

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

April 3, 2012

Opinion No. 12-46

Interior Design by Non-Registrants Under Tenn. Code Ann. §§ 62-2-101 to -906

QUESTIONS

1. Tenn. Att’y Gen. Op. 09-188 (December 16, 2009) opines that the services of an architect or engineer are not necessary if a project falls within any exemption set forth in Tenn. Code Ann. § 62-2-102(b), as further refined by the policies of the Tennessee Board of Architectural and Engineering Examiners as set forth in its “Reference Manual for Building Officials and Design Professionals” and its Internet web site.¹ Under these exemptions, may a non-registrant perform the services listed below?

(a) Prepare nonstructural interior design plans and specifications for interior spaces of a building or structure of any size, height and occupancy, including assembly, institutional, or educational occupancies, for the purpose of obtaining approval for a building permit?

(b) Prepare plans and specifications for tenant build-out on a second floor of an office building that subdivides an existing 4,999 square foot space into two separate offices (business occupancy) and a shared public corridor/lobby?

(c) Specify interior finishes (for example carpet, wall covering, and acoustical ceilings) for existing public corridors through a high-rise office building (business occupancy)?

(d) Produce new finishes for an elementary school corridor (education occupancy, single story building, 4,500 square feet)?

(e) Produce interior construction drawings and specifications for demolition and new construction of non-load bearing partitions, finishes and furnishings for a restaurant that seats 150 people (assembly occupancy), single store building, 2,500 square feet?

(f) Do any of these services involve plans and specifications that affect “life safety”?

2. Tenn. Code Ann. §§ 62-2-101 to -906 does not address the issue of a seal for registered interior designers. May a registered interior designer affix to plans and specifications a seal indicating that such person is a registered interior designer with the State of Tennessee with

¹ The website is www.tn.gov/commerce/boards/ae/policies.shtml.

the registration number XXX if such seal does not represent that it is a seal authorized by the Board of Architectural and Engineering Examiners?

OPINIONS

1. A non-registrant may only perform the services as described below.

a. If done for the purpose of obtaining a permit, the authority having jurisdiction (AHJ) typically requires plans and specifications to be prepared by a registered individual. However, your question indicates that the plans and specifications involve only non-structural elements; typically non-structural changes do not require submission to a permitting authority. One exception, however, would be non-structural changes that require some alteration to a building's safety features, such as the placement of sprinkler system heads or fire doors. In such a case, and depending on the extent of the changes, the plans may have to be submitted by a registered individual.

b. Based upon the facts provided, it appears that such plans and specifications would likely require measures such as installing a fire-rated dividing wall to subdivide the area, as well as the alteration of electrical wiring and/or heating, ventilation and air conditioning (HVAC) ducting and controls. If so, these matters are governed by applicable fire, electrical, and building codes, and plans and specifications dealing with these matters would require submission to a permitting authority by a registered professional.

c. These matters typically do not require the services of a registered professional. It should be noted, however, that interior furnishings are often made of inflammable materials. Depending upon the facts and circumstances, therefore, these matters may implicate life safety issues which would require the services of a registered professional.

d. These matters usually do not require the services of a registered professional. It should be noted, however, that interior furnishings are often made of inflammable materials. Depending upon the facts and circumstances, therefore, these matters may implicate life safety issues requiring the services of a registered professional.

e. These matters, based upon the facts provided, do not appear to require the services of a registered professional.

f. As discussed above, some of the scenarios presented would likely affect "life safety." Furthermore, depending upon the specific facts and circumstances, it is possible that any of these scenarios might involve safety issues. Consequently, it is impossible to provide a conclusive opinion on this question without further information regarding the specific circumstances. In addition, this question goes somewhat beyond the scope of a legal question, and calls for engineering or architectural expertise.

2. There is no Tennessee statute or regulation prohibiting the use of such a seal by a registered interior designer. There may be circumstances, however, under which the use of such a "homemade" seal might be deemed to violate some state or federal consumer protection laws, if

the seal can be interpreted as deceptive or misleading. Once again, the specific facts and circumstances surrounding the design, creation, and use of such a seal would determine the applicability of consumer protection provisions to a given situation. Use of such a seal might also, depending on the facts presented, violate federal trademark law.

ANALYSIS

1. Tenn. Code Ann. §§ 62-2-901 to -906 is the “Interior Designers Title Registration Act” (the Act). Tenn. Code Ann. § 62-2-903 provides that:

(a)(1) No person shall use the title “registered interior designer” unless the person is registered as provided in this part.

