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Opinion No. 09-188

Requirements of Tenn. Code Ann. § 62-2-102(b) for Non-Registrants

QUESTIONS

1. (a) Does Tenn. Code Ann. § 62-2-102(b) require the services of an architect and/or engineer to prepare plans and specifications for any building or structure classified as "business," "factory-industrial," "hazardous," "mercantile," "residential," and "storage" occupancies which are three (3) stories or greater in height and greater than five thousand square feet (5,000 sq. ft.) in total gross area if such plans and specifications do not involve architecture or engineering?

(b) If the answer to the above is "No," can persons not registered as an architect or engineer ("non-registrants") submit such plans and specifications to building officials to obtain a permit for such occupancies for buildings or structures of any height and square footage?

(c) If plans and specifications do not involve architecture or engineering, can non-registrants prepare such plans and specifications for "assembly," "institutional" and "educational" occupancies?

2. Are the policy requirements of the Tennessee Board of Architectural and Engineering Examiners (the "Board")[1] and in the publication entitled "Tennessee Board of Architectural and Engineering Examiners Reference Manual for Building Officials and Design Professionals" ("Manual") to be interpreted that architecture and engineering is involved in plans and specifications unless within an exemption set forth in the Internet Policies and Manual, including, but not limited to checklist items 9 and 10 on Page 7, and Appendices B and C?

3. May non-registrants prepare plans and specifications, including, but not limited to, cabinets, electrical fixtures, plumbing fixtures, and wall and door placements in buildings greater than two stories in height and spaces greater than 5,000 square feet, including residential high rises of more than two-family dwellings; or are non-registrants limited in preparing such plans and specifications to a separate tenant space of less than 5,000 square feet?

[1] As set forth on its Internet web site (www.state.tn.us/commerce/boards/ae/policies.shtml) ("Internet policies").

4. Does the Manual, Appendix C, "Seal Exemption Clarification," Paragraph 2.A, limit the issuance of a building permit to non-registrants and registered interior designers to preparing plans and specifications for spaces that are 5,000 square feet or more in total gross area or over two stories in height, to normal maintenance or remodeling, and upgrades consisting of removing and replacing finishes and built-in cabinetry (wall, floor, ceiling), change lights or filters, and rearrangement of prefabricated partitions?

OPINIONS

1. (a) No. Tenn. Code Ann. § 62-2-102(b) does not require the services of an architect and/or engineer to prepare plans and specifications for any building or structure classified as "business," "factory-industrial," "hazardous," "mercantile," "residential," and "storage" occupancies which are three (3) stories or greater in height and greater than five thousand square feet (5,000 sq. ft.) in total gross area if such plans and specifications do not involve architecture or engineering. However, the policy requirements of the Board, as set forth on its Internet web site (www.state.tn.us/commerce/boards/ae/policies.shtml) ("Internet Policies") and in the Manual indicate that architecture and engineering is involved in plans and specifications unless within an exemption set forth in Tenn. Code Ann. § 62-2-102(b), the Internet Policies, and the Manual, including checklist items 9 and 10 on Page 7, and Appendices B, C and H. If the project does not fall within one of those exemptions, a registered architect or engineer would be required.

(b) Requirements for the submission of design documents are controlled by the reviewing jurisdiction for permitting, such as municipal governments, fire marshals, and state and local exempt jurisdictions. The Board does not determine requirements for submitting documents. The Board controls professional conduct of architecture and engineering.

(c) No. "Assembly," "institutional" and "educational" occupancies are specifically not included in the exempted structures listed in Tenn. Code Ann. § 62-2-102(b); therefore, it would be unlawful for a non-registrant to prepare plans and specifications for such structures.

2. Yes. The policy requirements of the Board, as set forth on its Internet Policies and in the Manual indicate that architecture and engineering is involved in plans and specifications unless within an exemption set forth in the Internet Policies and Manual, including checklist items 9 and 10 on Page 7, and Appendices B, C and H.

