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2014 KANSAS LEGISLATURE REDEFINES THE PRACTICES OF ARCHITECTURE, ENGINEERING, AND LANDSCAPE ARCHITECTURE

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by Wyatt A. Hoch

Over the course of the last 4 years the Kansas industry groups for architects, engineers, landscape architects, surveyors, and geologists have worked to develop consensus for updating their Kansas licensing statutes. That effort culminated on April 18 with Governor Brownback’s signature of Senate Bill 349, which goes into effect July 1. The statutory revisions, according to AIA Kansas, are intended to provide “clarity for the affected professions.”

The bill creates a new, 9-point list of “common technical services” that any Kansas-licensed professional may provide to clients. That list can be distilled to 5 areas of service: representation of clients in connection with the clients’ contracts [also known as the practice of law], construction administration, forensic investigations and expert testimony, technical research, and teaching. The concept of “common technical services” eliminates repetition among the definitions of each technical profession and is a common-sense drafting solution.

The bill revises the definition of each technical profession. The definition of “Architecture” has been rewritten but, according to the Kansas Board of Technical Professions, includes without change the “normal practice activities of Architects.” It specifically includes “preparing or providing designs, drawings, specifications and other technical submissions.” The “Practice of Engineering” continues to include engineering design features for “utilities, structures, buildings . . . and equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature. . . .” The definition of engineering notably does not include preparing or providing designs, drawings, specifications and other technical submissions. The revised definitions are generally helpful and, without more, would not impact most professionals’ practices.

But the legislature did not stop there. The practices of Architecture, Engineering, and Landscape Architecture are now arguably mutually exclusive except for the group of “common technical services.” This is a major change in the rules, as the Kansas Supreme Court in *Schmidt v. Board of Technical Professions* (2001) held the design professional practices are not mutually exclusive under the current statutes.

This sea-change is implemented by the inclusion, in the definition for each of the 5 technical professions, of a paragraph that says each practice “shall not include those services specifically identified in the definition of” the other 4 professions, except for “common technical services.”

The practical implications of this revision are enormous. In a March 19 letter to a Kansas licensee, the Board recognized that the new statute “simply requires that an Architect be utilized in the design and construction of any non-exempt building used for human

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habitation. . . .” [emphasis added] Under the Board’s interpretation, no longer can a Kansas professional engineer seal the project drawings for a pre-engineered metal building used for a warehouse or manufacturing facility.

The exclusivity provision wreaks further havoc on the practices of Kansas engineers and landscape architects. Under the plain language of the statute, engineers and landscape architects can no longer prepare “designs, drawings, specifications and other technical submissions,” for those are specifically identified as the province of architects. This unintended consequence can only, and must, be corrected by the legislature.

The revised statute negatively impacts some Architects’ current practices as well. The revised definitions of Engineering and Landscape Architecture specifically include – and therefore place beyond the practice of Architects:

- the preparation, review, and analysis of master plans for land use and development;
- the production of overall site development and “land enhancement” plans;
- grading and drainage plans; and
- the design of land forms and non-habitable structures such as pools, walls, and structures for aesthetic and functional purposes.

Regardless of a design-professional’s expertise, the statutory changes will require greater involvement of consultants on Kansas construction projects.

Finally, the statutory revisions notably do not clarify whether a builder in Kansas can undertake a design-build contract and subcontract the design services to a licensed architect or engineer. That clarification must await another day. The Board has in the past 10 years brought a disciplinary action against a contractor for offering to practice architecture or engineering by advertising “design-build services” in a phone-directory and by submitting a design-build proposal in response to an owner’s request for proposals.

FOR FURTHER INFORMATION

Foulston Siefkin regularly counsels clients on issues relating to construction law. If you are interested in additional information regarding this Issue Alert, or if you have questions about how this new legislation may impact you, call Wyatt Hoch at 316.291.9769 or email him at whoch@foulston.com. Mr. Hoch’s training in architecture and experience in construction place him in a unique position to counsel architects, engineers, and contractors. His practice includes design and construction contract drafting and consulting, claim negotiation, and dispute resolution in both arbitration and court settings on a nationwide basis. Mr. Hoch enjoys Martindale-Hubbell Law Directory’s highest “AV” rating for lawyers. He was named the Wichita Construction Lawyer of the Year in 2011, and Wichita Litigation – Construction Lawyer of the Year in 2013 by Best Lawyers in America ®. Mr. Hoch serves as the lead attorney for the firm’s construction law practice. For additional information on the Firm, please visit our website at www.foulston.com. Information contained in this bulletin has been prepared for general information purposes only and is not legal advice.

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