

AGENDA ITEM # 4K

DEC 6 2006

STATE BOARD OF ARCHITECTS



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA  
ATTORNEY GENERAL OPINION  
06-38

RECEIVED

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OKLAHOMA  
BOARD OF ARCHITECTS

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*<sup>1</sup> 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<sup>2</sup> (“Act”). The Legislature enacted Section 46.21b of Title 59 at 2006

<sup>1</sup> INT’L CODE COUNCIL, INC., 2003 INTERNATIONAL BUILDING CODE (2002) [hereinafter 2003 International Building Code].

<sup>2</sup> 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<sup>3</sup> 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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<sup>3</sup> 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;<sup>4</sup>

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<sup>4</sup> 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.



W.A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA



JOHN CRITTENDEN  
ASSISTANT ATTORNEY GENERAL





July 21, 2005

STATE OF OKLAHOMA  
BOARD OF GOVERNORS OF THE LICENSED ARCHITECTS  
AND LANDSCAPE ARCHITECTS OF OKLAHOMA

MEMORANDUM

To: All licensees

From: The Board of Governors of the Licensed Architects and Landscape Architects  
Of Oklahoma

Re: Policy on the standard of care for professional's work and signing, sealing and dating work

The policy of the Board of Governors of the Licensed Architects and Landscape Architects is that the **standard of care** for the quality of work performed by licensed professionals is the same for buildings requiring an architect by the State Architectural Act, as it is for buildings not requiring an architect. As such, **you are required** to professionally design all projects, as well as to sign, seal and date **all** your architectural work. This **includes** other buildings, such as single family residential, even though they are not required to be designed by an architect. The Board expects your standard of work to be of the same nature and quality on every project across the board. There is no time you can dispense with your professional status and become a building designer, for instance. This policy simultaneously applies to landscape architects and the projects and work they execute and is applied in exactly the same manner, requiring the same professional standard of care and signing, sealing and dating **all** executed work.

It is also the responsibility of the licensed professional, architect or landscape architect, to hire other design professionals as required by the other statutes of the State of Oklahoma. The reference here for engineers and land surveyors is O.S. 59, Section 475.1 et seq and their website address is [www.pels.state.ok.us](http://www.pels.state.ok.us).

Remember too, from a previously issued declaratory ruling, **you are still required** to sign, seal and date all work, even to the end point of your contract. If the plans are not finished, you may put notations on them to indicate they are not for construction or any other language identifying them as incomplete. **Declaratory rulings** have the same effect as law until overturned by a court of law. You may obtain additional copies by accessing our website at [www.ok.gov/architects/](http://www.ok.gov/architects/) under what's new, news items or calling 405-949-2383 or faxing the Board office at 405-949-1690.

*"Our mission is to protect the citizens of the State of Oklahoma by regulating the professions of Architecture and Landscape Architecture and promoting quality practice."*

JEAN WILLIAMS  
EXECUTIVE DIRECTOR



BRAD HENRY  
GOVERNOR

STATE OF OKLAHOMA  
BOARD OF GOVERNORS OF THE LICENSED ARCHITECTS  
AND LANDSCAPE ARCHITECTS OF OKLAHOMA

September 26, 1994

TO: ALL LICENSES

FROM: JEAN WILLIAMS, EXECUTIVE DIRECTOR

RE: DECLARATORY RULING

At the September 8<sup>th</sup>, 1994, regular meeting of the Board of Governors of the Licensed Architects and Landscape Architects of Oklahoma, the Board unanimously issued the following declaratory ruling:

“Any licensed architect preparing documents that would be considered to fulfill an entire contract with a client (being the end point of service) SHALL sign, seal and date those documents.”

This ruling pertains to the State Architectural Act, know as Oklahoma Statutes, Title 59, Section 46.1 et seq, in particular 46.25, and the Oklahoma Administrative Code (known as OAC), Title 55, Chapter 10, Section 11, subsection 8 through 10. The ruling is the Board’s official response as to the application or enforcement of its rule or statute to a given set of circumstances. This ruling shall constitute precedent for the purpose of the Board’s application and enforcement of the rules in this Chapter and statutes until revoked or overruled by the Board or the Courts (OAC 55:10-3-10). Therefore, the ruling is considered to require mandatory compliance by all licensed architects under this Board’s jurisdiction.

If you have any question, please contact this office immediately. Thank you for your cooperation and attention to this matter.

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P.O. Box 53430 · OKLAHOMA CITY, OK 73152 · TELEPHONE NUMBER (405) 949-2383



STATE OF OKLAHOMA

January 2, 1996

BOARD OF GOVERNORS OF THE LICENSED ARCHITECTS  
AND LANDSCAPE ARCHITECTS OF OKLAHOMA

Declaratory Rulings

from

THE BOARD OF GOVERNORS OF THE LICENSED ARCHITECTS AND  
LANDSCAPE ARCHITECTS OF OKLAHOMA

At the regular meetings of the Board held June 8, 1995, September 14, 1995 and December 7, 1995, the Board discussed a letter from Mr. Grant Easterling, Administrator, Building Plans Review for the City of Tulsa, wherein six (6) declaratory rulings were requested from this Board. They were as follows, along with the responses by the Board:

Question

1. Are the Board's rules set forth in the Oklahoma Administrative code at Title 55, Chapter 10, Subchapters 1 through 15 ("OAC 55:10"), the official and binding interpretation of the Oklahoma State Architectural Act (the "Act"), 59 O.S. 1991 and Supp. 1994, Sections 46.1 et seq., or are they simply a "recommended guide" for local jurisdictions to help in setting local standards?

