

## **Opinion No. 67-34**

March 2, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. John McHugh, Secretary New Mexico Board of Architect Examiners 717 Canyon Road Santa Fe, New Mexico

### **QUESTION**

#### **FACTS**

Senate Bill No. 417 would create a new licensed person designated as an "Architect-Designer". The bill sets up standards which must be met before an architect-designer may be licensed and also limits the activities in which an architect-designer may participate. After so listing the activities in which an architect-designer may participate, the act specifically forbids all other registered architects, architect engineers, and registered professional engineers from performing those activities. Under the terms of the bill all properly qualified individuals residing in the State of New Mexico who have been lawfully engaged in the architectural design business and practiced for one year or more in the state at the time the act would take effect, if passed, would be eligible for a certificate of registration without examination. No person not so qualified could qualify for a license without six years practice in the field of "architect-designer" work.

#### **QUESTION**

Is Senate Bill No. 417 constitutional?

#### **CONCLUSION**

It is extremely unlikely.

### **OPINION**

#### **{\*42} ANALYSIS**

Senate Bill No. 417 defines an "Architect-Designer" and lists his skills as follows:

A. ARCHITECT-DESIGNER: An additional licensed person to be registered, A person who has a required skill and learning; with all technical knowledge, understanding of all State of New Mexico, Building Codes, for Health and Safety; Practical Knowledge of all FHA and VA Minimum Property Standards; in the Architectural Plans and Specifications, consisting of elevations, detailed sections to completely describe the work to be done and materials to be used including Health, Safety and Welfare together with appropriate economy and Aesthetic quality, relating to the "ethical and administrative

responsibilities of an "ARCHITECT-DESIGNER" with relationship between, Owner and Contractor, Basic functions of specifications, Contracts, Bonds, Insurance, Certificates and Arbitration, Building equipment, relating to Principles of design and required detailed knowledge concerning Heating, Ventilating, Air Conditioning, Plumbing, Electric Wiring, Fire Protection and vertical transportation, taking into account Scientific, Technical, Economic and practical factors involving architectural design; involving the application of the principles of space design to a solution of the program for a building such as might be found in Architectural practice and concerning drawings of a specified number, kind and scale to present and Efficient arrangement, logical structural organization and compliance with basic Codes for Health and Safety together with appropriate economy and Aesthetic quality and one who shall prepare Plans and specifications for, designing, planning or supervision of construction, alterations, {\*43} remodeling, additions to or repair of any of the following:

(a) Dwellings intended for private use, occupancy or resale, including accessory buildings commonly associated with the same, (b.) Apartment Houses, Lodging Houses, Hospitals, Hotels, Nursing Homes, Motels, Stores, Mercantile Buildings not more than two (2) stories in Height, exclusive of one story basements, providing however, no clear Structural Span between bearings therein shall be greater than twenty four (24) feet, (c) Public or Private garages, Industrial buildings, and ware-houses for the manufacture, processing and storage of products, offices and other building accessory to the operation of an industrial plant located on or adjoining to the plant Site, provided however no such garages, industrial buildings, or warehouses shall exceed one story in Height, exclusive of one story in height, Basement, (d.) Farm Buildings and building for the Marketing, storage, or processing of Farm Products, (e.) Additions, Alterations, or repairs to the foregoing buildings which do not cause the Complete buildings to exceed the applicable limitations herein set forth; (f) Nonstructural alterations of any nature to any building, provided that such alterations, do not affect the safety of the Building.

Senate Bill 417 also provides that no one but a "Registered Architect-Designer" may perform the activities listed above. Subsections (g) and (h) of the bill provide for this in the following language:

(g.) Only Licensed Registered "ARCHITECT-DESIGNER" May prepare plans and specifications for, or supervising the construction, alterations, remodeling, or repair of buildings listed herein "67-12-1.2 of this Act may use the Title "ARCHITECT-DESIGNER" with an Official Seal as provided in Section 67-12- section II par. 12.

(h.) All other registered Architects, Architect Engineers, Registered Professional Engineers, previously registered to do work of a larger nature and Calibre, cannot prepare, design, plan, etc, any part of this section, nor may they be licensed under or qualify in any way for this Act, and such will be prosecuted under 67-12-9, Violations and Penalties, the same as an non-registered Architect or Engineer.

[Errors in spelling, punctuation, etc., are carried over in opinion inasmuch as that is the way they appear in the printed bill.]

In view of the above quoted sections of Senate Bill 417 the question is now presented whether it would deny the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States and by Article II, Section 18 of the New Mexico Constitution. **This question arises since Senate Bill 417, if enacted into law, would effectively prohibit architects, architect engineers, and registered professional engineers from engaging in activities which they now legally perform and which we are reliably informed constitute a great portion of their business.**

The leading New Mexico case on the power of the legislature to classify for purposes of legislation is **State v. Pate**, 47 N.M. 182, 138 P.2d 1006 (1943). In that case a person was charged with violating Laws 1941, Chapter 165, Section 1(a), which provided that nonresident owners of motor vehicles did not have to register them for a period of three months after entering the State of New Mexico, but also providing that nonresident owners of vehicles who were gainfully employed in New Mexico had to register their vehicles immediately {*\*44*} upon accepting employment. The Supreme Court of New Mexico ruled that an unconstitutional classification was placed upon those nonresident owners of vehicles who were gainfully employed in New Mexico had to register their vehicles immediately upon accepting employment. The Supreme Court of New Mexico ruled that an unconstitutional classification was placed upon those nonresident owners of vehicles who accepted gainful employment within the State of New Mexico. In so ruling, the Court applied the following test:

"The question regarding classification is always, as said in *Hutchison v. Atherton*, supra: 'Is it so wholly devoid of any semblance of reason to support it, as to amount to mere caprice, depending on legislative fiat alone for support? If so, it will be stricken down as violating constitutional guaranties. But the fact that the legislature had adopted the classification is entitled to great weight.' "

The Court then examined the difference between nonresident owners of motor vehicles who were not engaged in gainful employment in the State of New Mexico and those who were. After so examining these categories of persons, our Supreme Court concluded that there could be no difference discovered upon which the classification could be reasonably based. The Court said:

" 'While classification is proper, there must always be uniformity within the class. If persons under the same circumstances and conditions are treated differently, there is discrimination and classification.' See 6 R.C.L. § 370.

Do we not have here a general class, viz. nonresident owners or operators of motor vehicles? And is not this general class arbitrarily divided within itself by the act of the legislature, when it seeks to impose a license fee on those within the class who are gainfully employed and exempting those within the same class who are not? Such differentiation is discrimination and not classification."

We are of the opinion that the same reasoning would probably be applied if Senate Bill 417 should be enacted into law and later attacked in our courts. **We are reliably informed that the skills required of an architect-designer by Senate Bill 417 as listed above, are exactly the skills which are now required of architects, architect engineers, and registered professional engineers.** Despite this, Senate Bill No. 417 would seek to prevent architects, architect engineers, and registered professional engineers from performing the activities and services listed as belonging within the domain of the architect-designer. If Senate Bill No. 417 would be passed, the ensuing situation would be analogous to some kind of law providing for the separate licensure of surgeons and general practitioners of medicine and then denying to surgeons the general practice of medicine.

Therefore, it is our opinion that the classification of architect-designers as the only persons qualified by law to perform certain activities presently being performed by architects, architectural engineers, and registered professional engineers is probably unconstitutional. Further, the bill is poorly drafted and extremely confusing.

By: Paul J. Lacy

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