AGENDA ITEM # 4K

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OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
06-38

Ms. Jean Williams, Executive Director
Board of Governors of Licensed Architects and Landscape Architects
P.O. Box 53430
Oklahoma City, Oklahoma 73152

November 21, 2006

Dear Ms. Williams:

This office has received your request for an Attorney General Opinion in which you ask, in effect, the following questions:

1. **Are architects who are licensed pursuant to the State Architectural and Interior Designers Act required to plan, design and prepare plans and specifications for buildings to be constructed for the *2003 International Building Code*[1] Use Groups A-2 and A-3 – Assembly and E - Education, if the buildings are:**

   (a) **Two (2) stories or fewer in height and designed for a code-defined occupancy of no more than fifty (50) persons;**

   (b) **One (1) story in height and designed for a code-defined occupancy of fifty-one (51) persons or more; and**

   (c) **Three (3) stories or more in height and designed for a code-defined occupancy of forty (40) persons or more?**

2. **Is a basement to be counted as a story of building height when determining the need for architects licensed pursuant to the State Architectural and Interior Designers Act?**

In 2006 the Oklahoma Legislature amended and enacted several new laws in the State Architectural and Interior Designers Act[2] ("Act"). The Legislature enacted Section 46.21b of Title 59 at 2006

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[1] INT'L CODE COUNCIL, INC., 2003 INTERNATIONAL BUILDING CODE (2002) [hereinafter 2003 International Building Code].

[2] *See* 2006 Okla. Sess. Laws ch. 163, §§ 1 – 30; 2006 Okla. Sess. Laws ch. 193, §§ 1 – 6 (current version at 59 O.S. 2001 & Supp.2006, §§ 46.1 – 46.41).

Okla. Sess. Laws ch. 163, § 17[3] with an effective date of July 1, 2006. Section 46.21b in pertinent part provides:

> A. ***An architect shall be required*** to plan, design and prepare plans and specifications for the following building types ***except where specifically exempt*** from the provisions of the State Architectural and Interior Designers Act. All use groups in this section are defined by the 2003 International Building Code.
>
> B. The construction, addition or alteration of a building of any size or occupancy in the following Code Use Groups ***shall be subject*** to the provisions of the State Architectural and Interior Designers Act:
>
> 1. Code Use Group I — Institutional;
>
> 2. Code Use Group R-2 – Residential, limited to dormitories, fraternities and sororities, and monasteries and convents;
>
> 3. Code Use Group A-1 – Assembly and theaters;
>
> 4. Code Use Group A-4 – Assembly, arenas and courts;
>
> 5. Code Use Group A-5 – Assembly, bleachers and grandstands; and
>
> 6. Buildings for which the designated Code Use Group changes are not exempt from this act.
>
> C. The ***following shall be exempt*** from the provisions of the State Architectural and Interior Designers Act; provided that, for the purposes of this subsection, ***a basement is not to be counted as a story*** for the purpose of counting stories of a building for height regulations:
>
> 1. The construction, addition or alteration of a building ***no more than two stories*** in height ***and*** with a code–defined occupancy of ***no more than fifty (50) persons*** for the Code Use Groups ***A-2 and A-3 – Assembly*** and Code Use Group ***E - Education***[.]

Id. (emphasis added).

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[3] The Second Regular Session of the Fiftieth Legislature also amended Section 46.21b at 2006 Okla. Sess. Laws ch. 193, § 6; however, the amendment is not germane here.

I.

"The fundamental rule of statutory construction is to ascertain and, if possible, give effect to the intention and purpose of the Legislature as expressed in the statute." *Jackson v. Indep. Sch. Dist. No. 16*, 648 P.2d 26, 29 (Okla. 1982) (footnote omitted). The exemption language in Section 46.21b(C)(1) defines the first exemption with two negative clauses: "***no more than two stories*** in height ***and*** with a code–defined occupancy of ***no more than fifty (50) persons*** for the Code Use Groups A-2 and A-3 – Assembly and Code Use Group E - Education[.]" *Id.* (emphasis added). Title 25 O.S. 2001, § 1 provides that "[w]ords used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears." The word "and" is a conjunction used to connect grammatically coordinate words, phrases, or clauses, and it means "along with or together with . . . as well as . . . also at the same time . . . in addition to." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 80 (3d ed. 1993). Therefore, we read the exemption language as "***no more than two stories*** in height [together with (or, as well as)] a code–defined occupancy of ***no more than fifty (50) persons*** for the Code Use Groups A-2 and A-3 – Assembly and Code Use Group E - Education[.]" 59 O.S. Supp.2006, § 46.21b(C)(1) (emphasis added).

II.

