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October 31, 1988

Patricia A. Stevens  
Interim Executive Director  
Structural Pest Control Commission  
2207 South 48th Street, Suite M  
Tempe, Arizona 85282

Re: I88-111 (R88-106)

Dear Mrs. Stevens:

You have asked questions regarding the application of Laws 1988 (2nd Reg. Sess.) Ch. 348, § 17(A), which provides:

A. The structural pest control commission shall issue, on a form prescribed by the commission, a certificate, license or qualification to any person who on the effective date of this act holds a valid certificate, license or qualification that was issued by the structural pest control board.

(Emphasis added.) Specifically, you ask whether the new Structural Pest Control Commission ("Commission") is required to issue new licenses to licensees who did not receive passing examination scores on tests administered by the former Structural Pest Control Board ("Board").

We conclude that licenses issued by the former Board that are unsupported by passing examination scores were improperly issued and are therefore invalid. Based upon the plain language of section 17(A), the new Commission may issue new licenses only to those licensees who hold valid licenses.

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A board is a creation of the legislature and has only those powers conferred upon it by statute. Fund Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety Personnel Retirement System Board, 137 Ariz. 536, 672 P.2d 201 (App. 1983). Actions by a Board which are outside of its statutory authority are necessarily null and void.

Implicit in the cases denying a board's power to review or re-examine a question, however, is the qualification that the board must have acted within its jurisdiction and within its powers conferred on it . . . While a board may have exhausted its power to act when it has proceeded within its powers, it cannot be said to have exhausted its powers by doing an act which it had no power to do or by making a determination without sufficient evidence. In such a case, the power to act legally has not been exercised, the doing of the void act is a nullity.

Aylward v. State Board of Chiropractic Examiners, 31 Cal. 2d. 833, 192 P.2d 929 (1948).

A.R.S. § 32-2314(C)(1) has provided since January 1, 1985, that applicants may not be licensed unless they receive a score of 70% or more on a written examination given under the direction of the Board. Because the Board had no authority to issue licenses to any applicant who did not meet that statutory requirement, licenses issued after that date to individuals who did not receive passing examination scores are invalid.

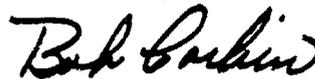
You also inquire whether the language of section 17(A) could be interpreted as a "grandfather" clause, entitling all persons who hold a Board license to be issued a new Commission

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license.<sup>1</sup> Section 17(A) contains no language in the nature of a grandfather clause. It states that the Commission shall issue new licenses only to those persons who, on the effective date of the act, "hold a valid certificate, license or qualification that was issued by the structural pest control board."  
(Emphasis added.)

Thus, section 17(A) does not act as a grandfather clause and does not authorize the Commission to issue new licenses to any persons who may have been licensed by the Board without meeting the statutory criteria of A.R.S. § 32-2314. We therefore conclude that the Commission may issue licenses pursuant to section 17(A) only to those licensees who were issued valid licenses by the former Board.

Sincerely,



BOB CORBIN  
Attorney General

BC:JLG:MJC/rs

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<sup>1</sup>A grandfather clause is an exception to a regulatory scheme, and is generally found where an occupation not formerly regulated by statute is brought under legislative control. See State Board of Dispensing Opticians v. Schwab, 93 Ariz. 328, 380 P.2d 784 (1963). When the legislature fails to make an exception, it is presumed that no exception is intended. Bushnell v. Superior Court of Maricopa County, 102 Ariz. 309, 428 P.2d 987 (1967). See also Ariz. Atty. Gen. Op. 177-144 (no grandfather clause in a Board of Technical Registration statute).