(2) This part shall not prohibit any architect registered under parts 1-6 of this chapter from using the title of “registered interior designer.”

(b) Nothing contained in this part shall prevent any person from rendering or offering to render interior design services; provided, that the person shall not be permitted to use or be identified by the title “registered interior designer” unless registered in accordance with this part.

As described in the Tennessee Board of Architectural and Engineering Examiners’ Reference Manual for Building Officials and Design Professionals (revised 2009) (the Manual)² the Act is

a “title” act requiring that any interior designer who calls himself or herself a registered interior designer must be registered by the Board [of Architectural and Engineering Examiners]. The law is not a “practice” act; therefore interior designers are allowed to do no more and no less than before the legislation was passed. 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 at 7. Consequently interior designers do not have to be registered in order to practice interior design or to hold themselves out to the public as interior designers; they only have to be registered if they wish to hold themselves out as “*registered* interior designers.” The questions asked therefore actually do not involve an issue of registered as opposed to non-registered interior designers, but rather address issues of what work must be performed by registered engineers and/or architects and what work may be performed by non-registered individuals.

Tenn. Code Ann. § 62-2-102(b) lists certain services related to building plans and specifications that do not have to be provided by a registered architect or engineer, providing in pertinent part as follows:

² The Manual is available online at <http://www.tn.gov/commerce/boards/ae/documents/ReferenceManual.pdf>.

(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 those occupancies are defined in the 1985 edition of the Standard Building Code, that 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 to those dwellings;
- (3) Farm buildings not designed or intended for human occupancy; . . .

The Manual provides a number of “Most Commonly Asked Questions” regarding the exemptions allowed by Tenn. Code Ann. § 62-2-102(b), that include the following which pertain to the questions in your opinion request:

6. If a freestanding building classified as “business” has an area greater than 5,000 gross square feet but is only one or two stories high, must the plans and specifications be prepared by a registered architect or engineer?

Yes. The building must meet both the requirement for an area less than 5,000 square feet and the requirement for a height of less than three stories to be exempt from the requirement for plans and specifications prepared by an architect or engineer. For instance, if a two-story building has 4,000 square feet per floor (or 8,000 total square feet) the plans and specifications shall be prepared by an architect or engineer.

. . . .

10. Should a building permit be issued when the building official receives a set of plans for tenant space that is part of a new multi-story office building’s construction and the plans are not sealed by a licensed architect or engineer?

No, 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. 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. *A registered interior designer 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.* (emphasis added).

. . . .

22. Are full height, non-bearing, non-rated partitions considered components that affect the safety of the building?

The addition, relocation, or removal of full height, non-bearing, non-rated partitions could change or affect the safety of a building. *Each situation must be judged within its specific context; thus, the building official must decide whether such partitions would affect the safety of the building.* (Emphasis added).

....

29. Is a registered architect or engineer required to prepare and seal drawings for an existing building space of 5,000 square feet or more if the space is going to be divided into several spaces less than 5,000 square feet?

Yes. While the particular use of a facility may ultimately have individual spaces less than 5,000 square feet and separated by fire-rated construction from other tenants, the overall space requires a registered architect or engineer to be sure construction, egress, systems, etc., are properly designed and integrated collectively.

Manual at 7, 9 & 10. As these excerpts from the Manual indicate, non-registrants are generally permitted to prepare plans and specifications for interior finishes, furnishings, and non-load bearing partitions in buildings of any size or floor area, provided that these matters do not, in the judgment of the AHJ, affect the safety of the building. With these principles in mind, we now turn to the specific questions asked.

a. This question asks whether a non-registrant may prepare nonstructural interior design plans and specifications for interior spaces of a building or structure of any size, height and occupancy, including assembly, institutional, or educational occupancies, for the purpose of obtaining approval for a building permit. If done for the purpose of obtaining a permit, the authority having jurisdiction (AHJ)³ typically requires plans and specifications to be prepared by a registered individual. However, your question indicates that the plans and specifications involve only non-structural elements; typically non-structural changes do not require submission to a permitting authority. One exception, however, would be non-structural changes that require some alteration to a building's safety features, such as the placement of sprinkler system heads or fire doors. In such a case, and depending on the extent of the changes, the plans may have to be submitted by a registered individual.

b. The next question posed is whether a non-registrant prepare plans and specifications for tenant build-out on a second floor of an office building that subdivides an existing 4,999 square foot space into two separate offices (business occupancy) and a shared public corridor/lobby. Based upon the facts provided, it appears that such plans and specifications would likely require measures such as installing a fire-rated dividing wall to subdivide the area, as well as the alteration of electrical wiring and/or heating, ventilation and air conditioning (HVAC) ducting and controls. If so, these matters are governed by applicable fire, electrical, and building codes, and plans and specifications dealing with these matters would require submission to a permitting authority by a registered professional.

