

office of governor at the last preceding general election in the village or fractional school district.

If a precinct is situated only partially within the village or fractional school district the portion of the gubernatorial vote in the precinct to be allocated to the portion of the precinct within the village or fractional school district and to become part of the total gubernatorial vote of which 25% would constitute the minimum signature requirement for recall petitions should be determined by referring to applications for ballots in the divided precinct at the most recent election at which a Governor was elected. After reference to such records reveals the number of electors residing in the portion of the precinct within the village or fractional school district who actually cast ballots at the polls or by absentee ballot, such number must be reduced to reflect the number of electors who did not vote for any of the candidates for Governor. For example, if 400 voters, of whom 150 resided in the village or fractional school district, cast ballots but only 350 votes, or 87.5% of the ballots, were cast for gubernatorial candidates, the gubernatorial vote for the portion of the precinct within the village or fractional school district would be 131, or 87.5% of 150.

Election records must be retained only two years and gubernatorial elections occur every four years. We are advised that in the future the Department of State will instruct local election officials to retain the materials for divided precincts from one gubernatorial election until the next.

If the election materials from the 1970 gubernatorial election for a given municipality are no longer available it will be necessary for the local clerk to apportion the gubernatorial vote in split precincts in whatever manner he believes will best reflect the true distribution of the actual vote, taking into consideration the specific characteristics of the particular precinct.

FRANK J. KELLEY,
Attorney General.

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ARCHITECTS: Responsible supervision

PROFESSIONAL ENGINEERS: Responsible supervision

Responsible supervision of all construction is the practice of architecture and professional engineering.

Responsible supervision of all construction cannot be performed by a person not registered as an architect or a professional engineer.

Opinion No. 4626

May 25, 1973.

Mr. Jack Sharpe
Administrative Secretary
Board of Registration for Architects
1116 South Washington Avenue
Lansing, Michigan 48926

This is in response to your request for our opinion on certain questions relating to delegation of responsibility for supervision of construction. In

your request you set forth the following factual situations and ask specific questions relating to each situation:

1. An owner who desires to construct a building not exempt from the requirements of 1937 PA 240, as amended, being MCLA 338.551 *et seq*; MSA 18.84(1) *et seq*, contracts with a registered architect and a registered professional engineer, to design, engineer, and prepare plans and specifications for construction of the building. The contract does not provide for responsible supervision of construction. The owner then hires or contracts with a person not registered under the provisions of this act to provide responsible supervision of construction of the building.

(a) Is the person not registered under the provisions of this act, and hired by the owner to render responsible supervision of construction of the building in violation of 1937 PA 240, as amended?

(b) Is the owner in violation of 1937 PA 240, as amended, by causing responsible supervision of construction to be executed by a person not registered under the provisions of the act?

2. A registered architect or registered professional engineer contracts with an owner to design, engineer, prepare plans and specifications, and provide responsible supervision of construction of a building not exempt from the provisions of this act. The registered architect or the registered professional engineer then either assigns an employee not registered under the provisions of this act or contracts with a person not registered under the provisions of this act to provide the responsible supervision of construction.

Is the registered architect or registered professional engineer who either delegates to his employee or subcontracts the responsible supervision of construction of the building in violation of 1937 PA 240, as amended?

3. Is responsible supervision of construction by a registered architect or registered professional engineer required on all buildings not exempt under the provisions of 1937 PA 240, as amended?

In response to part (a) of your first question, under section 2 of 1937 PA 240, as amended, the practices of architecture and professional engineering include "responsible supervision of construction:"

"(2) The practice of architecture within the meaning and intent of this act includes any professional service such as consultation, investigation, evaluation, planning, design or *responsible supervision of construction*, alteration or repair in connection with any public or private structures, buildings, equipment, works or projects when such professional service requires the application of the principles of architecture or architectural design. No registered architect shall be engaged or interested in the sale of building materials or have any interest in any project or structure, prejudicial to his professional interest therein, excepting such projects and structures as are not required by this act to be designed by a registered architect.

"* * *

"(4) The practice of professional engineering within the meaning and intent of this act includes any professional service, such as con-

sultation, investigation, evaluation, planning, design or *responsible supervision of construction* in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, when such professional service requires the application of engineering principles and data, except as hereinafter defined." MCLA 338.552; MSA 18.84(2) (4) (emphasis supplied)

Therefore, if a person who is not registered is hired by the owner to render responsible supervision of construction of the building, that hired person is in violation of section 1 of 1937 PA 240, as amended, which provides in pertinent part:

" . . . it shall be unlawful for any person to practice or to offer to practice the profession of architecture, the profession of engineering . . . in this state, . . . unless such person has been duly registered or exempted under the provisions of this act." MCLA 338.551; MSA 18.84(1)

The owner is not in violation of the act because he is not "practicing or offering to practice" the profession of architecture or professional engineering, but merely offering to pay for such services.

