



THE NORTH CAROLINA BOARD OF ARCHITECTURE  
501 N. BLOUNT ST. RALEIGH, N. C. 27604 919/733-8544

August 24, 1992

RE: DESIGN/BUILD OPINION BY THE  
NC BOARD OF ARCHITECTURE

Ladies and Gentlemen:

The North Carolina Board of Architecture has received a number of requests to evaluate the status of various "design/build" arrangements. These have varied dramatically in the source of the requests, the variety of relationships proposed, the proposed project responsibility, the contractual arrangements, the representation of the arrangement to the public, etc.

In public meeting of May 13, 1992, the Board adopted the enclosed "Interpretive Statement on Design/Build Undertakings in North Carolina". It is being sent to you as a registered design professional, code official, or other involved participant in the design and construction process. We hope that your reading of this will increase your awareness of the position the Board has taken concerning this matter, and will allow you to help us to control the unauthorized practice of architecture through non-conforming "design/build" practitioners in this state.

The statement is the result of an extensive effort to clarify a controversial subject of regulation. We welcome your suggestions on ways to make the Board's position clearer. To summarize a few of the points that may be of interest as practical matters:

1. It is considered inappropriate for contractors to offer design/build services without the identification of those who would be the licensed entities providing the design aspects of the services; not to do so would amount to the offering of the unlicensed practice of architecture or engineering. Therefore, the offering of the design/build service by an unlicensed entity is illegal.
2. An architect cannot participate in the design/build process as an employee of a company that does not hold a license to practice architecture from this Board. Any provision of such service should be by independent contractual arrangement.
3. Requirements for disclosure of the duties and responsibilities of the participating parties suggest that all project documents, title blocks, etc., at the very least disclose the identity of the design professional responsible. Contractor's title blocks are not sufficient.

We invite you to bring any questions you may have regarding the above and the enclosure to the Board. Should you observe that there are those practicing outside these guidelines, we would appreciate your bringing those instances to the attention of the Board and its Attorney.

Sincerely,

Michael R. Tye, A.I.A.

President

Encl.

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NORTH CAROLINA BOARD OF ARCHITECTURE

INTERPRETIVE STATEMENT ON THE DESIGN/BUILD UNDERTAKINGS IN  
NORTH CAROLINA

[Adopted May 13, 1992, pursuant to N.C.G.S. 150-2(8a)(c) and N.C.G.S. 83A-13(b)]

North Carolina architecture law generally prohibits the practice of architecture by any person or entity not licensed as an architect in North Carolina. The definition of "the practice of architecture" in North Carolina is broad. It includes not only *doing* the things that architects do, but *offering* to do those things, or *using the title* "architect." However, the North Carolina architecture law exempts "design/build undertakings" under particular circumstances, so long as an unlicensed person or entity does not end up "practicing architecture." North Carolina General Statute 83A-13(b) states that nothing in the architecture law:

Shall be construed to prevent a duly licensed general contractor, professional engineer or architect, acting individually and in combination thereof, from participating in a "design/build" undertaking including the preparation of plans and/or specifications and entering individual or collective agreements with the owner in order to meet the owner's requirements for predetermined costs and unified control in the design and construction of a project, and for the method of compensation for the design and construction services rendered; *provided*, however, that nothing herein shall be construed so as to allow the performance of any services or any division thereof by one who is not duly licensed to perform such service or services in accordance with applicable licensure provisions of the general statutes; *provided further*, that full disclosure is made in writing to the owner as to the duties and responsibilities of each of the participating parties in such agreements; and *provided further*, nothing in this chapter shall prevent the administration by any of the said licensees of construction contracts and related services or combination of services in connection with the construction of buildings. (North Carolina General Statute 83A-13(b)).

I. **Statutory Provisions:**

For proper analysis its helps to break down into separate parts the above-quoted law.

- A. **"Duly Licensed General Contractor":** This refers to only those who are licensed as "general contractor" pursuant to North Carolina General Statute Chapter 87. A general contractor is:

any person or firm or corporation who for a fixed price, commission, fee or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage on his own behalf or for any person, firm or corporation that is not licensed as a general contractor pursuant to this article, the construction of any building, highway, public utilities, grading or any improvement or structure or the cost of the undertaking is forty-five thousand dollars or more or undertakes to erect a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code (North Carolina General Statute 87-1). All general contractors in this state must be licensed by the State Licensing Board for General Contractors [North Carolina General Statute 87-10, 87-13].