Response

The Oklahoma Administrative Procedures Act provides as follows with regard to rules:

Rules shall be valid and binding on person they affect, and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise. Except as otherwise provided by law, rules shall be prima facie evidence of the proper interpretation of the matter to which they refer.

75 O.S. 1991, Section 308.2

Question

2. If OAC 55:10 is only a guide, is there any authority other than the courts that should/must be approached to interpret the Act?

Response

An answer to this question is not necessary in view of the answer to question 1.

Question

3. If OAC 55:10 is the official and binding interpretation of the Act:
  - a. Is the Board of Governors of the Licensed Architects and Landscape Architects of Oklahoma the singular interpreter and appellate/interpreter for the Act?

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- b. What reference (s) or standard (s) are used to interpret and set the scope of the Act project type restrictions, i.e. BOCA Building Code, indicated use and public nature of a facility, even dictionary definitions to differentiate and stipulate semantics?

Response

- (a.) It is within the powers and duties of the Board to promulgate rules of conduct governing the practice of licensed architects and landscape architects. The Board is also given the duty to initiate proceedings for violation of the Act or Board rules. 59 O.S. 1991, Section 46.7 (12, 14). Any person may request that the Board make a declaratory ruling as to the application or enforcement of any rule or statute to a given set of circumstances. OAC 55:10-3-10. Therefore, the Board is the interpreter for the Act unless and until a court of competent jurisdiction rules on a particular matter relating to the Act or the Board's rules.
- (b.) Interpreting the Act begins with a plain reading of the statutes. Statutes are to be construed by reading their provisions with ordinary and common definitions and understanding of the words used unless the context dictates a special or technical definition is to be understood. 25 O.S. 1991, Section 1. Many of the terms used in the statutes are defined there. If other statutes define a term that is not defined in the Act that definition will apply unless a contrary intention appears. 25 O.S. 1991, Section 2. The Board's rules also assist in interpreting and applying the Act, and as noted above, they have the force and effect of law.

4. The Board's ruling after discussion and vote is as follows concerning what building types require and architect:

Question

Are commercial buildings which do not exceed two stories in height specifically exempted from the State Architectural Act, regardless of size or occupancy load?

Response

The Act specifically states that it shall not apply to commercial buildings not exceeding two stories in height. O.S. 59, 1991, Section 46.3-C.

Question

When does a commercial building become an assembly hall? Are building code definitions used as criteria?

June 8, September 14 and December 7, 1995

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Response

A building is an assembly hall if it is one of the specifically enumerated entities in OAC 55:10-1-3 under the definition of "assembly hall" or if it is used to gather 50 or more persons together for such purposes as deliberation, worship, entertainment, amusement, or awaiting transportation. If a building fits within those criteria, it requires an architect. The BOCA building code definitions are not the criteria.

Question

Does the reference to a construction valuation greater than \$40,000.00 in the first sentence of 59 O.S. 1991, Section 46.3 (C) refer only to school building, not to any other building type mentioned in that sentence?

Response

The 40,000.00 total cost used in the first sentence of 59 O.S. 1991, Section 46.3 (C) applies only to school buildings. The \$40,000.00 total cost requirement in the second sentence applies to all the entities listed in that sentence.

Question

Is there a scope, size or occupancy load which automatically requires a building be considered an "assembly hall" because of public safety consideration, regardless of the business conducted?

Response

There is no scope, size, or occupancy load which automatically requires a building be considered an "assembly hall" because of public safety consideration, regardless of the business conducted. The definition of assembly hall in the rules contemplates a purpose in addition to a gathering of 50 or more person.

Question

The definition of assembly hall in OAC 55:10-1-3 says it includes, but is not limited to, all buildings or portions of buildings used for gathering together 50 or more persons for such purposes as deliberation, worship, entertainment, amusement, or awaiting transportation. It goes on to provide a list of occupancies that are included. What is the effect of the phrase "but not limited to"?

Response

The fact that the definition of assembly hall in OAC 55:10-1-3 uses the phrase "include, but not limited to" indicates that there may be buildings other than those on the list which would come within the definition.

June 8, September 14 and December 7, 1995

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#### Question

Does the product/service being bought/rented have any bearing on the interpretation of entertainment or amusement, i.e. paint vs. clothing vs. video tapes vs. books vs. cleaning service, etc? Would it if the occupancy is greater than 50 and a valuation greater than \$40,000.00?

#### Response

See the analysis in the preceding responses. Differentiating between commercial building and assembly hall is difficult and involves combining all the elements of the Act and Board rules. These must be read in a way to harmonize all provisions. Application of the Act and Board rules to the facts of circumstances of a particular building may require a ruling by this Board, which can be requested as provided in OAC 55:10-3-10.

#### Question

5. If a seal is required, may an out-of-state seal be present on the set of documents if a seal of a licensed architect, state of Oklahoma appears there also?

#### Response

The use of a seal declares authorship and is prima facie evidence that the technical submission was prepared by or under the direct and personal supervision of the individual named on said seal. OAC 55:10-11-9. A licensed architect, State of Oklahoma is prohibited from placing his or her seal on any drawings or specifications not done under the architect's personal and direct supervision. 59 O.S. 1991, Section 46.25; OAC 55:10-11-12.

