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October 19, 1987

The Honorable Jesus "Chuy" Higuera
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I87-138 (R87-137)

Dear Senator Higuera:

We are writing in response to your request for an opinion on the following question:

If an individual were not a licensed contractor but had lawfully begun work building apartments for rent during the year prior to July 1, 1987, or had begun some other type of commercial project before July 1, 1987, would that individual be exempt from the contractor licensing requirements found in title 32 of the Arizona Revised Statutes for the sole purpose of completing the project under construction?

The Arizona legislature in Laws 1986 (2nd Reg. Sess.) Ch. 318 regulated commercial construction in Arizona by imposing license requirements for all construction. The regulation provision did not become effective until after June 30, 1987. Laws 1986 (2nd Reg. Sess.) Ch. 318, § 23. Prior to adoption of Chapter 318, only residential builders were included in the definition of a contractor who was required to be licensed. Laws 1986 (2nd Reg. Sess.) Ch. 318, § 2 amended the definition of a contractor to provide that:

A. For the purpose of this chapter:

• • • • •

2. "Contractor" is synonymous with the term "builder" and means a person, firm, partnership, corporation, association or other organization, or a combination of any of them, that undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or any other structure or work in connection with the construction.

A.R.S. § 32-1151 which makes it unlawful for any person, firm, partnership, corporation, association or other organization to engage in the business or act in the capacity of a contractor without a license unless that person, firm, partnership, corporation, association or other organization is exempt from the licensing provisions as provided in Title 32.

The exemptions referred to in A.R.S. § 32-1151 are contained in A.R.S. § 32-1121 which includes exemptions for governmental bodies, trustees of a court, public utilities, retailers, owner builders, architects, engineers, pest control operators, maintenance workers, employees of licensed contractors, surety companies and insurance companies using licensed contractors, handymen and manufacturers of factory built buildings and manufactured houses if licensed accordingly.

Within this statutory framework, the legislature clearly intended to create and impose a licensing requirement for all contractors engaged in commercial construction in the State of Arizona. By redefining the term contractor the legislature broadened the scope of the licensing requirement to include a class of construction which had not been regulated for some years. This obligation was imposed on the date the statutory changes took effect, July 1, 1987. See A.R.S. § 1-241(B) (time statutes take effect).

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In determining whether individuals who had begun construction on commercial projects prior to July 1, 1987 are exempt from the licensing requirements for the sole purpose of completing that project we are governed by the fundamental rule of statutory construction that the language of the statute is the most reliable evidence of its intent, and in the absence of clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive. State ex rel. Corbin v. Pickrell, 136 Ariz. 589, 667 P.2d 1304 (1983). We are also guided by the rule of construction that when a statute enumerates the subjects upon which it is to operate it will be construed as excluding from its effects all subjects not specifically mentioned. Inspiration Consolidated Copper v. Industrial Commission, 118 Ariz. 10, 514 P.2d 478 (App. 1977). Generally, where no exceptions are made to general language of a statute it will be presumed that no exceptions were intended. Bowen v. Chemi-Cote Perlite Corp., 5 Ariz.App. 28, 423 P.2d 104 vacated, 102 Ariz. 423, 432 P.2d 435 (1967).

The statutes imposing the licensing requirement for commercial construction effective July 1, 1987 contain no provision for exemption from the licensing requirement to complete jobs in progress and no exemption was provided in A.R.S. § 32-1121. If the legislature had intended to exempt ongoing projects from the licensing requirement after July 1, 1987 it could have easily done so. By the same token the legislature in 1986 did not require individuals or companies which would enter into contracts or begin construction on projects to obtain licenses prior to July 1, 1987 even though the projects were not scheduled for completion until after July 1, 1987. Instead the legislature merely created a licensing requirement for commercial projects which was imposed on a date certain, July 1, 1987.

The plain meaning of these statutes is to require licenses of all commercial contractors engaging in that business on July 1, 1987 regardless of whether the job was in progress or not, and in the absence of any expressed intent to create an exemption from licensing to complete jobs in progress, we must conclude that none was intended. We find further support for this conclusion from the fact that the legislature allowed ample time for contractors to meet the licensing requirements by delaying the effective date of the statute for almost a year from the date a statute ordinarily would have become effective in the absence of a delayed effective date. See Ariz. Const., art. IV, Pt. 1, § 1(3) (effective date of legislation).

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The statutes were written to and do operate prospectively on all individuals and companies engaging in commercial construction from and after June 30, 1987. The statute does not operate retrospectively merely because it relates to antecedent conditions (projects begun prior to July 1, 1987). Cohen v. State, 121 Ariz. 6, 588 P.2d 299 (1978); Tower Plaza Investments, Limited v. DeWitt, 109 Ariz. 248, 508 P.2d 324 (1973).

For these reasons, we conclude that there is no exemption from the licensing requirement created effective July 1, 1987 for individuals or companies for the purpose of completing projects initiated prior to July 1, 1987. All individuals and companies engaging in commercial construction from and after June 30, 1987 must be properly licensed to satisfy the applicable contractor licensing statutes contained in Arizona Revised Statutes, Title 32, Chapter 10, A.R.S. § 32-1101 to -1170.03 regardless of the date the project was commenced.

Sincerely,



BOB CORBIN
Attorney General

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