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DESIGN MATTERS

Info only 3

Atty Gen Opinion
11-0048 (12/7/11)

From: Jerry Jones (DOA) [mailto:Jerry.Jones@LA.GOV]
Sent: Wednesday, December 07, 2011 4:25 PM
To: 'McGimsey, Rick'; John Davis (DOA)
Cc: 'Butch.Browning@dps.la.gov'; Lynn Robertson
Subject: RE:

Rick,

I think you all missed this one. You interpreted the wrong law.

Remember, it is the Architect's licensing law that governs this area of sealing architectural documents, not the engineers law. Only architects can practice architecture and only architects can place their professional seal on a set of building plans. It is an exception to the architects licensing law that allows **"civil engineers"** to place their seal on a set of building plans. Your opinion focuses too heavily on the engineers law; it should have focused more on the enabling law that allows engineers to seal architectural documents, the Architects Licensing Law.

I still contend that your opinion is incorrect. The State Board of Architectural Examiners counsel may want to weigh in on this one.

Thanks

Jerry W. Jones

From: McGimsey, Rick [mailto:McGimseyR@ag.state.la.us]
Sent: Wednesday, December 07, 2011 12:50 PM
To: Jerry Jones (DOA); John Davis (DOA)
Subject: FW:

Attached is a copy of the released opinion relating to the authority of the Fire Marshal to accept or reject plans from engineers that are not civil engineers. Thought you might be interested. We have advised the Fire Marshal that he may want to consider rules to give him the authority to limit acceptance of plans.

Richard L. McGimsey

Director

Civil Division

P.O. Box 94005

Baton Rouge, LA 70804-9005

Ph. (225) 326-6020

Fax (225) 326-6096

mcgimseyr@ag.state.la.us

From: Gauthier, Adrienne
Sent: Wednesday, December 07, 2011 12:14 PM
To: McGimsey, Rick
Subject:

Per your request, a released copy of Billy's 11-0048.

Adrienne R. Gauthier
Administrative Assistant
Office of General Counsel
Louisiana Department of Justice
225.326.6050 wk. ~ 225.326.6098 fx.

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JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

DEC 07 2011
Opinion 11-0048

3 - A Architects
45 Engineering
47 - 1 Fire Marshal, State

La. R.S. 37:141, *et seq.*; La. R.S. 37.145 & 37:155
La. R.S. 37:681, *et seq.*, La. R.S. 37.683, 37:688, 37.692-93 & 37.698
La. R.S. 40:1561, *et seq.*; La. R.S. 40:1563 & 40:1574
LAC 46.I:1307; LAC 46.LXI:1901; LAC 46.LXI:2505; LAC 46.LXI:2507

Under the statutes and regulations governing the practice of engineering, a licensed engineer is authorized to practice in all disciplines in which the engineer may be competent and qualified by education or experience, and his or her practice is not limited to the particular discipline in which the engineer is listed with the Louisiana Professional Engineering and Land Surveying Board. In the absence of a formally promulgated rule, the fire marshal has no authority to require that an engineer be listed in a particular discipline, or use a discipline-specific seal, in order to sign plans and specifications that are submitted to the fire marshal for approval under La. R.S. 40:1574(A) & (B).

Hon. Samuel P. Little
State Representative, District 14
117 South Franklin
Bastrop, Louisiana 71220

Dear Rep. Little:

You have asked this office for an opinion on the authorized scope of practice for an engineer licensed by the Louisiana Professional Engineering and Land Surveying Board ("Engineering Board"). Your request was precipitated by the refusal of some public agencies to recognize the license held by an agricultural engineer, but you advise that this issue also applies to engineers specializing in other disciplines of engineering, such as chemical, petroleum, and industrial.

The practice of engineering is regulated by Chapter 8 of Title 37 of the Louisiana Revised Statutes, La. R.S. 37:681, *et seq.* ("Engineering Laws"). These statutes prohibit the practice of engineering without a license issued pursuant to the statutory requirements. La. R.S. 37:681. The Engineering Laws established the Engineering Board to oversee the issuance of licenses, and to regulate the professions of engineering and land surveying. La. R.S. 37:683. In accordance with its statutory authority, the Engineering Board promulgated rules ("Engineering Rules") that further regulate the practice of engineering. *See* La. R.S. 37:688; L.A.C. 46.LXI:101, *et seq.*

The Engineering Board issues licenses to professional engineers who, in the opinion of the Board, have met all statutory requirements for licensure. La. R.S. 37:693(A)(1). The licensing statute specifies that "[p]rofessional engineers will be issued licenses by the board as a professional engineer." La. R.S. 37:693(A)(2). The licensing statute further directs that each professional engineer be listed in one or more specific disciplines of engineering:

> The board shall list a professional engineer in one or more of the disciplines of engineering approved by the National Council of Examiners

> for Engineering and Surveying to signify the area in which the engineer has demonstrated competence pursuant to education, experience, and examination.

La. R.S. 37:693(A)(2). Thus, each licensed engineer is listed in a particular discipline, such as agricultural engineering, civil engineering, electrical engineering, *etc.*[1]

The Engineering Board publishes the particular discipline (or disciplines) of each licensed engineer in the format of a searchable online database, as authorized by La. R.S. 37:692.[2] A professional engineer may use a stamp or seal that either designates the specific discipline of the engineer, or simply identifies the licensee as a professional engineer. La. R.S. 37:693(A)(2); *see also* L.A.C. 46.LXI:2507. Other than the right to use a discipline-specific seal and the listing of a discipline in the roster, the regulatory scheme bestows no privilege, right, limitation, or duty associated with the listing of a particular discipline for a licensed engineer.