Title 59 O.S. 1991, Section 46.22 and OAC 55:10-15-1 prohibit holding oneself out as authorized to practice architecture in this state without being licensed here.

1. An architect placed his or her seal on plans not done under the architect's direct and personal supervision.
2. An architect practiced or held himself or herself out as authorized to practice architecture in Oklahoma without being licensed here.

The ultimate determination of whether a violation has occurred, and if so the appropriate penalty is to be made by the Board after notice and hearing as set forth in 59 O.S. 1991, Section 46.14.

#### Question

6. If a seal is not required, may an out-of-state seal be present on the set of documents, whether or not accompanied by a state of Oklahoma licensed architect's seal?

June 8, September 14 and December 7, 1995

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#### Response

Generally, the State Architectural Act does not apply to person, firms, or corporations who prepare plans and specifications for buildings not specified in the Act as requiring an architect licensed under the laws of the State of Oklahoma. 59 O.S. 1991, Section 46.21. However, section 46.21 goes on to say "providing such person, firms or corporations shall not, in any manner, represent himself or itself to be an architect or other title of profession or business using form of the word, "Architect". This prohibition applies to all persons, and makes no exception for a person who may actually be a licensed architect in another state.

This declaratory ruling is binding unless overturned by the Board or a court of law. Thank you for your attention to this matter. Should you have any questions, please call this office.



RECEIVED  
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OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

OKLAHOMA  
BOARD OF ARCHITECTS

Attorney General Opinion  
99-59

Jean Williams, Executive Director  
Board of Governors of Licensed Architects and Landscape Architects  
11212 N. May Avenue, Suite 110  
Oklahoma City, Oklahoma 73120

August 31, 1999

Dear Ms. Williams:

This Office has received your letter asking for an official Opinion addressing, in effect, the following question:

**Is a building constructed by a public trust authority (having a municipality as its beneficiary), to be used by a private tenant for commercial or industrial purposes, a municipal building requiring licensed architectural services, pursuant to 59 O.S. Supp. 1998, §46.3(E)?**

### I. INTRODUCTION

The Board of Governors of Licensed Architects and Landscape Architects ("Board") regulates the practice of architecture in the State of Oklahoma. *See* 59 O.S. 1991 & Supp.1998, §§ 46.1 - 46.37. The State Architectural Act ("Architectural Act") defines the "practice of architecture" as the "rendering or offering to render certain services, in connection with the design and construction, enlargement or alteration of a building or a group of buildings and the space surrounding such buildings. . . ." 59 O.S. Supp.1998, §46.3(B). While the Architectural Act broadly defines the "practice of architecture," it does not require licensed architectural services in all instances. Under the Architectural Act, cost, use, and type of structure determine whether licensed architectural services are required.

For example, the Architectural Act makes it unlawful for any unlicensed person to "engage in the planning, designing and preparation of drawings and specifications for the alteration or construction of any building *to be used as . . . [a] municipal building* where the reasonably estimated total cost for construction, remodeling or repairing of such building exceeds the sum of Forty Thousand Dollars (\$40,000.00)." 59 O.S. Supp.1998, § 46.3(E) (emphasis added). Under this provision, licensed architectural services would be required when the building is to be used as a municipal building, and its construction exceeds the reasonably estimated cost of \$40,000.

Conversely, licensed architectural services are not required for other structures under the Architectural Act, such as industrial or commercial buildings not exceeding two stories in height. *See* 59 O.S. Supp.1998, § 46.3(E). Therefore, if a building is used as a commercial or industrial building, and its height does not exceed two (2) stories (excluding the basement), licensed architectural services would not be required.

## II. BUILDINGS USED AS MUNICIPAL BUILDINGS

Your question involves whether licensed architectural services would be required on a building constructed by a public trust authority<sup>1</sup> (having a municipality as its beneficiary) when the building is to be used by a commercial or industrial tenant. For purposes of determining whether a building requires licensed architectural services, the Architectural Act focuses on the *use* rather than the *ownership* of the building. Therefore, we must determine what constitutes a municipal building in order to ascertain whether licensed architectural services will be required.

The Architectural Act defines the term “building” to mean “a structure consisting of a foundation, walls, roof, with or without parts[.]” *See* 59 O.S. Supp.1998, § 46.3(E). However, the Architectural Act does not define the term “municipal.”<sup>2</sup> Consequently, the term “municipal” must be construed in its plain and ordinary meaning, consistent with 25 O.S. 1991, § 1. Webster’s Third New International Dictionary defines “municipal” or “municipal corporation” as “a political unit (as a town, city, or borough) . . . endowed with powers of local self-government,” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1487 (3d. ed. 1993), and defining “government” to mean “the organization, machinery, or agency through which a political unit exercises [its] authority and performs [its] functions. . . .” *Id.* at 982.

Focusing on the building’s use, we must determine whether the building you inquire about will be used by the municipality to exercise its authority and perform its local governmental functions. If the building is constructed by the public trust authority and is to be used by the municipality to perform its local governmental functions, the building would be “used as a municipal building,” thereby requiring licensed architectural services. If the building is constructed by the public trust authority and is to be used by a private tenant for commercial or industrial purposes, the building would not be “used as a municipal building,” therefore licensed architectural services would not be required.