- B. **"Professional Engineer":** These are regulated by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors. A "Professional Engineer" must be licensed by the Board (North Carolina General Statute 89C-3, 89C-13).

- C. **"Architect":** An "Architect" is a person duly licensed to practice architecture by the North Carolina Board of Architecture, subject to the provisions of Chapter 83A of the North Carolina General Statutes. The "practice of architecture" is defined as:

Performing or offering to perform or holding oneself out as legally qualified to perform professional services in connection with the design, construction, enlargement or alteration of buildings, including consultations, investigations, evaluations, preliminary studies, the preparation of plans, specifications and contract documents, administration of construction contracts and related services or combination of services in connection with the design and construction of buildings, regardless of whether these services are performed in person or as the directing head of an office or organization [North Carolina General Statute 83A-1(7)].

- D. **"Acting Individually and in combination thereof":** For as far back as records can be found regarding the design/build exemption these words have been construed to *not* include an employer/employee relationship. Although a licensed general contractor, a professional engineer or architect, while maintaining independence, can participate in a "design/build" undertaking, the architect cannot participate as an *employee* of a person or entity that is not licensed by the Board of Architecture.

For instance, on September 11, 1979, the Board issued an opinion letter regarding a duly licensed architect who was offered a position as vice-president of design and marketing with a contracting firm. The architect's duties would include "the design of buildings pursuant to the design-build concept." The Board warned the architect that he could "not render architectural services in the name of the corporation unless it is for the design of a building for the corporation's own use. . . by the fact that the licensed architect is an employee of a corporation, which is not a professional corporation, the provisions of the architecture law would be violated."

Later, in an opinion letter dated December 9, 1987, the Board informed the attorneys for the North Carolina Chapter of the American Institute of Architects that:

in G.S. 83A-13(b), relating to design/build services, the architectural services are rendered to owners. G.S. 83A-12 prohibits the practice of architecture to those entities which are not licensed which prohibition speaks in terms of prohibiting an indication or willingness to practice for others. The ability of a corporation to practice architecture through those licensed employees must be limited to the rendition of services for itself. However, it is certainly prohibited by G.S. 83A-12 for such an unlicensed corporation to hold itself out as rendering services for others. Any attempt by a corporation to render services for others by asserting that it was practicing for itself when in reality it was practicing for others, would be stringently and strictly construed against this type of activity.

More recently, the Board issued a Declaratory Ruling on point:

G.S. 83A-12, however, prohibits the practice of architecture by unlicensed corporations. In the case at hand, the employer is also providing architectural services to outside clients through the staff architect. This situation could present the architect with conflicting duties owed to the employer and the fiduciary duty owed to the client and is therefore prohibited. The design/build exemption set out in G.S. 83A-13 would not apply to this situation as described. While an architect may enter into such a project, the statute does not permit the employment of an architect by a contractor,

through which the architect then provides design services to the client. Rather, this statute addresses the individual licensed architect or architectural firm which enters into an individual or collective agreement with the owner to provide the necessary architectural services for the project." (Declaratory Ruling to David Ward Jones, November 28, 1990).

