

LAW LIBRARY ARIZONA ATTORNEY GENERAL

October 9, 1947

Mr. L. S. Neeb, Secretary
State Board of Technical Registration
P. O. Box 1029
Phoenix, Arizona

Dear Mr. Neeb:

We have three different letters from your office requesting opinions on the administration of the Technical Registration Act.

We shall attempt to give answers to all three requests in this one letter.

In your letter of July 14th, you request our opinion on what action the Board may take under the following circumstances, which we quote:

"A qualified engineer, duly registered and holding the office of city engineer sent in five dollars as a renewal fee to the office of the secretary April 18, 1946. He was advised by the secretary that a penalty of one dollar and a half was due to the State as the five dollars was paid three months after it was due under the law. This notification was ignored. A member of the Board made a personal call on the gentleman and this personal appeal was ignored. This engineer has not paid his renewal fee for 1947 nor has he paid the penalty for 1946. The Secretary has forwarded the five dollars remittance received in 1946 to the State Treasurer."

It is patent, of course, that the City Engineer is in violation of the Technical Registration Act, particularly Section 67-1803, Arizona Code Annotated, 1939, requiring a certificate of registration for the practice of engineering. The mere fact that the person in question is a city official does not render him immune from this requirement any more than it would the city attorney from the requirement that he be a qualified member of the bar. The duties of the City Engineer as outlined in Section 1024, Phoenix Municipal Code, 1939, strictly constitute the practice of engineering, the section expressly requiring such activity on his part.

As to what action may be taken, one course is the threat of prosecution. Section 67-1823 provides penalties for violation of the act and renders the violator subject to prosecution for a misdemeanor, and in case the alleged violator has been employing the seal described by Section 67-1817 he would be subject to prosecution for a separate offense thereunder. Then too, there is the possibility of a quo warranto action against the city official to test the legality of his tenure.

In your letter of August 2, 1947, you pose a question of statutory construction. Under the old law as it is found in Article 1, Chapter 58, Revised Code of 1928, there was the flat requirement for all categories of technical professions that the applicant for registration therein be not less than twenty-five years of age. In 1935, the old act above was repealed and in its place the Legislature passed Chapter 32, Laws of 1935, which is the present law as it appears in the 1939 Code. On the subject referred to above, the 1939 Code provides as follows:

"67-1811. Eligibility requirements - An applicant for registration as architect or engineer shall be not less than twenty-five (25) years of age and of good moral character and repute. If an applicant for registration as an architect or engineer, he shall have engaged actively for at least eight (8) years in architectural or engineering work of a character satisfactory to the board, but each year of teaching of architectural or engineering subjects or of study satisfactorily completed in an architectural or engineering school approved by the board, up to a maximum of five (5) years, shall be considered equivalent to one (1) year of active engagement. If an applicant for registration as an assayer or a land surveyor, he shall have engaged actively for at least four (4) years in assaying or land surveying work of a character satisfactory to the board, but each year of teaching of assaying or land surveying or of study satisfactorily completed in a school approved by the board, up to a maximum of two (2) years, shall be considered equivalent to one (1) year of active engagement. (Laws 1935, ch. 32, § 11, p. 126.)"

You ask whether the old law with regard to the age limit still applies to all four classifications in view of the above section.

It is a general rule of statutory construction that if the later act is intended to cover the entire subject and to be a substitute for the earlier act the omitted parts are deemed to be repealed by implication. *Mahoney v. Maricopa County*, 49 Ariz. 479; 68 Pac. (2d) 694. We believe that the plain omission of the age requirement with respect to the categories of assayer and land surveyor in this new act changed the law with respect to the same and that there is no reason to construe the act in any other way except as it now stands. We would therefore answer this second question to the effect that the old law is no longer applicable and that the new law sets an age limit for only two of the four classifications.

Lastly, in your letter of August 12, 1947, you ask for an opinion on the application of two seemingly conflicting laws, Sections 9-101 and 67-1821 Arizona Code Annotated, 1939, which are respectively Chapter 51, Laws of 1919, Section 1 and Chapter 32, Laws of 1935, Section 21. You refer very briefly to a fact situation at the State Hospital in Phoenix where you assert there was an alteration involving work of an engineering nature. The question is whether the hospital must employ an architect or engineer to draw plans, specifications and oversee details.

Although we are unable to give you a ruling on the propriety of the hospital action we feel able to state the law of the situation.

One applicable statute, Section 9-101, Arizona Code Annotated, 1939, reads as follows:

"Architect to be employed for construction or alteration - When by any law of the State, power is given to any state or county officer, board or commission, or any person, each herein designated as agent, to erect any state, county or other building or structure, or additions to or alterations of existing buildings or structures, such agent shall employ an architect if the structure, additions or alterations are deemed by such agent to warrant said employment. (Laws 1919, ch. 51, § 1, p. 58; rev., R. C. 1928, § 2600.)"

Section 67-1821 provides as follows:

"Public works - All drawings, plans, specifications, and estimates for public works of the state or any political subdivision thereof involving architecture or engineering shall be prepared by or under the personal direction, and the construction of such works executed under the direct supervision, of a registered archi-

tect or engineer, and all surveys, maps or assays required in connection with public land surveying or assaying shall be made by or under the personal direction of a registered land surveyor or assayer. (Laws 1935, ch. 32, § 21, p. 126.)"

In interpreting and construing two related acts it is our duty to harmonize these statutes and give each an interpretation that will give it full force and effect, rather than to construe them as contradictory and render one ineffective. *Street vs. Commercial Credit Co.*, 35 Ariz. 479; 281 Pac. 46. Section 9-101 rests the decision as to the employment of an architect with the agent empowered under the law to initiate the change. Section 67-1821 has the effect of canalizing this discretion by providing that if the public works involve architecture or engineering, an engineer or architect must be employed. Conversely if such factors are not involved the agent has the discretion to hire or not to hire such professional help.

The decision in each case is one of fact. With access to the facts involved in any one case this office may be able to advise parties as to their probable obligations under the law.

Hoping this letter has answered your inquiries, we remain,

Very truly yours,

JOHN L. SULLIVAN
Attorney General

WILLIAM P. MAHONEY, JR.
Assistant Attorney General

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