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<sup>1</sup>Municipalities may create public trust authorities to fund “any authorized and proper public function or purpose.” *See* 60 O.S. 1991 & Supp. 1998, §176 - §181. As a general principle, public trust authorities are distinct from their governmental beneficiaries. A.G. Opin. 98-36, citing *State v. Garrison*, 348 P.2d 859, 862 (Okla. 1959).

<sup>2</sup>The Oklahoma Supreme Court recognized the ambiguity of the term “municipal building” in *Reid v. City of Muskogee*, where a city bond election was challenged based on the lack of specificity of the term “city hall or municipal building.” 278 P. 339, 342 (Okla. 1929).

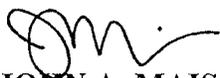
In the question posed, the public trust authority (having a municipality as its beneficiary) constructed a building, but the building was not to be used by the municipality to perform its local governmental functions. Rather, the building was to be used by a private tenant for commercial or industrial purposes. Therefore, the use of the building would not constitute "use as a municipal building" requiring licensed architectural services. We do not address whether licensed architectural services would nevertheless be required because of the building's size or cost.

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

1. The State Architectural Act, 59 O.S. Supp. 1998, § 46.3(E), requires licensed architectural services on buildings "used as municipal buildings" if the reasonably estimated total cost of the construction exceeds \$40,000.
2. Licensed architectural services are required on buildings constructed for use as commercial or industrial buildings if the buildings exceed two (2) stories in height (excluding basements). *See* 59 O.S. Supp. 1998, § 46.3(E).
3. A building "used as a municipal building," for purposes of 59 O.S. Supp. 1998, § 46.3(E), is any structure consisting of a foundation, walls, and roof, which is used by the municipality to perform its local governmental functions.
4. A building constructed by a public trust authority (having a municipality as its beneficiary) is not "used as a municipal building" when it is to be used by a private tenant for commercial or industrial purposes rather than by a municipality to perform its local governmental functions.



W.A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA



JOHN A. MAISCH  
ASSISTANT ATTORNEY GENERAL





SUSAN B. LOVING  
ATTORNEY GENERAL OF OKLAHOMA

December 21, 1994

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OKLAHOMA  
BOARD OF ARCHITECTS

Mr. Wendell V. Locke  
Secretary/Treasurer  
Oklahoma Board of Governors of the  
Licensed Architects and Landscape  
Architects of Oklahoma  
6801 North Broadway, Suite 201  
Oklahoma City, OK 73116-9037

RE: **Opinion No. 93-036**

Dear Mr. Locke:

The Attorney General has received your letter requesting an official opinion addressing, in effect, the following question:

Pursuant to 59 O.S.1991, § 46.3, may a person other than a licensed architect engage in the planning, designing, and preparation of drawings and specifications for the alteration or construction of a nursing home if the reasonably estimated total cost for the construction, remodeling, or repair of the nursing home exceeds \$40,000?

Consideration of your question requires an analysis of the Oklahoma Architectural Act, 59 O.S.1991, § 46.1, *et seq.*, as well as application of general principles of statutory construction. In addition, as you are aware, your question has been previously addressed by Attorney General Opinion 64-108. Consideration of the reasoning of that opinion is also necessary to resolve your question.

In formulating your question, we note that you have not defined the term "nursing home." Our understanding of that term is that it can refer to a variety of facilities for the care of disabled or elderly citizens. However, in undertaking this analysis, we have considered the term "nursing home" to be synonymous with the term "nursing facility," as defined by 63 O.S.1991, § 1-1902 (10), a part of the Nursing Home Care Act. Under that statute, a nursing facility is a home, establishment, or institution, a distinct part of which is primarily engaged in providing one of the following: (1) "skilled

nursing care and related services for residents who require medical or nursing care;" (2) "rehabilitation services for the rehabilitation of injured, disabled, or sick persons;" or (3) "health-related care and services to individuals who because of their mental or physical condition require care and services beyond the level of care provided by a residential care home which can be made available to them only through a nursing facility."<sup>1</sup>

In Oklahoma, the practice of architecture is regulated by the Architectural Act. In general terms, the Act defines the practice of architecture and provides that certain types of buildings may be lawfully designed only by licensed architects. It establishes the Board of Governors of the Licensed Architects and Landscape Architects and grants it certain powers and duties, including the power to examine candidates for licensure, to investigate and prosecute alleged violations of the Architectural Act and the Board's rules, and to levy civil penalties. See 59 O.S.1991, § 46.7. The Act specifically authorizes the Board to "promulgate rules of conduct governing the practice of licensed architects and landscape architects." 59 O.S.1991, § 46.7(14). The purpose of the Act is to "safeguard life, health and property." 59 O.S.1991, § 46.2.