3. No. Tenn. Code Ann. § 62-2-102(b) states that it is unlawful for any person other than a registered architect or engineer to prepare plans and specifications for any building or structure other than the structures that meet the criteria of Tenn. Code Ann. §§ 62-2-102(b)(1)(A) and (B). Tenn. Code Ann. § 62-2-102(b) requires the services of an architect and/or engineer to prepare plans and specifications for any building or structure classified as "business," "factory-industrial," "hazardous," "mercantile," "residential," and "storage" occupancies which are three (3) stories or greater in height and greater than five thousand square feet (5,000 sq. ft.) in total gross area. Accordingly, non-registrants may only prepare such plans and specifications for a building or structure classified as "business," "factory-industrial," "hazardous," "mercantile," "residential," and "storage" occupancies which is less than 5,000 square feet and less than three (3) stories in height.

4. No. Requirements for the submission of design documents are controlled by the reviewing jurisdiction for permitting, such as municipal governments, fire marshals, and state and local exempt jurisdictions. The Board does not determine requirements for submitting documents. The Board controls professional conduct of architecture and engineering. Appendix C of the Manual, "Seal Exemption Clarification," Paragraph 2.A states that non-registrants and registered interior designers may prepare plans and specifications for spaces that are 5,000 square feet or more in total gross area or over two stories in height for normal maintenance or remodeling, and upgrades consisting of removing and replacing finishes and built-in cabinetry (wall, floor, ceiling, where these are not a part of a required fire rated assembly), change lights or filters, and rearrangement of prefabricated partitions.

ANALYSIS

1. Tenn. Code Ann. § 62-2-102(b) provides as follows:

> (b) It is unlawful for any person other than a registered architect or engineer to prepare plans and specifications for any building or structure other than the following:
>
> (1) Structures classified as "business," "factory-industrial," "hazardous," "mercantile," "residential" and "storage" occupancies, as such occupancies are defined in the 1985 edition of the Standard Building Code, which are:
>
> (A) Less than three (3) stories in height; and
>
> (B) Less than five thousand square feet (5,000 sq. ft.) in total gross area;
>
> (2) One-family and two-family dwellings and domestic outbuildings appurtenant thereto; or
>
> (3) Farm buildings not designed or intended for human occupancy.

Tenn. Code Ann. § 62-2-102(b) requires the services of an architect and/or engineer to prepare plans and specifications for any building or structure classified as "business," "factory-industrial," "hazardous," "mercantile," "residential," and "storage" occupancies which are three (3) stories or greater in height and greater than five thousand square feet (5,000 sq. ft.) in total gross area. The statute is unambiguous in regards to the situations where a registered architect or engineer is required to prepare plans and specifications for buildings or structures.

However, Tenn. Code Ann. § 62-2-102(b) does not require the services of an architect and/or engineer to prepare plans and specifications for any building or structure classified as "business," "factory-industrial," "hazardous," "mercantile," "residential," and "storage" occupancies which are three (3) stories or greater in height and greater than five thousand square

feet (5,000 sq. ft.) in total gross area if such plans and specifications do not involve architecture or engineering. The policy requirements of the Board, as set forth on its Internet web site (www.state.tn.us/commerce/boards/ae/policies.shtml) ("Internet Policies") and in the Manual indicate that architecture and engineering is involved in plans and specifications unless within an exemption set forth in Tenn. Code Ann. § 62-2-102(b), the Internet Policies, and the Manual, including checklist items 9 and 10 on Page 7, and Appendices B, C and H. If the project does not fall within one of those exemptions, a registered architect or engineer would be required.

This question also asks whether persons not registered as an architect or engineer ("non-registrants") can submit such plans and specifications to building officials to obtain a permit for such occupancies for buildings or structures of any height and square footage. Requirements for the submission of design documents is controlled by the reviewing jurisdiction for permitting, such as municipal governments, fire marshals, and state and local exempt jurisdictions. The Board does not determine requirements for submitting design documents. The Board controls the professional conduct of architects and engineers.

