

Opinion No. 65-07

January 22, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Rex Bell, Superintendent, Gadsden Independent School District, Anothy, New Mexico

QUESTION

FACTS

The Gadsden Independent School District employed a registered and resident New Mexico architect to perform architectural services on behalf of such school district and to design and supervise the construction of a new junior high school for such system. The architect employed by the school system associated with him a firm of architects and engineers located in El Paso, Texas, and having on its staff both a registered New Mexico architect and a registered New Mexico engineer. In September, 1963 work was commenced upon the design and plans for such new junior high school by the New Mexico architect and the architectural and engineering firm from El Paso, Texas. On May 28, 1964, the New Mexico architect died after having completed the architectural design, preliminary surveys, client control and other architectural services upon the project. At the time of such architect's death the plans for the school building were in the process of being finalized under the deceased architect's supervision by the El Paso, Texas, firm. The final plans have subsequently been completed by the engineering firm pursuant to the directions, supervision, architectural design, preliminary surveys and client's direction established by the deceased New Mexico architect.

QUESTIONS

1. May the Gadsden Independent School District properly construct the proposed junior high school based upon the final architectural plans completed by the El Paso, Texas, architectural and engineering firm, which were finalized from the directions, supervision, architectural design and preliminary surveys of a new Mexico architect who died prior to the actual finalization of the architectural plans in question?
2. Can the New Mexico State Department of Education approve such architectural plans under such state of facts?

CONCLUSIONS

1. Yes, under the particular and unique fact situation here existing, substantial compliance exists with the New Mexico architectural licensing act and such plans

appear legally sufficient, subject to the approval of the State Board of Education of such plans.

2. Based upon the substantial compliance with the New Mexico architectural licensing act, the Department of Education may properly approve such architectural plans in question from the standpoint of legal sufficiency.

OPINION

{*13} ANALYSIS

Under the facts provided this office by the Gadsden Independent School District, and which are set forth above, it is apparent that the questions promulgated require the interpretation of the architectural licensing act (Sections 67-12-1 through 67-12-9 N.M.S.A., 1953 Compilation, as amended) and a provision of the New Mexico school laws, Section 73-1-9 N.M.S.A., 1953 Compilation.

As provided in the architectural licensing act, Section 67-12-8 N.M.S.A., 1953 Compilation, certain requisites are set forth for a school district planning to construct or maintain a school building. This section provides in part:

"Restriction. -- A. After the effective date of this act, except as otherwise provided in this act, **neither the state nor any** township, county, city, town, village, **school district**, nor other political subdivision of the state **shall engage in the construction or maintenance of any public work involving architecture for which the plans, specifications and architectural services have not been provided by legal resident architects of the state of New Mexico**; provided that nothing in this section shall be held to apply to such public work wherein the contemplated expenditure for the complete project does not exceed five thousand dollars (\$ 5,000). * * * *"

(Emphasis supplied).

The above quoted statutory provision necessitates that all school construction or maintenance programs involving a total expenditure of \$ 5,000.00 or more and encompassing architectural services, be carried out only when the plans, specifications and architectural {*14} services are provided by a legal resident architect of New Mexico.

In the instance under consideration the school district entered into a contract with a legal resident architect of New Mexico, however, as stated in the facts supplied this office, after the resident architect had completed the basic architectural design, preliminary surveys, plans and architectural services, and during the time the school plans were being finalized, the New Mexico architect employed by the school died. The plans are now complete and bids are ready to be let upon the construction of such school so that it can be used in the fall of 1965 for pupils.

Has the school district complied with the architectural licensing act so that the board may commence construction utilizing such finalized architectural plans?

Under the particular fact situation existing herein and upon the basis of the facts presented to this office, we are of the opinion that the specific plans and specifications in question meet the requirements of the architectural licensing laws of this state and the school district may with the written approval of the State Board of Education enter into a contract with a contractor to build the junior high school contemplated, and pursuant to the finalized architectural plans and specifications.

As pointed out in 6 C.J.S., "Architects," Section 2, at page 296:

"Since the practice of architecture demands learning, skill and integrity, the legislature may prescribe the qualifications of those engaged in such business, under the police power, or the inherent or plenary authority of the state to protect the welfare of the people; also since the drawings of plans and specifications for buildings which may be used by members of the public is a business involving the public safety and health, the practice of architecture is subject to regulation."