Section 46.3(C) of the Act addresses the particular types of buildings that must be designed by a licensed architect. It provides, in part:

[I]t shall be unlawful for any person other than an architect duly licensed as provided in The State Architectural Act to engage in the planning, designing and preparation of drawings and specifications for the alteration or construction of any building to be used as an armory, auditorium, assembly hall, convention hall, church, educational building, convent, dormitory, gymnasium, hospital, library, bonded warehouse, passenger station, power house, municipal building, county building, state building, federal building, radio or television

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<sup>1</sup>The Nursing Home Care Act makes a distinction between a nursing facility and a residential care home, which is defined in pertinent part as follows:

'Residential care home' means any home, establishment, or institution licensed pursuant to the provisions of the Residential Care Act other than a hotel, motel, fraternity or sorority house, or college or university dormitory which offers or provides residential accommodations, food service, and supportive assistance to any of its residents or houses any resident requiring supportive assistance. Said residents shall be ambulatory and essentially capable of managing their own affairs, but do not routinely require nursing care].

station, stadium or theater where the reasonably estimated total cost for construction, remodeling or repairing of such building exceeds the sum of Forty Thousand Dollars (\$40,000.00).

Because neither § 46.3(C) nor any other section of the Architectural Act refers specifically to nursing homes, it is necessary, in order to answer your question, to determine whether nursing homes fall within any of the kinds of buildings that are specifically listed there.

Unfortunately, § 46.3(C) does not set forth any definitions of the different types of buildings that require licensed architects for their design, remodeling, and repair. However, several of these building types are defined in other statutes. See, e.g., 65 O.S.1991, § 1-104 (defining "library"). Unless a contrary intention plainly appears, the definition of a word or phrase that is set forth in one statute applies to the same word or phrase that is used in another statute. 25 O.S.1991, § 2; Oliver v. City of Tulsa, 654 P.2d 607 (Okla.1982).

The word "hospital" (one of the categories of building set forth in 59 O.S.1991, § 46.3(C)) is defined in 63 O.S.1991, § 1-701 as:

any institution, place, building or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care of patients admitted for overnight stay or longer in order to obtain medical care, surgical care, obstetrical care, or nursing care for illness, disease, injury, infirmity, or deformity.

Section 1-701 is part of the legislation that governs the licensing and regulation of hospitals by the Oklahoma Commissioner of Health and the Oklahoma Board of Health.

Both the Architectural Act and the statutes governing the licensing and regulation of hospitals were enacted to protect public health and welfare. See Warner v. Kiowa County Hospital Authority, 551 P.2d 1179 (Okla.App.1976); 59 O.S.1991, § 46.2. We therefore can discern no reason why the definition of "hospital" set forth in 63 O.S. 1991, § 1-701 should not be applied to the use of the same word in 59 O.S.1991, § 46.3. Accordingly, we conclude that nursing homes that satisfy the definition of the term "hospital" set forth in 63 O.S.1991, § 1-701 require a licensed architect to engage in the planning, designing and preparation of drawings and specifications for their

construction, remodeling, and repair if the total cost of the construction, remodeling or repair exceeds \$40,000.<sup>2</sup>

As you are aware, Attorney General Opinion 64-108 found that, under the Architectural Act in effect in 1964, a nursing home was not a hospital and, as a result, nursing homes did not require an architect for their design, alteration, or repair. Opinion No. 64-108 relied primarily on a New York decision, Frax Realty v. Kleinert, 205 N.Y.S. 728 (N.Y.Sup.Ct.1924), which actually dealt with a home for the aged and concluded that, under New York law, such a home was not a hospital. The home for the aged, as described in the Frax case, differs significantly from a nursing facility as defined in Oklahoma law cited above, and is in fact more like the statutory definition of residential care home.

Opinion No. 64-108 did not discuss the definition of the term "hospital" set forth in the Oklahoma Statutes outside the Architectural Act. Nor did it have available the Nursing Home Care Act, 63 O.S.1991, §§ 1-1901, et seq., enacted in 1980, which defines "nursing facility." As a result, the opinion is correct in stating that a nursing home is not per se a hospital. However, taking into account the definition of hospital found in § 1-701 above, it is possible to have a facility which is called a nursing home, yet which functions in such a way as to meet the definition of hospital. The same public policy reasons for requiring a licensed architect for alteration or construction of hospitals are present in many nursing homes. Whether a particular nursing home comes under the requirements of 59 O.S.1991, § 46.3, requires a factual determination.

**It is therefore the official opinion of the Attorney General that:**

**Pursuant to 59 O.S.1991, § 46.3, no person other than a licensed architect may engage in the planning, design, and preparation of drawings and specifications for the construction, remodeling, or repair of any nursing home that satisfies the definition of the term "hospital" set forth in 63 O.S.1991, § 1-701, if the total cost of construction, remodeling or repair of the nursing home exceeds \$40,000.**

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<sup>2</sup>Of course, if a particular nursing home facility fits within the definition of one of the other specifically listed types of buildings set forth in 59 O.S.1991, § 46.3(C), then that particular nursing home facility would also require a licensed architect for its design, remodeling, and repair (assuming that the total cost of its construction, remodeling and repair was over \$40,000). Certain nursing home facilities might be considered to be dormitories or even municipal buildings, county buildings, state buildings, or federal buildings.

Mr. Wendell V. Locke  
Opinion No. 93-036  
December 21, 1994  
Page 5

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To the extent that it is inconsistent with this opinion, Attorney General Opinion No. 64-108 is hereby modified.