Finally, this question asks whether non-registrants can prepare plans and specifications for "assembly," "institutional" and "educational" occupancies if those plans and specifications do not involve architecture or engineering. Appendix C of the Manual provides: "In no case can anyone other than an architect or engineer registered in Tennessee provide design documentation with regard to assembly, institutional, and educational occupancies." (Manual, pg. 13, Appendix C). The statute does not specify whether the "plans and specifications" must involve architecture or engineering before a registered architect or engineer is required to prepare those plans and specifications. However, it seems highly unlikely that plans or specifications for the construction of a building or structure would not have any elements of architecture or engineering in them. As explained below, the policy requirements of the Board indicate that architecture and engineering is involved in plans and specifications unless the plans and specifications fit within an exemption set forth in Tenn. Code Ann. § 62-2-102(b), the Internet Policies, and the Manual, including checklist items 9 and 10 on Page 7, and Appendices B, C and H. "Assembly," "institutional" and "educational" occupancies are specifically not included in the exempted structures listed in Tenn. Code Ann. § 62-2-102(b); therefore, it would be unlawful for a non-registrant to prepare plans and specifications for such structures.

2. The policy requirements of the Board, as set forth on its Internet web site (www.state.tn.us/commerce/boards/ae/policies.shtml) ("Internet policies") and in the Manual indicate that architecture and engineering is involved in plans and specifications unless within an exemption set forth in the Internet Policies and Manual, including checklist items 9 and 10 on Page 7, and Appendices B, C and H.

The Board's Manual "is provided to assist in the understanding of the laws and rules under which the Board and its registrants are governed with the goal of better serving the people of Tennessee, and updates and replaces the manual published in 2006." (Manual, pg. 1, attached). The Manual states:

> In general, all structures must have plans prepared by design professionals registered by the Board. Plans and specifications for all structures classified as "assembly," "educational," and "institutional" in the Standard Building Code must also be prepared by architects or engineers.
>
> The only exceptions to this requirement are:
>
> - Structures classified as "business," "factory-industrial," "hazardous," "mercantile," "residential" and "storage" occupancies, as such occupancies are defined in the 1985 edition of the Standard Building Code, which are:
>
> 1. Less than three (3) stories in height; AND
> 2. Less than five thousand square feet (5,000 sq. ft.) in total gross area;
>
> - One-family and two-family dwellings and domestic outbuildings pertaining thereto; and
> - Farm buildings not designed or intended for human occupancy.
> - Signs that do not exceed either of the following limits (unless failure of the support system for the sign is likely to cause harm to people or property):
>
> (i) Any portion of the sign is twenty feet (20') or more above the ground level; or
> (ii) Any portion of the sign is fifteen feet (15') or more above the ground level, if the sign has more than one hundred twenty square feet (120 sq. ft.) in total sign face area.

(Manual, pg. 1-2). Accordingly, the Manual adopts Tenn. Code Ann. § 62-2-102(b). The Manual also provides "A Check List for the Examination of Building Construction Documents" which "is suggested as a pattern for the examination of building construction documents prior to the issuance of a building permit." (Manual, pg. 3). Checklist item number three again adopts Tenn. Code Ann. § 62-2-102(b) and provides the following explanatory notes:

> *Explanatory Notes:* The Board has interpreted the above exceptions (See **Appendix C** entitled "Seal Exemptions Clarification") only for those structures classified as above which are also separated from other buildings and/or spaces/tenants by the minimum fire-rated separation required by the applicable code.
>
> Additionally, registered interior designers, while not permitted to practice architecture or engineering, may engage in design services including consultations, studies, drawings, and specifications in connection with reflected ceiling plans, space utilization, furnishings, or the fabrication of non-structural elements within the interior spaces of buildings, but specifically excluding the services specified by law to require other licensed professionals, such as the

> design of life safety, mechanical, plumbing, electrical, and load-bearing structural systems, except for specification of fixtures and their location within interior spaces.

(Manual, pg. 4).