We also need to examine the meaning of "basement" and "story" as they are used in 59 O.S. Supp.2006, § 46.21b(C) above. "Statutes are to be construed by reading their provisions with the ordinary and common definitions of the words used unless the context dictates a special or technical definition is to be utilized." *State ex rel. W. State Hosp. v. Stoner*, 614 P.2d 59, 63 (Okla. 1980). In subsection (A) of Section 46.21b above, the Legislature uses the 2003 International Building Code to define "[all] use groups" in Section 46.21b. Because the 2003 International Building Code is a comprehensive set of technical standards for the architectural design of buildings, it appears that the Legislature intends for the code definitions of the architectural terms "basement" and "story" to be the same as its use of those terms in subsection 46.21b(C). The 2003 International Building Code defines basement and story to mean:

> BASEMENT. That portion of a building that is partly or completely below grade plane . . . . A basement shall be ***considered as a story above grade plane*** where the finished surface of the floor above the basement is:
>
> 1. More than 6 feet (1829 mm) above grade plane;[4]

[4] Grade plane is defined to mean a "reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829mm) from the building." 2003 INTERNATIONAL BUILDING CODE, ch. 5, § 502.1, p. 73.

2. More than 6 feet (1829 mm) above the finished ground level for more than 50 percent of the total building perimeter; or

3. More than 12 feet (3658 mm) above the finished ground level at any point.

. . . .

STORY. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above . . . .

Id. ch. 5, § 502.1, p. 73 (emphasis added) (footnote added).

According to the above definition a basement is to be considered as a "story above grade plane" when any one of three conditions is met, namely: where the finished surface of the floor above the basement is (1) more than 6 feet above grade plane, (2) more than 6 feet above the finished ground level for more than 50 percent of the total building perimeter, or (3) more than 12 feet above the finished ground level at any point. In each of these three situations the below grade nature of a basement is sufficiently diminished such that it is to be considered a single story.

The Act applies, and licensed architects are required for buildings for Code Use Groups A-2 and A-3 (Assembly) and E (Education), if ***either*** (1) the building height is three stories or higher ***or*** (2) the occupancy is to be fifty-one (51) people or more. To be exempt from the requirement to have licensed architects under 59 O.S. Supp.2006, § 46.21b(C)(1) of the Act, buildings for Code Use Groups A-2 and A-3 (Assembly) and E (Education) must be two stories or fewer in height (not counting the basement, unless it is "considered a story" as explained above) ***and*** designed for occupancy of fifty (50) people or fewer.

By way of example, a two-story building for use groups A-2 and A-3 – Assembly and E - Education designed for fifty-one (51) people or more would require licensed architects; a one-story building for Code Use Groups A-2 and A-3 – Assembly and E - Education designed for fifty-one (51) people or more would also require licensed architects. A two-story building for use groups A-2 and A-3 – Assembly and E - Education designed for fifty (50) people or fewer would be exempt from the Act, as would a one-story building for Code Use Groups A-2 and A-3 – Assembly and E - Education designed for fifty (50) people or fewer. A two-story building for Code Use Groups A-2 and A-3 – Assembly and E - Education with a basement "considered a story" by being more than 12 feet above the finished ground and designed for fifty (50) people or fewer would require licensed architects, because it is deemed to be three stories.

It is, therefore, the official Opinion of the Attorney General that:

1. In answer to your first question:

(a) Architects licensed pursuant to the State Architectural and Interior Designers Act, 59 O.S. 2001 & Supp.2006, §§ 46.1 – 46.41, are not required to plan, design and prepare plans and specifications for buildings to be constructed for the 2003 International Building Code Use Groups A-2 and A-3 – Assembly and E - Education, if the buildings are two (2) stories or fewer in height and designed for a code-defined occupancy of no more than fifty (50) persons. 59 O.S. Supp.2006, § 46.21b(C)(1).

(b) Licensed architects are required to plan, design and prepare plans and specifications for buildings to be constructed for the 2003 International Building Code Use Groups A-2 and A-3 – Assembly and E - Education, if the buildings are one (1) story in height and designed for a code-defined occupancy of fifty-one (51) persons or more. 59 O.S. Supp.2006, § 46.21b(C)(1).

(c) Licensed architects are required to plan, design and prepare plans and specifications for buildings to be constructed for the 2003 International Building Code Use Groups A-2 and A-3 – Assembly and E - Education, if the buildings are three (3) stories or more in height and designed for a code-defined occupancy of forty (40) persons or more. 59 O.S. Supp.2006, § 46.21b(C)(1).

2. A "basement" is to be counted as a "story" of building height when determining the need for architects licensed pursuant to the State Architectural and Interior Designers Act, when any one of three conditions are met, namely: where the finished surface of the floor above the basement is (1) more than 6 feet above grade plane, (2) more than 6 feet above the finished ground level for more than 50 percent of the total building perimeter, or (3) more than 12 feet above the finished ground level at any point. 59 O.S. Supp.2006, § 46.21b(C); 2003 INTERNATIONAL BUILDING CODE, ch. 5, § 502.1, p.73.

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