

Opinion No. 66-79

June 20, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

TO: Mr. John W. McHugh, New Mexico Board of Examiners for Architects, Office of the Secretary, 701 Canyon Road, Santa Fe, New Mexico

QUESTION

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1. May the New Mexico Board of Examiners for Architects refund 50% of the examination fee to those candidates who do not succeed in passing the examination?
2. What fee should the New Mexico Board of Examiners for Architects charge for retakes of portions of the architects examination?

CONCLUSIONS

1. Yes.
2. \$ 50.

OPINION

{*103} ANALYSIS

The examination requirement for those who desire to become architects in the State of New Mexico is found under Section 67-12-5, N.M.S.A., 1953 Compilation, which reads as follows:

REQUIREMENTS FOR REGISTRATION. -- 5. A. No person shall be eligible for registration, who is not of good character and repute, and who has not been actively engaged for eight (8) years or more in architectural work of a character satisfactory to the board. However, each year of teaching or of study satisfactorily completed of architecture in a school of architecture of a standing satisfactory to the board shall be equivalent to one (1) year of such active engagement.

5. B. All applicants for registration shall be required to pass a written and/or oral examination as required by the board.

5. C. Properly qualified individuals, firms or corporations residing in the State of New Mexico, who shall have been lawfully engaged in the professional practice of

architecture for one (1) year or more in the State at the time this act [67-12-1 to 67-12-9] takes effect shall be granted a certificate of registration without examination by payment to the board of the fee for the certificate of registration, on condition that the applicant satisfies the board of examiners that he is qualified to be styled or known as an architect or registered architect.

5. D. In determining the qualifications of applicants for registration as architects, a majority vote of the members of the board shall be required. In case the board denies the issuance of a certificate to an applicant, one-half of the registration fee deposited shall be returned by the board to the applicant.

5. E. A corporation, partnership or association may engage in the practice of architecture in this state, provided at least two (2) of the principals of such corporation, and all members of such partnership or association are registered as herein required of architects or as otherwise by this act authorized to practice.

It is apparent from a reading of the statute, that the passing of an examination required by the New Mexico Board of Architects Examiners is but one of several requirements which the prospective architect must meet before he may be registered as an architect under the laws of New Mexico. If the applicant for registration fails his examination or indeed if he fails to meet any of the requirements for registration, he will not be registered by the board. Moreover, under sub-section D., supra, if the applicant is denied the issuance of a certificate of registration by the board, the board must return one-half the registration fee deposited by the applicant.

Therefore, because failure to pass the examinations required by the board is a statutory basis for refusal of the registration certificate, the board must refund to the applicant one-half of the registration fee he deposited.

Answering your second question requires additional interpretation of Section 67-12-5, supra. We are of the opinion that this section demands that each applicant for a certificate of registration as an architect must successfully meet each of the requirements listed therein before the board may issue to him a certificate of registration. Conversely, the statute {**104*} also requires that the board deny the issuance of a certificate of registration to an applicant who fails to meet the requirements set forth in the Section. Therefore, when an applicant fails the examination that the board requires him to take, the board must deny him the issuance of a certificate of registration at that time. Then, if the unsuccessful applicant wishes to be again considered for being issued a certificate of registration as an architect, he must once again file an application and accompany this application with the statutory \$ 50 registration fee.

Therefore, we conclude that a failure of all or a portion of the examination required by the board, necessitates the denial of the issuance of a certificate of registration to an applicant, and that the applicant must then pay the full \$ 50 application fee before he may again be considered by the board for issuance of a certificate of registration even

though he might not be required to take all sections of the examination on his subsequent attempts.