Furthermore, checklist items 9 and 10 explain what plans and specification registered interior designers may provide without running afoul of Tenn. Code Ann. § 62-3-102(b). Checklist item number 9 provides: "A registered interior designer may provide plans and specifications in connection with reflected ceiling plans, furnishings, the fabrication of non-structural elements within the interior spaces of buildings, or space utilization not affecting life safety." (Manual, pg. 7). Checklist item number 10 explains that a building permit should not be issued when the building official receives a set of plans for tenant space that is part of a new multi-story office building and the plans are not sealed by a licensed architect or engineer unless the tenant space is less than 5,000 square feet and separated from other tenant spaces by the minimum fire-rated separation required by the applicable code. (Manual, pg. 7). Checklist item number 10 further provides that "[a] qualified registrant of this board must prepare and seal the plans prepared by him or her for the tenant space, even if the shell of the building is prepared by another registrant." (Manual, pg. 7). This item number also explains that "[a] registered interior designer[2] or non-registrant may provide plans and specifications with reflected ceiling plans, furnishings, the fabrication of non-structural elements within the interior spaces of buildings, or space utilization not affecting life safety." (Manual, pg. 7).

Appendix B of the Manual provides an example of a "Letter of Clarification" which should be submitted by the designer when building officials receive a set of documents for permitting purposes without an architect or engineer's seal. (Manual, pg. 12, Appendix B). The letter of clarification sets forth the reasons why a registered architect or engineer is not required for the project. These reasons include the exemptions set forth in Tenn. Code Ann. § 62-2-102(b) and the Manual. The letter of clarification provided in Appendix B provides as follows:

> When building officials receive a set of documents for permitting purposes without an architect or engineer's seal, they should ask the designer of record to sign a statement, such as the following:
>
> The drawings you have submitted on the above-referenced project do not have the seal of an architect or engineer, which is somewhat unusual to find on construction documents for a project of this type. In order to recognize the fact that a registered architect or engineer is not required for this project, we need you to provide the following assurances (circle all that apply).
>
> 1. The design being submitted is less than 5,000 gross square feet and less than three stories in height or a tenant space less than 5,000 gross square

[2] Checklist item number 23 provides that "[a]ny person may render interior design services. Only registered Interior Designers and Architects registered in the State of Tennessee may use the title 'Registered Interior Designer.' (Reference T.C.A. Section 62-2-903.)" (Manual, pg. 9).

feet and separated from other tenant spaces by the minimum fire-rated separation required by the applicable code.

and/or

2. I am competent in the design of this type of space planning, which does not include changes that affect the structural, mechanical, electrical system, or the life safety of the building and occupants of this space.

and/or

3. The building or space is not an "A," "E," or "I" occupancy, which would require a registered architect or engineer regardless of size.

and/or

4. I am a registered interior designer, and these plans and specifications are for build out to spaces less than 5,000 square feet, or these plans and specifications are in connection with reflected ceiling plans, furnishings, the fabrication of non-structural elements within the interior spaces of buildings, or space utilization not affecting life safety. My registration number is _____.

(Manual, pg. 12, Appendix B).

Appendix C of the Manual provides "Seal Exemptions Clarification," which is a reiteration of Tenn. Code Ann. § 62-2-102(b). Appendix C provides as follows:

The following are situations where a registered architect, engineer, or landscape architect is not required unless an awarding authority deems it necessary:

1. Tenant finishes and tenant improvements to a building of B, F, H, R, M, or S occupancy may be designed by a non-registrant with the following provisions:

   A. Each separate tenant space is less than 5,000 square feet and the tenant spaces are separated from other tenant spaces by the minimum fire-rated separation required by the applicable code. In accordance with Section 402.1.2 of the 1985 edition of the Standard Building Code, "each part of a building or structure included within fire walls shall be considered a separate building."

   B. Remodeling, maintenance, or renovation of any building or structure, which does not alter the structural system, or fire protection, or egress requirements.

2. The following exemptions apply to buildings, structures and spaces of B, F, H, R, M, occupancy that are 5,000 square feet or more in total gross area or over two stories in height:

    A. Existing interior space. Normal maintenance or remodeling of an existing interior space in an existing building where the occupancy or floor plan do [sic] not change but upgrades are needed, such as, remove and replace finishes (wall, floor, ceiling, where these are not a part of a required fire rated assembly), change light bulbs or filters, and rearrange prefabricated partitions.

