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It has been said that this act's purpose is "to safeguard life, health, and property and to promote the public welfare by requiring that only properly qualified persons shall be engaged in general contracting." Farmer v. Farmer, 528 S.W.2d 539, 542 (Tenn. 1975). The Tennessee Supreme Court initially took a strict view of the act in Farmer, holding that an unlicensed general contractor who performed work under a contract could not enforce his contract or even recover the value of his services (quantum meruit), where the general contract exceeded the statutory limit (then $20,000) plus the 10% tolerance. Id. The court in Farmer was following an established principle of contract law that a contract made in breach of the law, here the licensing statute, could not be enforced by the wrongdoer.

However, that general rule is harsh where its enforcement is required neither by the terms of the licensing act or the policy underlying the statute. 17 Tenn. Jur. 417, Licenses § 2 at 419. A few years later the Tennessee Supreme Court began to relax its holding in Farmer. It held that an unlicensed plumbing subcontractor could recover in quantum meruit from the general contractor with whom it had contracted and performed $178,000 worth of work, even though it could not have recovered from the owner under the rule in Farmer. The court reasoned that the purpose of the licensing act - the protection of the general public - does not exist when persons engaged in the same business act at arms length from one another. Unlike the owner, a general contractor is in a position to know the qualifications of a subcontractor, and no reliance is placed on the existence of a license. Gene Taylor & Sons Plumbing v. Corondolet Realty Trust W. & W. Construction, 611 S.W.2d 572 (Tenn. 1981). The court in Corondolet noted that the General Assembly had amended the licensing statute after Farmer to provide, as it does today, as follows:

> Any unlicensed contractor covered by the provisions of this chapter shall be permitted in a court of equity to recover actual documented expenses only upon a showing of clear and convincing proof.

T.C.A. § 62-6-103(4)(c).

In the cases decided by the Tennessee Supreme Court in which contractors have been permitted recovery without a license or in excess of the monetary limits of a license, the Court has emphasized the good faith of the contractor, and has examined whether strict enforcement of the license would or

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would not further the purpose of the statute. In Corondolet the Supreme Court permitted the unlicensed plumbing subcontractor to recover in quantum meruit from the general contractor, as opposed to the owner, when it found that the purpose of the statute - the protection of the property of the general public - would not be served by unjustly enriching the general contractor, who was in a position to know the qualifications of the subcontractor without relying on the existence of a license. In another case the court held that a licensed contractor does not forfeit his right to recover his costs from the owner when his costs exceed the monetary limits of his license, where the contractor was innocent of wrongdoing, having no reason to anticipate the cost overruns until the project was well-advanced, and where a substantial part of the excess costs were attributable to the owner. Helton v. Angelopoulos, 629 S.W.2d 15 (Tenn. 1982). In a third case the contractor made a partial attempt to get a license, was informed by the licensing board's staff person that he did not need a license, and consequently did not complete the process of getting a license. A license was, in fact, required, but the Court held that the statute does not operate as a forfeiture of rights for a contractor who was in good faith and who made a colorable attempt to comply. Coleman v. Anderson, 620 S.W.2d 77 (Tenn. 1981).

Two aspects of these cases about the rights of unlicensed contractors are critical for our purposes: (1) the courts' emphasis on equity and good faith, and (2) the courts' equivalent emphasis of the policies underlying the licensing statutes and the monetary limitations on licenses. Unlike the parties in all of the cases described above, the contractor and the owner in your hypothetical would be intentionally structuring their dealings so as to attempt to evade the licensing laws. We must assume that the Tennessee Board for Licensing Contractors assigned a $1,000,000 limit to this contractor for a reason, whether it had to do with the contractor's financial resources, his level of experience, or the sufficiency of his plant or equipment. "The purpose of a monetary limitation, of course, is to afford financial security to owners, vendors, and others dealing with the contractor." Helton v. Angelopoulos, supra., 629 S.W.2d at 18 (emphasis added). This purpose would be disserved by a series of contracts with the same contractor on the same project, the series of which add up to a figure which substantially exceeds the monetary limitation on the contractor's license.

There is another statute which is related to the Contractors Licensing Act, T.C.A. § 62-2-101, et seq., and which expressly speaks to this issue. This related statute is

T.C.A. § 7-62-101, et seq. It empowers the cities, towns, and counties of this state to enact laws or ordinances to protect property owners by requiring the licensing of residential, commercial or assembly builders and residential, commercial, and assembly maintenance and alteration contractors. T.C.A. § 7-62-103. This chapter does not apply to (among others) contractors licensed under the state contractors' law (T.C.A. § 62-6-111) discussed above. T.C.A. § 7-62-104(7). Its apparent purpose is to permit local governments to extend the protection of the state licensing scheme to certain small contractors who are exempted from the state act. In defining the exceptions from the licensing requirements of T.C.A. § 7-62-101, et seq., this statute expressly responds to your question:

> T.C.A. § 7-62-104. Exceptions from licensing requirements. - This chapter shall not apply to:
>
> . . . .
>
> (6) Any work or operation on one (1) undertaking or project or one (1) or more contracts, the aggregate contract price for which labor, materials and all other items is less than one hundred dollars ($100), such work or operations being considered as a casual, minor, or inconsequential nature. This exemption does not apply in any case wherein the work or construction is only part of a larger or major operation, whether undertaken by the same or a different residential, commercial or assembly builder and/or residential, commercial, or assembly maintenance and alteration contractor, or in which a division of the operation is made in contracts of less than one hundred dollars ($100) for the purpose of evasion of this chapter.
>
> . . . .