- E. **"Entering individual or collective agreements with the owner in order to meet the owner's requirements for predetermined costs and unified control etc"**: This phrase generally permits the licensed general contractor, professional engineer or architect to offer services at a price encompassing the architects' services as well as services of other professionals in order to accommodate an owner's requirements for predetermined costs and unified control. Of course, this means that if the arrangement is not primarily made to meet the owner's requirements, but is rather a *marketing ploy enabling a general contractor to trade upon the architectural title of a licensee*, the exemption would not apply. For example, the state of Tennessee recently pronounced that "offering through sign, brochure, business card, yellow pages or other advertising, to provide design/build services, is offering to provide architectural, engineering, or landscape architectural services to the public. The Tennessee Board pointed out that "design/build is a legitimate professional activity which is being abused across the state by unlicensed drafting."
- F. **"Provided, however, that nothing herein shall be construed so as to allow the performance of any such services or any division thereof by one who is not duly licensed to perform such service or services in accordance with applicable licensure provisions"**: This language relates back to the discussion on architects as employees of design/build firms. It also relates to G.S. 83A-12 which prohibits "any individual, firm or corporation to practice or offer to practice architecture in this state as defined in this chapter [N.C.G.S. 83A-1(7)], or to use the title "architect" or in any form thereof, ...unless such a person holds a current individual or corporate certificate of admission to practice architecture [in North Carolina]." The law plainly precludes any person or general business corporation not licensed under the architecture statute from using an employee to provide architectural services to others. Violation subjects the architect to disciplinary action pursuant to North Carolina General Statute 83A-14 and 83A-15. The unlicensed person or entity can be enjoined or prosecuted for unauthorized practice pursuant to North Carolina General Statute 83A-16 and 83A-17. Architects may not be employed by building contractors, but may enter individual independent contracts or collective agreements with them to the extent permitted under General Statute 83A-13. The Board has historically permitted architects to be employees of the government, construction firms and utilities only to the extent these employees are in effect the architect's clients. In these instances the rules of ethics still apply to architects.
- G. **"Provided further, that full disclosure is made in writing to the owner as to the duties and responsibilities of each of the participating parties in such agreements"**: This language places upon the architect party to a design/build undertaking the affirmative obligation to provide, in writing, to the owner a description of the architect's duties and responsibilities.
- H. **"Provided further, nothing in this chapter shall prevent the administration by any of the said licensees of construction contracts and related services or combination of services in connection with the construction of buildings"**: This provision permits *licensed* general contractors, *professional engineers*, and *licensed architects* to provide contract administration services in conjunction with the construction of buildings. In the light of the definitions of each of these three professions, only these licensees can administer contracts for non-exempt projects.

## II.

### Conclusions and Examples:

North Carolina General Statute 83A-12 sets out the purpose of the architecture law: "To safeguard life, health and property." Exemptions to laws of general application, pursuant to ordinary statutory construction, are to be read precisely and narrowly. The close inspection of the exemption for design/build undertakings helps answer a number of question often raised by architects and contractors. For example, a contractor who is not a registered architect cannot hire as an employee a registered architect who will be responsible for providing design services, including the sealing of documents, required in order for the contractor to operate as a "design/build contractor." Similarly, a registered architect cannot perform design services, including the sealing of documents, under the supervision of a nonprofessional. Aside from the restrictions on design/build arrangements, such a practice would be a direct violation of North Carolina General Statute 83A-15(a)(3)(c) which prohibits "knowingly undertaking any activity... or accepting any compensation or reward except from registrant's clients, any of which would reasonably appear to compromise registrant's professional judgment in serving the best interest of clients or public."

An architect may participate in a design/build project in these ways by:

- (1) Entering into an individual agreement with the owner to provide architectural services to be constructed by a contractor selected by the owner under separate contract where the architect is responsible for establishing the design and quality of materials and systems to be incorporated in the project in conjunction with the owner, and the contractor is responsible for estimating alternatives proposed to and for consideration of the owner in terms of design and material selection and ultimate construction of the project for a lump sum amount or, in some instances, on a cost basis. Such projects are typically "fast-tracked," meaning construction was begun before the total completion of all construction documents in order to minimize the total design and construction time for the owner.
- (2) The architect may participate in a design/build undertaking whereby the architect contracts with the licensed general contractor to provide architectural services, and the licensed general contractor is under agreement with the owner to provide design and construction services and is responsible to the owner for both services. Such an architect must provide services in keeping with the statutory obligation to safeguard life, health and property and, of course, must disclose in writing to the owner the architect's duties and responsibilities in the arrangement.
- (3) An architect can participate in a design/build project when one architect prepares conceptual drawings and defines scope, materials and systems to be incorporated in the building, which plans are then submitted for pricing by a contractor for design and construction following the arrangements described in the second alternative above.
- (4) It is possible for an architect to enter into a design/build contract with an owner and subcontract the estimating and construction aspects of the project to a contractor, in which case the architect has contractual responsibility for both elements to the owner.



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