APPROVED  
SUSAN B. LOVING  
ATTORNEY GENERAL  
IN  
CONFERENCE  
GAY ABSTON TUDOR  
ASSISTANT ATTORNEY GENERAL

*Susan B. Loving*  
*Gay Abston Tudor*

Official Seal

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OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

RECEIVED

AUG 31 2005

OKLAHOMA  
BOARD OF ARCHITECTS

August 26, 2005

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

Dear Ms. Williams:

This office has received your letter requesting an official Attorney General Opinion in which you ask, in effect, the following questions:

- 1. Are architects and landscape architects allowed to bid their professional fees for services on work to be performed on any or all public or private projects, prior to being selected as the professional?**
- 2. Are architects and landscape architects allowed to quote their professional fees for services on work to be performed on any or all public or private projects prior to being selected as the professional?**
- 3. Are architects and landscape architects allowed to give their professional services away for free without violating O.A.C. 55: 10-11-7 (3)?**
- 4. Are architects and landscape architects allowed to design-build public or private projects? (Which you mentioned is done as a flat fee and usually not bid)**

As you know, the State Architectural Act, 59 O.S. §§ 46.1 - 46.37 ("Architectural Act"), regulates architects and landscape architects, as those terms are defined in the Architectural Act, along with the rules promulgated by the Board of Governors of the Licensed Architects and Landscape Architects of Oklahoma as set forth in Title 55 of the Oklahoma Administrative Code ("Architectural Rules").

#### **Definitions/Assumptions**

In questions one, two and four you refer to "public or private projects" and "design-build"; however, you did not define the words "public", "private", "projects" or "design-build" so for the purposes of this response, we assume the term "projects" means those that involve the construction, repairing or remodeling of a "building" as that term is defined in the Architectural

Act, and that the projects you make reference to are of the type covered by the Architectural Act. Furthermore, we assume the word “**public**” means those projects involving a public work improvement covered by Title 61 of the Oklahoma Statutes, entitled Public Buildings and Public Works (“Works Act”) (61 O.S. § 1, et seq.). Also, we assume the words “**design-build**” have the meaning as defined in § 202 5. of the Works Act and pertain to projects involving a public work improvement covered by such statute. **Any responses made to your questions herein are subject to such assumptions.**

With respect to the words “**private projects**”, the factual circumstances unique to any particular private project require interpretation of a myriad of bidding procedures that could be required by a particular private project in connection with selecting an architect or landscape architect, as well as making other factual determinations concerning a private project; such determinations and interpretations are beyond the scope of this response. Therefore, no response is made with respect to any private projects, except for the response herein to questions three and four, and nothing should be implied from the lack of such response.

### **Response To Questions One and Two**

The answers to questions one and two, which involve whether architects, or landscape architects, are allowed to bid or quote their professional fees on public or private work prior to being selected, can be answered together in that the words “**bid**” and “**quote**” are substantially similar in meaning when used in making an offer to perform services for a certain fee. **The response to both questions one and two is no as to public work.**

The selection of design consultants, which includes any consultant or person performing architectural services for a public work improvement project in the State of Oklahoma, is covered in the provisions of the Works Act, specifically 61 O.S. §§ 60-65. The selection procedure contained therein requires the selection to be based upon the professional qualifications and technical experience of the design consultant, including the capacity for timely project completion and past project performance. Only after the interview selection has been made as a result of those factors is a fee negotiated. This procedure is further clarified in the rules promulgated by the Construction and Properties Division of the Department of Central Services (O.A.C. 580:20-3-1, et seq.). Specifically, section 580: 20-3-7 (b) states:

**“Questions concerning fees may not be asked. Engineers, architects, and land surveyors are prohibited from being required to bid by Oklahoma Statutes. They are to be selected based upon their professional expertise and qualifications with their fees being negotiated after selection, as described in 580: 20-3-6.”**

### **Response To Question Three**

**The answer to question three**, involving whether architects, or landscape architects, are allowed to give their professional services away for free, **is generally no**, but depends on the intent of the professional. The Architectural Rules set forth in O.A.C. 55: 10-11-7 (3), clearly prohibit the offering or giving of any gift, with the intent of influencing the judgement of an existing or

prospective client in connection with a project in which the architect/landscape architect is interested. No distinction is made as to whether the project is of a public or private nature, so the rule would apply to both. The broad definition of the words “**intent of influence**” in the rule makes its application comprehensive.

#### **Response To Question Four**

Based on a literal reading of the provisions of 59 O.S. §§ 46.27 and 46.36, which respectively provide:

**“It shall be unlawful for an architect, at any time, to bid for a contract for the reparation, alteration or erection of a building or other structure for which he has prepared the plans and specifications.”**

**“It shall be unlawful for a landscape architect, at any time, to bid for a contract for the reparation, alteration or construction of a project for which the landscape architect has prepared construction documents.”**

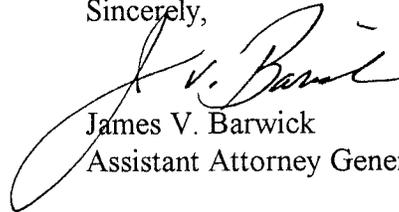
**the answer to question four**, which involves whether architects, or landscape architects are allowed to design-build public or private projects if the architect has prepared the plans and specs for the building or if a landscape architect prepares the construction documents for a project, **is generally no based on the aforementioned provisions of the Architectural Act, except for the exception in the Works Act discussed below concerning public projects.** As mentioned above with respect to public works projects, architects are required to bid based on their qualifications and experience, with fees to be negotiated after the selection process; §§ 46.27 and 46.36 of the Architectural Act prohibit architects from bidding for a contract to construct a project which they designed, so your reference to a flat fee in question four is immaterial to answering the question.