³ Depending upon the location and type of work to be performed, the state fire marshal or some local official or officials may have jurisdiction over the plans submitted. See Tenn. Code Ann. § 68-120-101 to -118.

c. The third question asks whether a non-registrant may specify interior finishes (for example carpet, wall covering, and acoustical ceilings) for existing public corridors through a high-rise office building (business occupancy). These matters typically do not require the services of a registered professional. It should be noted, however, that interior furnishings are often made of inflammable materials. Depending upon the facts and circumstances, therefore, these matters may implicate life safety issues. For example, Tenn. Code Ann. § 68-120-104 states as follows:

The state fire marshal shall make regulations limiting the maximum amount of inflammable interior furnishings and materials, including draperies, curtains, shades, floor coverings, upholstery, furniture of combustible type, paints, varnishes, bedding and other materials that may be used or stored in any building or room or space of such building.

Consequently, even matters involving only interior furnishings, draperies and carpets may implicate safety issues depending upon the specific facts and circumstances. Accordingly, the AHJ for the location and type of construction should always be consulted.

d. The production of new finishes for an elementary school corridor (education occupancy, single story building, 4,500 square feet) usually does not require the services of a registered professional. However, as noted in the immediately preceding discussion, because specific facts and circumstances may implicate safety considerations, the appropriate AHJ should always be consulted to determine whether a registered professional is needed to complete the contemplated work.

e. This question asks whether a non-registrant may produce interior construction drawings and specifications for demolition and new construction of non-load bearing partitions, finishes and furnishings for a restaurant that seats 150 people (assembly occupancy), single store building, 2,00 square feet. These matters, based upon the facts provided, typically do not require the services of a registered professional. However, as noted in the preceding discussion, because specific facts and circumstances may implicate safety considerations, the appropriate AHJ should always be consulted.

f. The final hypothetical presented is whether any of the services addressed in questions “(a)” through “(e)” involve plans and specifications that effect “life safety.” As already discussed, depending upon the specific facts and circumstances, it is possible that any of the scenarios discussed above might involve life safety issues. Consequently, it is impossible to provide a conclusive opinion on this question without further information regarding the specific circumstances. In addition, this question goes somewhat beyond the scope of a legal question and calls for engineering or architectural expertise. In any event, we again note that the appropriate AHJ should always be consulted.

2. There is no Tennessee statute or regulation establishing an approved seal for registered interior designers, nor is there any Tennessee statute or regulation prohibiting the use of such a “homemade” seal by a registered interior designer. There may be circumstances, however, under which the use of such a “homemade” seal might be deemed to violate one or

more state or federal consumer protection laws, if the seal can be interpreted as deceptive or misleading.

For example, Tenn. Code Ann. § 47-18-104(a)⁴ prohibits “unfair or deceptive acts or practices affecting the conduct of any trade or commerce . . .” Section (b) of the same statute lists a number of unfair or deceptive acts or practices that are unlawful. Among the unlawful practices which might be found applicable to a seal that is deceptive or misleading are the following:

(2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services. . . .

(3) Causing likelihood of confusion or misunderstanding as to affiliation, connection or association with, or certification by, another. . . .

. . . .

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship approval, status, affiliation or connection that such person does not have;

. . . .

(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

Tenn. Code Ann. § 47-18-104(b)(2), (3), (5) & (27). This question does not specify the precise design and usage of the seal that is the subject of inquiry. Thus, depending upon the facts and circumstances, such a “homemade” seal could potentially violate any of the provisions quoted above, and these provisions do not constitute an exhaustive list of possible violations. Consequently, while the use of a “homemade” seal by registered interior designers is not specifically prohibited by Tennessee law, the potential to run afoul of consumer protection provision makes caution advisable. Furthermore, the use of such a seal could possibly violate federal trademark laws. *See* 15 U.S.C. §§ 1051 to 1129.

ROBERT E. COOPER, JR.
Attorney General and Reporter

⁴ This statute is part of the “Tennessee Consumer Protection Act of 1977,” codified at Tenn. Code Ann. §§ 47-18-101 to -130.

WILLIAM E. YOUNG
Solicitor General

KEVIN STEILING
Deputy Attorney General

Requested by:

The Honorable Bo Watson
State Senator
6A Legislative Plaza
Nashville, TN 37243-0211