Clearly, as noted above, the legislature has by enacting the various statutory provisions regulating the practice of architecture sought to protect the public and the construction of public and private buildings. Bearing in mind such legislative purpose however, we do not under the facts here presented believe that Section 67-12-8, supra, or the other provisions of the architectural licensing statutes call for a restrictive interpretation necessitating that the architectural plans prepared herein be re-done by another New Mexico resident architect, when as pointed out by the facts all of the preliminary plans were prepared by or under the supervision of a New Mexico resident architect, who dies shortly prior to the actual drawing of the final plans and specifications.

Certainly, the interpretation and application of such law necessitates consideration of the fact that substantially all of the plans were prepared by a licensed and registered New Mexico architect and that to require such work to be redone by another architect would result in duplication of expense, and delay of the erection of the school programmed for occupancy in September of 1965. If such plans were not substantially completed prior to the death of such New Mexico architect then a finding of non-compliance would be required since the purpose of such restrictions are to insure that public buildings are constructed pursuant to the plans of qualified and proven architects.

Where, in fact, however, such plans are substantially complete and the New Mexico architect dies, we are of the opinion that the school district is not required by law to have the work of the deceased architect re-done by another New Mexico resident architect **if the plans are otherwise acceptable and correct.** As previously recognized by the New Mexico Supreme Court in **State v. Llewellyn**, {*15} 167 P. 414, 23 N.M. 43, statutes should be construed by the court in the most beneficial manner which their language will permit to prevent absurdity, hardship or injustice, to favor public convenience, and to oppose all prejudice to public interests. See also, **Fisherdick v.**

San Juan Co. Bd. of Ed., 236 P. 743, 30 N.M. 454; *State v. So. Pac. Co.*, 281 P. 29, 34 N.M. 306; and **Scott v. U.S.**, 213 P.2d 216, 54 N.M. 34.

Although, under the fact situation existing, we hold there has been compliance up to this point with the architectural licensing act, we wish to emphasize that any further architectural services of any nature, involved in such project, whether they be concerning a change in such plans, consultation with the contractor or supervision of the work must be performed by a registered resident of New Mexico architect pursuant to Section 67-12-8, supra. Prudence, also, may dictate that a New Mexico architect be consulted regarding any architectural matters involved in the finalized plans which may have been completed without the actual supervision of the New Mexico architect who died.

As used in Section 67-12-8, supra, the term "architectural services" implies that services normally and customarily rendered by an architect following completion of the working plans and specifications be carried out by a registered and resident New Mexico architect. In the case of **Arkansas State Board of Architects v. Bank Building and Equipment Corporation of America**, 286 S.W. 2d 323, 225 Ark. 889, 56 A.L.R.2d 720, quoting from **McGill v. Carlos**, 81 N.E.2d 726:

"Primarily, an architect is a person who plans, sketches and presents the complete details for the erection, enlargement, or alteration of a building or other structure for the use of the contractor or builder when expert knowledge or skill are required in such preparation. **The practice of architecture may also include the supervision of construction under such plans and specifications.**"

(Emphasis supplied).

Supervision of such construction work and the determination that compliance has been made with the finalized plans would seem to require that a resident New Mexico architect be employed to assist the school board in carrying out the work in the future, providing that such supervision was included in the contract.

Your second question poses the inquiry as to whether the New Mexico State Department of Education by law can approve or disapprove the architectural plans in question prior to their use for the construction of the junior high school.

We think that clearly the answer to such question is in the affirmative. Section 73-1-9 N.M.S.A., 1953 Compilation, provides in applicable part:

"Additional powers. -- The state board of education, in addition to the powers already given it by law, shall have the following powers:

(a) To examine and approve all plans and specifications for the repair or construction of school buildings of five (5) rooms or less; and no contract shall be written or any money expended by any board of education or governing authority of any school district in this

state for the repair or construction of any school building in this state until such plans and specifications have been approved by the state board of education or the state superintendent of public instruction. Any contract not so approved shall be absolutely void, and constitute no charge in law or equity against such school board. Provided, however, that this provision shall apply where {*16} the expenditure is a less sum than five hundred dollars (\$ 500.00). * * * "

The above statute interdicts against any plans and specifications being utilized for construction or repair of school buildings unless and until the state board of education or the state superintendent of public instruction approves them. Under this statute the applicable state authorities must approve the plans of the Gadsden Independent School District prior to their use for the proposed junior high school. Additionally, any contract for the construction of the proposed junior high school must also be approved by the state board of education or the state superintendent of public instruction. Without such express approval the contemplated contract would be void. The approval by the educational authorities pursuant to such statute necessarily involves some determination of the architectural aspects of the plans and contract and the legal sufficiency of such documents and the discretion of such authorities in such matter is controlling.