This statute is not, strictly speaking, applicable to the parties described in your hypothetical, because they are covered by the state contractors' laws. However, it is part of the same overall statutory scheme treating the licensing of contractors, making it useful in construing the state act. As a general rule "[s]tatutes relating to the same subject matter

should be construed together." Belle - Aire Village, Inc. v. Ghorley, 574 S.W.2d 723, 726 (Tenn. 1978). "Statutes forming a system or scheme should be construed so as to make that scheme consistent in all its parts and uniform in its operation." Howard & Herrin v. N. C. & St. L. Ry. Co., 153 Tenn. 649, 660, 284 S.W. 894, 897, quoted in Davis v. Beller, 185 Tenn. 638, 207 S.W.2d 343, 346 (1947), app. dismissed 333 U.S. 859, 68 S.Ct. 745, 92 L.Ed 1138 (1948). In this chapter dealing with the smaller construction projects which are to be supervised by local governments, the General Assembly expressly announced its disapproval of the division of an operation into contracts of less than the statutory minimum for the purpose of evasion of the chapter's regulatory scheme. The General Assembly made it clear that such a division would have no force and effect, and the parties would be subject to regulation under the statute even though each separate contract was for less than one hundred dollars.

Construing this chapter together with the state Contractors' Licensing Act, it becomes evident that the General Assembly did not intend to exempt from the coverage of the various licensing laws any persons who artificially subdivided their dealings for the purpose of evading the monetary limitations which define the law's application. For one thing, the Contractors' Licensing Act speaks in terms of "undertaking" and "work" and "project," instead of "contract," demonstrating the drafters' wish not to be tied up in technical legal terminology in defining the application of the act. T.C.A. § 62-6-102(1). Second, this act defines "contractor" as someone who engages in or offers to engage in contracting. T.C.A. § 62-6-102(2). This means that the critical consideration is the monetary value of all the work this contractor offered to engage in as part of the contemplated project.

Is there anything which this contractor with a $1,000,000 monetary limitation on his license can do in order to handle this $5,000,000 project? Yes, the regulations provide for two alternatives. First, if a licensee believes that the $1,000,000 limitations are too low in view of his experience and his financial resources, he can apply to the state board for licensing contractors to consider revision of his monetary limitations. The regulations set out in detail what information the applicant must submit to the board, and what factors the board must consider in order to adjust the monetary limitations of any licensee. Rules and Regulations, 0680-1-.14, 0680-1-.15. Second, the regulations state that a joint venture provides a means by which licensed contractors may combine their monetary limitations in order to undertake a

larger project than either of them would otherwise be able to perform as separate contractors. Rules and Regulations, 0680-1-.11.

2. Specialty contractors and separate contracts.

Your second question concerned what the impact would be on the monetary limitations of the general contractor's license if the owner of this project contracted directly with other electrical and/or plumbing contractors for their particular specialities. Before we answer this question we need to define some terms. Your second hypothetical contemplates the owner contracting directly with an electrical and/or plumbing contractor as well as with a "general contractor" on the same project.

"General contractor" is not a term that is used in the Contractors Licensing Act. Instead the General Assembly has carefully defined the terms "contracting" and "contractor" in § 62-6-102. These definitions have been refined by Public Act on several occasions. The term "general contractor" appeared once in the Act in T.C.A. § 62-6-103(c), which was added in 1980 (Tenn. Pub. Acts 1980, Ch. 652, § 5), but this section was amended in 1989 to delete the word "general".

General contractor is a term which has been defined by the Tennessee Supreme Court. A general contractor, as opposed to contractor, means:

> "One who contracts for the construction of an entire building or project, rather than for a portion of the work. The general contractor hires subcontractors (e.g. plumbing, electrical, etc.), coordinates all work, and is responsible for payment to subcontractors . . ."

ABC Plumbing & Heating, Inc. v. Dick Corp. 684 S.W.2d 84, 87 (Tenn. 1985) quoting Black's Law Dictionary, 615 (5th Ed. 1979) (emphasis added). In your first hypothetical you had a general contractor who was contracting with the owner for the entire project. The electrical and plumbing contractors would have contracted with the general contractor for the performance of some part of the general contractor's contract with the owner, making them subcontractors. A subcontractor is a person other than a materialman or laborer who enters into a contract with a contractor for the performance of some part of the contractor's