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July 19, 1977

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Mrs. Ethel Elam
Executive Director
Board for Licensing General Contractors
516 Capitol Hill Building
Nashville, Tn 37219

RE: Section 62-603 (1976)

Dear Mrs. Elam:

You have requested that this office reconsider its opinion of September 21, 1976, wherein we defined "individual use" as it is found in Section 62-603. Your request has been referred to the undersigned for reply.

With the obvious exception of the changes promulgated by Chapter 9 of the Public Acts of 1977, this office, upon reconsideration of its previous opinion regarding "individual use", reaffirms its interpretation of same.

The section of the statute in question reads:

> "Any person, firm, or corporation that owns property and constructs thereon single residences, farm, or other buildings for individual use, and not for resale, lease, rent, or other similar purpose, is exempt from the requirements of this act."

As stated in your request, it is the opinion of the Board for Licensing Contractors, as well as certain industry associations, that "individual use" should not be applied to the construction of buildings for business or proprietary purposes. The point is made that there would seem to be no difference between a business constructing an industrial plant for use by itself and its employees and an apartment owner who builds an apartment complex to house tenants.

It is understood from this example that reference must be made to previous opinions of this office wherein a corporation as described above would need not have a license, while an apartment owner in the situation described above would need to have a license. We only wish to point out that an employee, as such, is not a member of the general public while operating within the scope of his employment. Rather, he is a part of the very business organization for which he works.

On the other hand, an apartment dweller is a tenant pursuant to a contractual arrangement with the owner or owners of the apartment complex in which he dwells. As such, he does not lose his identity as a member of the general public.

Hence, while both the business and the apartment owner would be constructing the particular buildings for their individual, business-type, purposes, only the latter caters to and depends upon usage by members of the general public. As such, he thereby fails to qualify for the "individual use" exemption outlined above.

Very truly yours,

Chip Ames

CHIP AMES
Assistant Attorney General

CA:mea

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R. A. ASHLEY, JR.
ATTORNEY GENERAL & REPORTER

OPINION NO. 23

TO: Board of Licensing Contractors
DATE: September 21, 1976

QUESTION

What constitutes "individual use" as it appears in Section 3 of the Contractors Licensing Act of 1976, §62-603?

OPINION AND ANALYSIS

The particular sentence of Section 3 of said Act would read,

> "Any person, firm, or corporation that owns property and constructs thereon single residences, farm or other buildings for individual use, and not for resale, lease, rent or other similar purpose is exempt from the requirements of this Act."

Having had a part in the writing of this particular sentence, this writer feels qualified in stating that it was the intent of said sentence to insure that there would be no abuse of what is called the owner exemption to this Act by providing that any building constructed on property owned by the builder must be built for the individual use of the owner and not for use by the general public.

While it is respectfully suggested that any further augmentation of this sentence be done by virtue of a Rule or Regulation, it will be the intent of this office in this opinion to provide legal guidelines as set out by this act within which the definition of individual use must adhere. It is appropriate at this point to look to the caption of this Act to see if same provides any insight as to the intent for the creation of same. Part of the caption would state that its purpose is to safeguard the life, the health and the property of the citizens of the State of Tennessee and to promote public welfare.

When this is read in conjunction with the above-quoted owner exemption sentence, it would appear that individual use with respect to a building constructed by an owner would not include those buildings built for resale, lease, rent, or any other utilization which depends on and caters to frequent use by the general public. Suggested examples of what would constitute individual use would include, but not be limited to, a homeowner building a garage on his property or a corporation building office space for use solely by its employees; while examples of non-individual use would include, but not be limited to, a property owner building a grocery store upon his property or a church organization building a church-related structure on its property.

CHIP AMES
Assistant Attorney General

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