



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

March 1, 1976

R 76-15
BRUCE E. BABBITT
ATTORNEY GENERAL

76-66

R76-15

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. John J. Kayetan
State Registrar of Contractors
1818 W. Adams Street
Phoenix, Arizona 85007

Re: Enforcement of State Contractors' Licensing Law

Dear Mr. Kayetan:

This is in response to your letter of January 5, 1976 in which you requested a legal opinion of this office. The facts, as we understand them, are as follows:

The California State Highway Department and the Arizona State Highway Department have entered into an agreement to construct a bridge across the Colorado River at Yuma, Arizona. We understand that this is a Federal Aid Project and the contract which was let by the State of California was awarded to a contractor who is licensed to contract in California, but not in Arizona. The job requires that the actual construction work be performed within the borders of Arizona as well as California. Since this job involves two states you have asked if our statutes which require that a person obtain an Arizona license to contract in this state is negated by the Commerce Clause of the United States Constitution.

The Arizona Supreme Court has ruled that the State Contractors' Licensing Law is intended to protect the public by regulating the conduct of persons engaged in the construction business in Arizona and the legislation is well within the police power of the state. Hunt v. Douglas Lumber Co., 41 Ariz. 276, 282, 17 P.2d 815 (1933). State Legislation addressed to the protection of the public



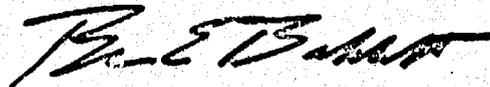
Mr. John J. Kayetan
March 1, 1976
Page Two

pursuant to the reserved police power of the state in respect to matters of internal concern is not repugnant to the Commerce Clause of the United States Constitution, even though it may incidentally affect interstate commerce. Head v. New Mexico Board of Examiners in Optometry, 374 U.S. 424, 10 L. Ed. 2d 983, 987, 83 S. Ct. 1759 (1963).

Whether or not a state statute merely indirectly affects the flow of interstate commerce or constitutes an undue burden is a question of fact to be determined on a case-by-case basis. The Colorado Anti-Discrimination Commission v. Continental Air Lines, 372 U.S. 714, 10 L. Ed. 2d 84, 88, 83 S. Ct. 1022 (1963). In this case, the licensing law requires that the contractor pay an annual license fee, post a bond, and take an examination to determine his knowledge of the construction business [Title 32, Chapter 10, Arizona Revised Statutes]. It has been held that a state licensing statute enacted pursuant to the police power which requires the licensee to post a bond and pay a reasonable annual fee representing the cost of issuing a license and regulating the licensee does not discriminate against nor constitute an undue burden on interstate commerce. Myers v. Matthews, 71 N.W.2d 368, 54 A.L.R.2d 868, App. Dismd., 350 U.S. 927, 100 L. Ed. 811, reh. den. 350 U.S. 977, 100 L. Ed. 847. The Courts have also stated that it is a valid exercise of the police power for states to require an examination of persons engaged in occupations requiring technical knowledge and skill. State v. Harris, 216 N.C. 746, 6 S.E.2d 854, 128 A.L.R. 658 (1940).

Accordingly, it is our opinion that the provisions of the Arizona Contractors' Law are not repugnant to the Commerce Clause of the United States Constitution and in this case the contractor is required to obtain the proper license from your agency.

Sincerely,



BRUCE E. BABBITT
Attorney General

BEB:TP:jdp