

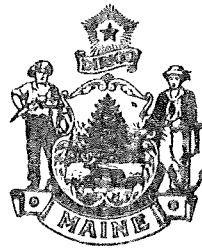
# MAINE STATE LEGISLATURE

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ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

May 12, 1981

Honorable David R. Ault  
Senate Chambers  
State House  
Augusta, Maine 04333

Honorable Judy C. Kany  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Senator Ault and Representative Kany:

This is an informal response to your letter of April 17, 1981, in which you raise questions as to whether a professional engineer may provide certain services under the relevant regulations of the Department of Housing and Urban Development (HUD), as interpreted by the Maine State Housing Authority (MSHA).<sup>1/</sup>

Although your letter poses four questions, further inquiries reveal that the problem involves the interpretation of a single HUD regulation. That regulation, found at 24 C.F.R. §883.406(c) (1980), provides as follows:

(c) Certification of Working Drawings and Specifications. The HFA must submit to HUD a certification by the HFA, based upon an analysis and report by the design architect of the project or by an architect employed or engaged by the HFA that. . . . (emphasis added)

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<sup>1/</sup> Our response is informal for two reasons. First, the problem you raise is ultimately governed by an HUD regulation, and it would be inappropriate for us to render a formal interpretation of a federal regulation. Second, because of time constraints, our advice to you necessarily relies on certain unofficial input from HUD, and thus, we would be reluctant to characterize our conclusions as a formal opinion.

The point of contention which gives rise to your opinion request is whether the analysis and report required by the regulation must be made by an architect or whether it may be made by a professional engineer. We are advised that the State Housing Authority has adopted the former interpretation and embodied it in its regulations.

It is a basic principle of statutory construction that words in a statute are to be given their plain meaning whenever possible. Applying this principle to the regulation in question, the logical conclusion is that the required "analysis and report" must be provided by an architect. Thus, relying solely on the language of the regulation, which expressly requires an analysis and report by an "architect," the Housing Authority's interpretation is clearly defensible.

The problem has become confused, however, by virtue of the fact that HUD has apparently offered a broader interpretation of its regulation. In an attempt to clarify this matter, I spoke with a HUD official who indicated that a professional engineer might be able to provide the analysis and report if he were authorized by State law to perform the requisite functions. When pressed for elaboration, the official stated that the engineer would have to be authorized to design and supervise the construction of buildings to the same extent that an architect is so authorized.<sup>2/</sup>

When viewed in terms of the explanation provided by the HUD official, the question is whether a professional engineer possesses the same authority as an architect to design and supervise the construction of buildings. An analysis of this question must begin with the statutory definition of the "practice of professional engineering," found in 32 M.R.S.A. § 1251(3). That section reads in relevant part as follows:

3. Practice of professional engineering.  
The term "practice of professional engineering" shall be held to mean any professional service, such as . . . design or responsible supervision of construction in connection with any . . . buildings. . . when such service requires the application of engineering principles and data. (Emphasis added)

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<sup>2/</sup> Given the nature of my conversation with the HUD official, his comments are most fairly characterized as an unofficial interpretation of 24 C.F.R. § 883.406(c) (1980).

On its face, 32 M.R.S.A. § 1251(3) authorizes an engineer to design and supervise the construction of buildings. It is significant, however, that the statute limits the authority so granted to those services which require "the application of engineering principles and data." As a result, the statute does not really resolve the issue of whether the engineer's authority is coextensive with that of the architect.

In State v. Beck, 156 Me. 403 (1960), the Law Court addressed the issue raised above and concluded that, under the relevant Maine statutes, an engineer was not empowered to perform all of the functions of an architect.<sup>3/</sup> After noting that there are similarities between the professions, the Court found that their functions are nonetheless not identical.

We conclude that, while all architects may be engineers, all engineers are not architects. . . . The Legislature confirmed these inferences when in 1945 it made requisite a special and classificational licensing of architects as such and enacted a separate statute for such a purpose in addition to the earlier engineering licensing act of 1935. While the respective functions of an engineer and those of an architect as recited in the two statutes superficially appear parallel and equivalent as predicated for each group they are designedly not so. Notably in the instance of architects studies, plans, specifications, etc., are coupled conjunctively with "a coordination of structural factors concerning the aesthetic." That element is absent from the engineering law. 156 Me. at 410.

The thrust of the Beck decision then is that an engineer is not authorized to perform all of the functions of an architect, particularly with respect to design. Applying the Court's interpretation of Maine law to the HUD regulation, even as modified by the informal explanation described above, we see no basis for finding unreasonable the MSHA requirement that the analysis and report be performed by an architect.<sup>4/</sup>

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<sup>3/</sup> Beck upheld the conviction of an engineer for holding himself out as authorized to practice architecture.

<sup>4/</sup> Our conclusion is not altered by 32 M.R.S.A. § 226 which excepts the professional engineer from the architectural licensing requirement as long as the engineer does "only architectural work as is incidental to his engineering work." As noted by the Law Court, this provision merely allows engineers to perform "occasional or gratuitous architectural. . . functions." State v. Beck, supra at 412. It does not give engineers the same authority as architects with respect to the design and construction of buildings as the HUD regulation would appear to require.

Since the question underlying your inquiries would appear to be what legislative action would be necessary to insure that engineers may provide the required analysis and report, we shall briefly address that matter. As you undoubtedly recognize, the ultimate power to resolve the issue lies with HUD. Subject to that qualification, we would suggest that the Legislature would have to empower engineers to perform all of the functions of architects with respect to the design of buildings and the supervision of their construction in order to insure compliance with the HUD requirement, even as modified. Stated in the converse, as long as architects possess powers in the design and construction of buildings, which are not shared by engineers, it will be reasonable for MSHA to interpret the HUD regulation as mandating an analysis and report by an architect.<sup>5/</sup>

I hope this information is helpful.

Sincerely,

*Stephen L. Diamond*

STEPHEN L. DIAMOND  
Deputy Attorney General

SLD/ec

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<sup>5/</sup> If it is believed that an engineer should be authorized to provide the required analysis and report, the most direct path to this objective would be an amendment to the HUD regulation. Such an amendment could be limited to the problem at hand. By contrast, the changes in State law which would appear necessary to reach the same result would almost inevitably have ramifications far beyond the immediate problem. We recognize, of course, that the Maine Legislature has no control over HUD; the observation is offered, however, to point out the difficulty of dealing with this problem through State legislation.