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Robert W. Corbin

June 16, 1982

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INTERAGENCY  
Mr. John F. Holmes, P.E.  
Department of Administration  
Division of Finance  
1700 W. Washington  
State Capitol, West Wing, Room 806  
Phoenix, AZ 85007

Re: I82-064 (R81-073)

Dear Mr. Holmes:

We are writing in response to your letter dated May 6, 1981, wherein you posed the following questions:

1. A.R.S. § 32-142 requires that plans and specifications for public works construction be prepared under the supervision of a qualified registrant. Does A.R.S. § 32-144.A.3, which exempts a nonregistrant from the requirements of Chapter 1 of Title 32 when the construction involves a building costing less than \$50,000, apply to construction of public buildings?
2. How does A.R.S. § 32-144.A.3 interact with A.R.S. § 34-102, pertaining to employment of an architect or engineer for public works construction?
3. Can work, not requiring plans and specifications, with an aggregate cost in excess of \$5,000, be performed using agency personnel to function in the role of the general contractor along with separately bid subcontractors and materials?

In answer to your first question, we find that the exemption which A.R.S. § 32-144.3 provides from the registration requirements of Title 32, does not apply when work is to be done on a public building or structure.

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A.R.S. § 32-121 requires that persons desiring to practice as architects, assayers, engineers, geologists or surveyors obtain a certificate of registration. These professionals must meet certain qualifications in order to be registered. A.R.S. § 32-122.

A.R.S. § 32-144 sets forth certain exceptions to the general registration rule. The exception that is pertinent to our inquiry is A.R.S. § 32-144.A.3, which allows an exception to licensure for "[a] nonregistrant who designs a building or structure, the cost of which does not exceed fifty thousand dollars, or who designs alterations to any one single story building, the cost of which does not exceed fifteen thousand dollars, or who designs a single family dwelling or additions or alterations to such dwelling."

A.R.S. § 32-142.A, however, specifically requires that:

"Drawings, plans, specifications and estimates for public works of the state or a political subdivision thereof involving architecture, engineering, assaying, geology, landscaping architecture, or land surveying, shall be prepared by or under the personal direction of, and the construction of such works shall be executed under the direct supervision of a qualified registrant within the category involved."

The question, then, is whether the exemption provided by A.R.S. § 32-144.A.3 overrides the specific mandate of A.R.S. § 32-142.A. We think that the exemption does not apply when a public building or structure is involved.

If public buildings were included within the meaning of § 32-144.A.3, the requirements of A.R.S. § 32-142, that professionals hired for public works be registered, would be superfluous; that section would add nothing to the requirements of A.R.S. § 32-121 and A.R.S. § 32-144. The fact that public works are mentioned separately within the statute must mean, therefore, that in all cases involving public works a registered professional must be employed. This interpretation is supported by the mandatory language of the statute.

An examination of the other exemptions provided by A.R.S. § 32-144.A adds further support to this conclusion.

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Section 32-144.A.4 exempts wastewater treatment plants and water distribution or collection systems if the total cost does not exceed \$2,500. Inasmuch as these projects may be classified as public works, their exemption is specifically set forth in the exemption provision. Moreover, A.R.S. § 32-144.A.5 exempts work done by the nonregistrant to structures erected on property owned or leased by him or owned or leased by a corporation, including a utility, telephone, mining, or railroad company, which employs the nonregistrant on a full-time basis if the property is not to be used by the public. Thus, work done by a nonregistrant on his own property is exempt as is work done on the property of his employer. The provision specifies, however, that such property must not be used by the public.

We think, therefore, that A.R.S. § 32-142 sets out an absolute requirement that any public works construction be supervised by a qualified registrant. Although A.R.S. § 32-144 excludes from the general registration requirements work done in a limited number of situations where public involvement is minimal, the exemptions do not excuse the state from complying with A.R.S. § 32-142 in the construction of a public building.

Your second question concerns the relationship between A.R.S. § 32-144 and A.R.S. § 34-102. In Ariz. Atty. Gen. Op. 180-047, we discussed that relationship. In that opinion, we stated:

A.R.S. § 34-102 gives some discretion to public agents in deciding whether an architect or engineer should be employed for work on public buildings and structures. A.R.S. § 32-142 says that specified kinds of work done on public works projects must be performed by a qualified registrant. An agent thus makes an initial determination as to whether the work to be done "is deemed to be of a nature warranting" the employment of an architect or engineer. Once he decides that such employment is warranted, he must employ a qualified registrant pursuant to A.R.S. § 32-142. (emphasis in original).

Furthermore, as noted previously, A.R.S. § 32-144A.3 does not exempt the state or a political subdivision from the requirements of § 32-142. Therefore, any time public works require the services of an engineer or architect, the state or political subdivision must employ a qualified registrant and

the exemptions of § 32-144.A.3 are not applicable.

Your third question inquires whether work not requiring plans and specifications, but costing in excess of \$5,000 may be performed by agency personnel. A.R.S. § 34-201 provides, in relevant part:

- A. Every agent shall, upon acceptance and approval of the working drawings and specifications, publish a notice to contractors of intention to receive bids and contract for the proposed work.

...

- C. If the agent believes the works can be done more advantageously by day work or force account, any building, structure, addition or alteration not exceeding five thousand dollars in total cost, may be constructed without advertising for bids.

In Secrist v. Diedrich, 6 Ariz. App. 100, 430 P.2d 446 (1967), the Arizona Court of Appeals held that a school district had violated the statute when it allowed school landscaping work costing more than \$2,500 and for which the district's employees had prepared plans and specifications to be done by its own employees rather than calling for bids. The court gave the following interpretation of A.R.S. § 34-201:

In passing the subject competitive bidding statute, we believe the legislature was intending to affect all contracts for the construction of buildings and structures and alterations thereto which are of such substance as to require working drawings and specifications when the total cost, is to be in excess of \$2,500<sup>1/</sup> and that it would be a circumvention of this intent to permit construction of this type to be performed without competitive bidding . . . . 6 Ariz. App. at 106. (emphasis supplied).

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1. An amendment to the statute in 1974 increased this amount to \$5,000.

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The court, in Secrist, identified two factors which make a project one of "substance" requiring competitive bidding: 1) whether the project requires drawings and specifications and 2) the cost of completion.

The court did not consider whether the cost of a project alone means that it must be competitively bid. Accordingly, it appears that so long as no plans or specifications are required, the work need not be advertised for bids if the agent desires to use its own personnel to do the job. However, as the Secrist court emphasized, the fact that plans and specifications are prepared by an employee does not excuse an agency from bidding requirements, if the cost of the project is in excess of \$5,000.

Sincerely,



BOB CORBIN  
Attorney General

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