According to Title 61 § 202.1, the design-build project delivery method can be used for a project (those subject to the Works Act) if the written approval from the Director of Central Services is given for such delivery method or an act of the Oklahoma Legislature specifies design-build as the project delivery method. Therefore, for those type of projects and if the approval of the Director of Central Services is obtained or the Legislature specifies design-build as the project delivery method, architects and landscape architects would be allowed to design-build a public works project.

Although the provisions of 59 O.S. §§ 46.27 and 46.36, which basically prohibit architects and landscape architects from both designing and building construction projects, may appear to conflict with the provisions of 61 § 202.1, which allows both design and construction services to be acquired in the same contract from a single entity for public work projects, the design-build project delivery method is allowed only under certain limited and controlled circumstances. **Therefore, § 202.1 of Title 61, which permits certain design-build projects, is essentially a specific exception to the general prohibitions against architects/landscape architects both designing and building the same project found in §§ 46.27 and 46.36 of Title 59.**

Because your questions can be answered from a reading of the relevant statutes and rules, our office is responding by this letter in lieu of issuing an official Attorney General Opinion. We hope this information is helpful to you.

Sincerely,

A handwritten signature in black ink, appearing to read "J. V. Barwick". The signature is fluid and cursive, with a large loop at the end of the last name.

James V. Barwick  
Assistant Attorney General



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION  
05-34

RECEIVED

OCT 12 2005

OKLAHOMA  
BOARD OF ARCHITECTS

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

October 10, 2005

Dear Ms. Williams:

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

**Are government entities, including state agencies, county governments, city governments, and schools, required to abide by the provisions of the State Architectural Act, 59 O.S. 2001 & Supp.2004, §§ 46.1 – 46.37?**

You ask whether government entities are required to abide by the State Architectural Act ("Act"), 59 O.S. 2001 & Supp.2004, §§ 46.1 – 46.37. The purpose of the Act is found in 59 O.S. 2001, § 46.2. "In order to safeguard life, health and property and to promote the public welfare, the professions of architecture or landscape architecture are declared to be subject to regulation in the public interest. It is unlawful for any person to practice or offer to practice architecture or landscape architecture in this state, . . . unless the person is duly licensed or exempt from licensure under The State Architectural Act." *Id.* Therefore, the Act exists to protect the public.

According to the Act, it is "unlawful for any person other than an architect duly licensed as provided in The State Architectural Act to engage in the planning, designing and preparation of drawings and specifications for the alteration or construction of any building to be used as an armory, auditorium, assembly hall, convention hall, church, educational building,<sup>1</sup> convent, dormitory, gymnasium,

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<sup>1</sup> "Educational buildings" are defined as "all buildings used for the gathering of groups of 6 or more persons for purposes of instruction." OAC 55:10-1-3. This includes:

- (A) Academies
- (B) Child day-care facilities
- (C) Colleges and universities
- (D) Kindergartens
- (E) Nursery schools
- (F) Schools.

*Id.*

hospital, library, bonded warehouse, passenger station, power house, municipal building, county building, state building, federal building, radio or television station, stadium or theater where the reasonably estimated total cost for construction, remodeling or repairing of such building exceeds the sum of Forty Thousand Dollars (\$40,000.00).” *Id.* § 46.3(E) (footnote added). A building is defined under the Act as a “structure consisting of a foundation, walls, roof, with or without other parts.”<sup>2</sup> *Id.*

An architect is required to be licensed when engaging in the practice of architecture. *Id.* § 46.2. The Act defines the “practice of architecture” as:

[R]endering or offering to render certain services, in connection with the design and construction, enlargement or alteration of a building or a group of buildings and the space surrounding such buildings, including buildings which have as their principal purpose human occupancy or habitation; the services referred to include planning, providing preliminary studies, designs, drawings, specifications and other technical submissions, the administration of construction contracts, and the coordination of any elements of technical submissions prepared by others including, as appropriate and without limitation, consulting engineers and landscape architects; provided, that the practice of architecture shall include such other professional services as may be necessary for the rendering of or offering to render architectural services.

*Id.* § 46.3(B).

Having examined when a licensed architect is required under the Act, it is appropriate to discuss what the Act requires of government entities who endeavor to construct or remodel a building as defined in the Act. In the definition of “building,” the Act states that it is “unlawful for any person other than an architect duly licensed as provided in The State Architectural Act to engage in the planning, designing and preparation of drawings and specifications for the alteration or construction” of certain types of buildings, including schools, municipal buildings, county buildings, state buildings and federal buildings where the total cost of construction, remodeling, or repairing exceeds forty thousand dollars. *Id.* § 46.3(E).

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<sup>2</sup> The Act does not apply to “any building, or to the repairing or remodeling of any building, to be used for one-family residential purposes, duplexes, or apartment houses not exceeding two stories in height, to any warehouse, maintenance building, garage or storage building not exceeding two stories in height or to a hotel, lodge, or fraternal building not exceeding two stories in height, or to any farm improvements, or industrial or commercial buildings not exceeding two stories in height, nor to any school building where the reasonably estimated total cost for construction, where structural changes are being made in remodeling or repairing of such school building does not exceed the sum of Forty Thousand Dollars (\$40,000.00). A basement is not to be counted as a story for the purposes of counting stories of a building for height regulations.” *Id.* § 46.3(E).