Your second question necessitates an inquiry as to the reasons why "responsible supervision of construction" constitutes the practice of architecture. In *Wahlstrom v Hill*, 213 Wis 533; 252 NW 339 (1934), the court dealt with a statute which, as does the Michigan statute, defined the practice of architecture to embrace "responsible supervision of the construction." The Supreme Court of Wisconsin stated:

"We have now therefore for determination what is meant by 'responsible supervision of the construction, enlargement or alteration of a public or private building.' Upon the undisputed facts, it appears here that plans and specifications, using the words in their more technical meaning, were furnished by licensed architects. It seems clear that the services which the plaintiff undertook to render were not 'responsible supervision of the construction, enlargement or alteration' of the building in question. What he undertook to do was to act as agent of the defendants in the letting of contracts and in the doing of things which an owner might properly do for himself and so make his knowledge and skill as a builder, his familiarity with the value of materials, labor, etc., available to the defendants. This differs widely from the supervisory services ordinarily rendered by an architect who goes upon the job for the purpose of ascertaining whether or not the materials being used are of the quality and kind specified and whether or not the work is done in conformity with the plans and specifications. . . . The trial court well said:

"It is a matter of common knowledge that an architect may be employed merely to make plans and specifications or he may additionally contract to supervise the construction. Such supervision of construction means inspection from time to time by the architect to see that his plans and specifications are complied with. The object of the statute is to guard against the erection of unsafe and unsanitary buildings. *Proper plans and specifications accompanied*

by proper construction must be assured by competent architect service. Proper construction includes inspection of the material used and the performance of the construction work so as to comply with the plans and specifications.’” (pp 537-538) (emphasis supplied)

The reasoning of this opinion demonstrates that since “responsible supervision of construction” requires expertise and sound judgment, it is considered to be the practice of architecture. This decreases the risk that non-architects will judge the adequacy of construction and thus insures against the erection of unsafe buildings.

In fact, section 19(e) of 1937 PA 240, as amended, provides that responsible charge of design or supervision cannot be delegated by a registered architect or a registered professional engineer to an employee or a subordinate if that employee or subordinate is not registered as an architect or professional engineer.

Section 19(e) of 1937 PA 240, as amended, provides in pertinent part:

“Nothing in this act shall require an employee or subordinate of a person holding a certificate of registration under this act or an employee of a person exempted from registration by clauses (a) and (b) of this section to be registered as required by this act, if his work does not include responsible charge of design or supervision.”
MCLA 338.569(e); MSA 18.84(19) (e)

The same reasoning that prohibits the registered architect and the registered professional engineer from delegating the responsible charge of construction to a non-registered employee or subordinate would preclude the registered architect and registered professional engineer from contracting all supervision of construction to a non-registered subcontractor. This assumes that the registered architect or the registered professional engineer bound himself by contract to supervise all construction and that the non-registered person to whom all supervisory work is assigned or subcontracted to, performs all supervisory work without supervision of the registered architect or the registered professional engineer.

Whether the registered architect or the registered professional engineer would be in violation of 1937 PA 240, as amended, for employing or contracting non-registered personnel for supervising construction would be a matter for the State Board of Registration for Architects and the State Board of Registration for Professional Engineers to determine. Section 21(b) of 1937 PA 240 provides:

“The board shall have the power to revoke the certificate of registration of any registrant who is found guilty of:

“* * *

“(b) Any gross negligence, incompetency, or misconduct in the practice of architecture, professional engineering or land surveying as a registered architect, a registered professional engineer, or registered land surveyor.” MCLA 338.571; MSA 18.84(21)

Whether the delegation or subcontracting of supervision of construction would constitute gross negligence, incompetency, or misconduct in the

practice of architecture or professional engineering would be for the respective boards to determine.

In response to your third question, section 19 of 1937 PA 240, as amended, exempts certain construction from the provisions of the act:

"Nothing in this act shall be construed as requiring supervision by an architect or professional engineer on private single residences for which he has rendered other professional services as herein defined.

"Nothing in this act shall prevent any owner from doing any of the architectural, engineering, or surveying work mentioned herein upon or in connection with the construction of buildings on his own property for his own use, nor be construed as preventing a person not registered under this act from planning, designing or supervising the construction of residence buildings not exceeding 3,500 square feet per building in 'calculated floor area.'" MCLA 338.569(e); MSA 18.89(19) (e)

In *Dave's Place v Liquor Control Comm*, 277 Mich 551 (1936), the court cited a well known principle of statutory construction:

"It is a general principle of interpretation that the mention of one thing implies the exclusion of another thing; *expressio unius est exclusio alterius*." 25 R.C.L. p. 981. (p. 555)

In other words, no other construction is exempt from the statute. Since we assume that all construction is supervised and the statute states that "responsible supervision of construction" constitutes the practice of architecture or professional engineering, all construction which section 19, *supra*, does not exempt must be supervised by registered architects or registered professional engineers.

FRANK J. KELLEY,
Attorney General.

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BOARD OF COUNTY COMMISSIONERS: Authority of the board to grant retroactive compensation.

Authority of the board chairman to appoint committees without prior approval of the full board of commissioners.

The board of county commissioners has no authority to grant retroactive compensation to the chairman for the past performance of duties. The chairman of the board of commissioners has no authority to appoint committees without the approval of the full board as required by the by-laws of the board of county commissioners.

Opinion No. 4772

June 12, 1973.

Honorable Gilbert DiNello
State Representative
The Capitol
Lansing Michigan 48901

Recently you requested my opinion on behalf of the Macomb County Board of Commissioners. The initial question has been rephrased to read: