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Phoenix, Arizona 85007

Robert R. Corbin

August 9, 1979

Ms. Betty B. Sisk
Structural Pest Control Board
Suite M
2207 South 48th Street
Tempe, Arizona 85282

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ARIZONA ATTORNEY GENERAL

Re: I79-213 (R79-083)

Dear Ms. Sisk:

You have requested an opinion of this office to the following question: "Is Rule R4-29-21, promulgated by the Structural Pest Control Board lawful?"

Rule R4-29-21 reads as follows:

- A. Qualification: Any person domiciled in this State who:
1. Has qualified with the board for "registration" under previous rules, or
 2. Does not renew a license, may, at the time for such renewal, apply to the board for an "inactive license", and such license shall be granted if such person was otherwise eligible for renewal of his license or registration.
- B. Expiration and Renewal: Inactive licenses expire each year at the same time as licenses, and shall be renewable each year by payment of the fee prescribed herein.
- C. Activating License: The board shall process as though a timely renewal thereof, the application for license of any person holding a valid inactive license.

In Rule R4-29-04 the Board establishes a schedule of fees. The annual renewal for an inactive license is \$25.00, whereas the annual renewal of a license is \$100.00.

Ms. Betty B. Sisk
August 9, 1979
Page 2

A.R.S. § 32-2313 provides for the issuance of annual licenses to engage in the business of structural pest control. The Board of Structural Pest Control is empowered to prescribe the application form, establish an application fee, and review the applicants' qualifications. A.R.S. § 32-2313. Five classifications of licenses are established by A.R.S. § 32-2313.B as follows:

1. General pest control, not including the control of wood-destroying insects and organisms, weed control and fumigation.
2. Control of wood-destroying insects and organisms.
3. Weed control.
4. Fumigation.
5. Turf and ornamental horticulture pest control.

Section C. of that statute authorizes the Board to "establish other classifications based on practice in the industry."

You have asked whether or not the Board has the power to issue inactive licenses under this statutory framework. We conclude that it does not. The statute contemplates only licenses "to engage in the business of structural pest control." (Emphasis added.) That language suggests that licenses issued would authorize the active engagement in the business.

Our review of other statutes regulating the professions indicates that when the Legislature intends to authorize different classes of licenses, it does so specifically by statute. See, for example, A.R.S. § 32-211, which provides for active, retired and honorary membership in the Arizona State Bar, and A.R.S. §§ 32-1425.02, 32-1426 and 32-1426.01, which provide for limited, temporary and area permit licenses to practice medicine.

Notably, the statute in question also provides for different classes of licenses, listed in A.R.S. § 32-2313.B. These classifications, however, are all based upon the type of work to be done by the licensee, as requiring some special knowledge and skill.

Ms. Betty B. Sisk
August 9, 1979
Page 3

A.R.S. § 32-2313.C authorizes the Board to establish, by rule or regulation, "other classifications based on practice in the industry." We interpret this section as authorizing the Board to establish other license classifications like those created in paragraph B of that statute, relating to the particular nature of the work to be performed, not classifications based upon the active or inactive business of the licensee.

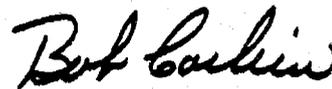
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Under A.R.S. § 32-~~32~~207, the Board is authorized to establish a schedule of fees for the issuance of licenses. A.R.S. § 32-2313, subsection B, establishes five license classifications. Subsection C of the same statute allows the Board, by rule or regulation, to establish other classifications based on practice in the industry. Subsection F of the statute provides as follows:

The board shall issue to each applicant who passes the examination with a grade of seventy per cent or more a license to engage in the business of structural pest control for the calendar year in which the license is issued. Unless the license is sooner revoked or suspended, the license shall be renewed annually upon application to the Board accompanied by the proper fee as set by the board. . . (Emphasis added.)

It appears from the statutory framework that the Legislature intended that the classifications of licenses to be established by the Board are to be based upon the type of operations to be conducted by the applicant, and not upon the intention of the person to actively engage in the business of structural pest control. In fact, subsection F mandates that the license issued by the Board be one allowing the applicant to engage in the business of structural pest control. Although not specified in the Board's rules and regulations, this office is informed that an inactive license does not authorize a person to engage in the business of structural pest control. We conclude that the Board is not authorized to make such a license classification.

Sincerely,



BOB CORBIN
Attorney General