    B. Mechanical design.

        i. The design of a mechanical system for a building or structure of B, F, H, R, M, or S occupancy, and a temporary structure, wherein the HVAC system developed is not more than a total of 12.5 ton capacity and not more than a total of 500,000 BTU of heating per hour output.

        ii. Normal maintenance or replacement of defective mechanical equipment with like equipment with like size may be accomplished by contractors licensed in their respective trades.

    C. Plumbing design. Minor plumbing upgrades and additions up to the equivalent of three (3) fixture unit values, which do not require any change to the capacity of any waste, vent or supply system.

    D. Electrical design. Minor electrical additions, such as receptacles, lighting, or other circuits, not to exceed 20 amperes, may be designed without benefit of a registrant, if the additional circuits do not require additional distribution panel(s) and/or the need for upgrading, resizing, or enlarging branch circuits and main feeders. In addition, such work shall certify to any authority having jurisdiction, in writing, that he/she has evaluated such work in relation to the National Electrical Code and local codes, providing, for the record, the number of circuits added and the revised loads on the existing panel(s).

    E. Reroofing. Normal maintenance or repair of an existing roof where the weight, drainage, fire protection, and other code related requirements of the original design are not changed or compromised.

    Note: In no case can anyone other than an architect or engineer registered in Tennessee provide design documentation with regard to assembly, institutional, and educational occupancies.

(Manual, pg. 13, Appendix C).

Accordingly, both Appendices B and C set forth situations where a registered architect, engineer, or landscape architect is not required. (Manual, pg. 12-13, Appendices B and C). Unless the criteria set forth in Tenn. Code Ann. § 62-2-102(b), the Manual, and Appendix B and C of the Manual are met, a registered architect or engineer is required to submit plans and specifications for structures and buildings.

3. As explained above, Tenn. Code Ann. § 62-2-102(b) states that it is unlawful for any person other than a registered architect or engineer to prepare plans and specifications for any building or structure other than the structures that meet the criteria of Tenn. Code Ann. §§ 62-2-102(b)(1)(A) and (B). Both Tenn. Code Ann. § 62-2-102(b) and the Manual requires the services of a registered architect and/or engineer to prepare plans and specifications for any building or structure classified as "business," "factory-industrial," "hazardous," "mercantile," "residential," and "storage" occupancies which are three (3) stories or greater in height and greater than five thousand square feet (5,000 sq. ft.) in total gross area.

Both Appendices B and C of the Manual set forth situations where a registered architect, engineer, or landscape architect is not required to submit plans and specifications to the Board. (Manual, pg. 12-13, Appendices B and C). Unless the criteria set forth in Tenn. Code Ann. § 62-2-102(b), the Manual, and Appendices B and C of the Manual are met, a registered architect or engineer is required to submit plans and specifications for structures and buildings.

4. Appendix C provides as follows:

> The following exemptions apply to buildings, structures and spaces of B, F, H, R, M, occupancy that are 5,000 square feet or more in total gross area or over two stories in height:
>
> A. Existing interior space. Normal maintenance or remodeling of an existing interior space in an existing building where the occupancy or floor plan do not change but upgrades are needed, such as, remove and replace finishes (wall, floor, ceiling, where these are not a part of a required fire rated assembly), change light bulbs or filters, and rearrange prefabricated partitions.

(Manual, pg. 13, Appendix C).

Requirements for the submission of design documents are controlled by the reviewing jurisdiction for permitting, such as municipal governments, fire marshals, and state and local exempt jurisdictions. The Board does not determine requirements for submitting documents. The Board controls professional conduct of architecture and engineering. Appendix C of the Manual, "Seal Exemption Clarification," Paragraph 2.A states that non-registrants and registered interior designers may prepare plans and specifications for spaces that are 5,000 square feet or more in total gross area or over two stories in height for normal maintenance or remodeling, and upgrades consisting of removing and replacing finishes and built-in cabinetry (wall, floor, ceiling, where these are not a part of a required fire rated assembly), change lights or filters, and rearrangement of prefabricated partitions. Furthermore, checklist items 9 and 10 on Page 7 of the

Manual and Appendix B provide exemptions where a registered architect or engineer is not required to prepare plans and specifications.

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