Architect's Board - Membership
32 MRSA § 212

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To: Joseph M. Hochadel, Executive Department

From: Kate Clark Flora, Assistant Attorney General

Re: Meaning of the term "Independent Practice of Architecture."

This responds to your request of February 3 concerning the requirement in Title 32 M.R.S.A. § 212 that architects, to be eligible for appointment to the Maine State Board for Registration of Architects and Landscape Architects, must have been "engaged in the independent practice of architecture or landscape architecture for at least five years prior to appointment." Specifically your request is for an interpretation of the words "independent practice of architecture."

Summary Conclusion:

The term "independent practice" as used in 32 M.R.S.A. § 212 refers to the practice of architecture by a registered architect, whether self-employed or employed by a corporation engaged in the practice of architecture. The word "independent" is used to distinguish between the architect who is registered to practice as a professional architect and the person working under the supervision of a registered architect in order to satisfy the requirements of 32 M.R.S.A. § 220 (B)(1)(a)-(h).

Discussion

One of the qualifications set out in 32 M.R.S.A. § 212 for membership on the Board which oversees the registration of professional architects and regulates the practice of the profession is that members of the Board must have been engaged in the "independent practice of architecture . . . for at least five years." The question raised is what is meant by the use of the word "independent?"

The present law dealing with regulation of architecture, as a profession, is located in 32 M.R.S.A. § 211 et seq, which was enacted by PL 1977, c. 433 § 3. The section dealing with the practice of architecture by a corporation, § 220(1)(B)(2), provides:

> (2) No corporation as such shall be registered to practice architecture in this State, but it shall be lawful for a corporation to practice architecture providing at least 1/3 of the directors, if a corporation, or 1/3 of the partners, if a partnership, are licensed under the laws of any state to practice architecture and the person having the practice of architecture in his charge is himself a director, if a corporation, or a partner, if a partnership, and licensed to practice architecture under this chapter and all drawings, plans, specifications and administration of construction or alterations of buildings or projects by such corporation are under the personal direction of such registered architect. One-third of the directors or partners shall be licensed under the laws of any state to practice engineering, architecture, landscape architecture or planning. In cases where the number of directors or partners is not divisible by 3 the number of directors or partners shall be the number that results from rounding up or rounding down to the nearest number.

Under the old law, which was repealed and replaced, the provision dealing with the practice of architecture by a corporation, 32 M.R.S.A. §202(2), provided

> 2. Corporation. No corporation as such shall be registered to practice architecture in this State, but it shall be lawful for a corporation to practice architecture providing the chief executive officer of such corporation shall be a registered architect and all drawings and plans and specifications and supervision of construction or alterations of buildings or projects by such corporation shall be under the personal direction of such registered architect.

Under both the present and prior statutes, Board members were required to be in the "independent" practice of architecture. Both statutes provide that a corporation cannot be itself registered to practice but that it may perform architectural work provided that such work is performed under the supervision of a registered architect who is a partner or director of the corporation.

In construing a statute, the language of the statute is looked to first, and if it is clear, it is necessary to look no further. Lewiston-Auburn United Grocers, Inc. v. Johnson, 253 A.2d 338 (Me. 1969). Where the statutory language is ambiguous, the Legislative purpose must be considered. Beckett v. Roderick, 251 A.2d 427 (Me. 1969). Where the meaning is unclear, the practical consequences of particular interpretations may be considered. Tiedemann v. Johnson, 316 A.2d 359 (Me. 1974).

The statutory language in question here is ambiguous, as it is susceptible to two interpretations. The first, and I believe the correct one, is that the Legislature used the adjective "independent" to distinguish the "apprentice" architect (who possesses an architectural degree and is working under a registered architect to acquire the experience mandated by the statute before he or she can be registered as an architect,) from registered architect (who has satisfied the statutory requirements passed the examination).[1/] This interpretation is consistent with the statutory requirement that a candidate for the Board must have been engaged in "independent practice for at least five years." Such a requirement ensures that those who regulate their fellow professionals will have a significant amount of professional experience beyond their training period.

The second possible interpretation is that the word "independent" means that only those registered architects who practice by themselves are able to serve on the Board, and not those who are employed by corporations doing architectural work. Such an interpretation is somewhat inconsistent with the statutory requirements permitting architects to practice in corporations; it also presents constitutional problems. Because of the requirement that the person in charge of the architectural work in a corporation be a partner or director, as well as a registered architect, in most cases a registered architect working for a corporation would be in the type of decision making position to cause such a practice to be "independent", meaning "not dependent; not subject to control by others" as that word is defined in Websters Dictionary.[2/]

Even if the activity of a registered architect working for a corporation fails to satisfy the dictionary definition of "independent," there is another reason why the word "independent" should not be interpreted as intending to exclude registered architects employed by a corporation. That is that such an interpretation would result in a Board on which all the representatives of the architect's profession would be private, as opposed to corporate, practitioners. Such a composition would present consitutional difficulties.

In Gibson v. Berryhill, 411 U.S. 564 (1973) the Supreme Court found that where all the members of the Alabama State Board of Optometry were drawn from the Alabama Optometric Association, whose membership was limited to "privately practicing" optometrists, the Board was unconstitutionally constituted because its pecuniary interest precluded it from fairly adjudicating charges against all the optometrists in the state who were employed by business corporations. The

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1/ 32 M.R.S.A. § 220 (B)(1)(b) also permits a person not holding an architectural degree to work with a registered architect and acquire sufficient experience to become a registered architect.

2/ This does not cover the case of the registered architect who is employed by such a corporation working for the registered architect who is a director.

reasoning is that a board so constituted that its membership may have a pecuniary interest in the outcome of its regulatory decisions while a part of the regulated group is denied a voice on the board may unconstitutionally deny due process to those appearing before it, See also, Wall v. American Optometric Association, Inc., 379 F. Supp. 1975 (NDGA. 1974). This has been found to be so even where not the entire regulatory body but only a minority, are affected by the pecuniary interest.[3/] A.M.Motors Sales Corp. v. New Motor Veh. Bd., 138 Col Rptr. 594, 599 (1977). If all the board members who are registered architects were mandated to be in private practice, this would have the effect of excluding from representation all those registered architects who are in partnerships or corporations. A Board so constituted possesses an inherent bias which deprives non-private practice architects of due process.

It is a cardinal rule of statutory construction that if a statute can be construed in such a way as to avoid constitutional problems, it should be so construed. Portland Pipeline Corp. v. Environmental Imp. Commission, 307 A.2d 1 (Me. 1973), appeal dismissed 414 U.S. 1035; In re Stubbs, 141 Me. 143 (1944). An interpretation of the adjective "independent" to permit membership on the regulatory Board of only those architects in private practice would encounter constitutional difficulties. I therefore conclude that the proper interpretation must be that the word "independent" is used to distinguish between one who is an "apprentice" (or unregistered architect) and one who is a registered architect.

Kate Clark Flora

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3/ The "pecuniary interest" arises by the fact that the regulators are in the same business and stand to gain business by decisions affecting the removal of competitors from the profession. The problem presented here is that of an all "private practice" board regulating corporation practitioners.