The Act further declares it unlawful to “aid or abet any person, not registered or licensed under the provisions of this act, in the practice of architecture.” *Id.* § 46.8a(A) (footnote omitted). The phrase “aiding and abetting” is not defined in the Oklahoma Statutes. The Oklahoma Uniform Jury Instructions (“OUJI”), however, explain what aiding and abetting means. In OUJI-CR 2-6, it says that “[t]o aid or abet another in the commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding in the commission of that criminal offense.” *Id.* An accompanying jury instruction explains that the intent required for aiding and abetting is a “[d]esign to commit a crime or to commit acts the probable consequences of which are criminal.” OUJI-CR 2-9. According to 21 O.S. 2001, § 172, every person concerned in the commission of a crime, regardless of whether he or she directly commits the crime or aids and abets in its commission, though not present, is to be treated as a principal. Therefore, it is unlawful for a government entity to knowingly employ a person or entity, not licensed and not exempt from licensure under the Act, to engage in the practice of architecture when a license is required by the Act.

The Act also requires that persons or entities engaging in the practice of landscape architecture be licensed under certain situations. 59 O.S. 2001, § 46.2. The Act defines “landscape architecture” as:

[T]he performance of professional services defined as teaching, consultations, investigations, reconnaissance, research, planning, design, preparation of construction drawings and specifications, and construction observation in connection with the planning and arranging of land and the elements thereon for public and private use and enjoyment, including the design and layout of roadways, service areas, parking areas, walkways, steps, ramps, pools, the location and siting of improvements including buildings and other structures, and the grading of the land, surface and subsoil drainage, erosion control, planting, reforestation, and the preservation of the natural landscape, in accordance with accepted professional standards, and to the extent that the dominant purpose of such services or creative works is the preservation, conservation, enhancement, or determination of proper land uses, natural land features, ground cover and plantings, or naturalistic and aesthetic values.

The practice of landscape architecture shall include the location and arrangement of tangible objects and features as are incidental and necessary to the purpose outlined for landscape architecture. The practice of landscape architecture shall not include the design of structures or facilities with separate and self-contained purposes for habitation or industry, or the design of public streets, highways, utilities, storm and sanitary sewers and sewage treatment facilities, that are statutorily defined as the practice of engineering or architecture.

*Id.* § 46.3(K).

The Act provides further explanation of the definition of landscape architecture by listing which practitioners are not required to register under the Act, and therefore, are not considered to be landscape architects. *Id.* § 46.28(1) – (9). In pertinent part, they include the following:

1. A professional civil engineer . . . certified to practice . . . under any act to regulate the practice of [civil engineering]. . . ;
2. A landscape contractor building or installing what was designed by a landscape architect;
3. An agriculturalist, horticulturalist, forester as defined in Section 1202 of this title, nursery operator, gardener, landscape gardener, garden or lawn caretaker and grader or cultivator of land involved in the selection, placement, planting and maintenance of plant material;
4. Persons who act under the supervision of a registered landscape architect or an employee of a person lawfully engaged in the practice of landscape architecture and who, in either event, does not assume responsible charge of design or supervision;
5. Regional planners or urban planners who evaluate and develop land-use plans to provide for community and municipal projections of growth patterns based on demographic needs;
6. A landscape designer or contractor whose business is to consult and prepare plans and specifications with respect to choosing types of plants and planning the location thereof and the design of landscapes for those projects or whose work is limited to projects for a single-family residential home. Landscape design or installation work may also be performed by an owner or occupant on the single-family residence of the owner or occupant;
7. Persons other than landscape architects who prepare details and shop drawings for use in connection with the execution of their work;
8. Builders or their superintendents in the supervision of landscape architectural projects[.]

*Id.* § 46.28. These practitioners are not required to register under the Act unless they desire to use the title “landscape architect” or hold themselves out as practicing landscape architecture. *Id.* § 46.28(9).

Under the Oklahoma Administrative Rules, promulgated by the Board of Governors of the Licensed Architects and Landscape Architects of Oklahoma pursuant to the Act, it is unlawful to aid and abet the unlicensed practice of landscape architecture. OAC 55:10-15-2(14). Applying the same analysis of aiding and abetting used for the architecture analysis above, it is unlawful for a government agency to knowingly employ an unlicensed landscape architect for a project that requires a licensed landscape architect under the Act.

“The fundamental rule of statutory construction is to ascertain and give effect to the legislative intent, and that intent is first sought in the language of the statute.” *City of Durant v. Cicio*, 50 P.3d 218, 221 (Okla. 2002). As previously mentioned, the stated purpose of the Act is to “safeguard life, health and property and to promote the public welfare.” 59 O.S. 2001, § 46.2. The Act then, does not exist for the purpose of protecting licensed architects or licensed landscape architects; rather, it exists to protect the public. Therefore, the Act must apply equally to all buildings and services specified in the Act, without regard to whether the person or entity engaging, or aiding and abetting in the prohibited acts is a state agency, a political subdivision, or a private company.

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

**Absent a statutory provision to the contrary, all government entities are required to abide by the provisions of The State Architectural Act, 59 O.S. 2001 & Supp.2004, §§ 46.1 – 46.37, and utilize a licensed architect and licensed landscape architect when required under the Act.**



W.A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA



KATHRYN L. WALKER  
ASSISTANT ATTORNEY GENERAL