The only statutory limitation on the engineer's area of practice, aside from licensure, is that an engineer must be qualified to do the work he performs or offers to perform. La. R.S. 37:698(A)(18). As noted above, an engineer is not licensed as an agricultural engineer or a civil engineer; rather, the licensing statute specifies that each engineer is licensed "as a professional engineer." La. R.S. 37:693(A)(2).[3] The Engineering Laws therefore do not require that an engineer be listed in a particular discipline in order to practice in that discipline.

The Engineering Rules restate the aforementioned statutory provisions concerning licensure and disciplines:

> The licensure law provides that professional engineers will be issued licenses by the board as a Professional Engineer and that the board shall list a professional engineer in one or more of the disciplines of engineering

---

[1] A complete list of approved engineering disciplines can be found on the web site of the National Council of Examiners for Engineering and Surveying at http://www.ncees.org/Exams/PE_exam.php (last visited October 26, 2011)

[2] The search function for the online database is found on the web site of the Engineering Board at https://renewals.lapels.com/Lookup/LicenseLookup.aspx (last visited October 26, 2011)

[3] Certain provisions of the Engineering Rules use language that would lead one to believe that a license is held in a particular discipline or disciplines. *See, e.g.*, LAC 46.LXI.1701(E), LAC 46.LXI:3103(A); LAC 46.LXI:3105(A). The provisions of rules promulgated by a state agency cannot, however, prevail over contradictory statutes, and so we recognize the primacy of La. R.S. 37:693(A)(2).

> approved by the National Council of Examiners for Engineering and Surveying (NCEES).

LAC 46.LXI:1901. The Engineering Rules place no restrictions on the practice of engineering outside the discipline in which an engineer is listed. In fact, Section 2505 of the Engineering Rules further emphasizes the requirement that an engineer need only be qualified and competent in his area of practice:

> A. Licensees shall perform services only in the area of their competence.
>
> B. Licensees shall undertake assignments only when qualified by education or experience in the specific technical fields of engineering or land surveying involved.
>
> C. Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matters in which they lack competence, nor to any such plan or document not prepared under their responsible charge. ...
>
> D. Licensees may accept an assignment outside of their areas of competence to the extent that their services are restricted to those phases of the project in which they are qualified, and to the extent that they are satisfied that all other phases of such project will be performed or supervised by licensed, qualified associates, consultants, or employees, in which case they may then seal, sign and date the documents for the total project. . . .

LAC 46.LXI:2505. There is no statutory or regulatory requirement that an engineer limit his area of practice to the discipline in which he or she is officially listed. Therefore, this office is of the opinion that, under the statutes and regulations governing the practice of engineering, a licensed engineer is authorized to practice all disciplines in which the engineer may be competent and qualified by education or experience, and that an engineer's practice is not limited to the discipline in which the engineer may be listed.

Our opinion does not preclude the existence of valid restrictions or additional qualifications that may be imposed on the practice of engineering pursuant to constitutional, statutory, or regulatory provisions validly enacted by state, federal, and local governmental entities. Furthermore, nothing in this opinion would prevent a public agency, in its capacity as a market participant, from demanding certain qualifications for engineers that it retains, such as a minimum years of experience, minimum educational

qualifications, or official listing in a certain discipline. We also note that, under the Engineering Laws, if a question arises as to the competence of an engineer in a specific discipline, the Engineering Board has the right to demand that the engineer submit to the appropriate examinations in order to prove his or her competence. La. R.S. 37:688(E).

Your opinion request letter advises that some public agencies refuse to recognize an engineering license held by engineers listed in certain disciplines. It is beyond the scope of this opinion to review the actions of every public agency in the state to evaluate whether such agencies are improperly refusing to recognize the licenses of certain engineers. Nevertheless, in conversations with you and with other interested parties, we understand that your opinion request arises from a policy of the state fire marshal relevant to its consideration of plans for approval under La. R.S. 40:1574(A) & (B). Specifically, in order to consider plans for construction or renovation that bear the signature of a licensed engineer, the fire marshal requires that the licensed engineer be listed in the particular discipline that would encompass the plans under submission. As evidence of the official listing, the fire marshal also requires that the engineer use a discipline-specific seal when signing the plans.

The fire marshal is a statutory office established by La. R.S. 40:1561, *et seq.*, and has the general duty to "take all steps necessary and proper to protect life and property from the hazards of fire and of panic which may arise from fire or from the threat of fire or explosion." La. R.S. 40:1563(A).[4] The fire marshal must approve all plans for construction and renovation before any work is started on such plans:

> A. No structure, watercraft, or movable shall be constructed until building plans and specifications therefor have been submitted to and reviewed by the fire marshal and appear to him to satisfactorily comply with the laws, rules, regulations, and codes of the state.
>
> B. No repair, remodeling, or addition shall be made to any structure, watercraft, or movable affecting the exits, stairs, seating arrangement, fire protection, or other details of construction covered by this Part until plans and specifications therefor have been submitted to and reviewed by the fire marshal and appear to him to satisfactorily comply with the laws, rules, regulations, and codes of the state.

La. R.S. 40:1574(A) & (B). The role of the fire marshal with respect to approval of plans

[4] The duties of the fire marshal are limited with regard to projects constructed within local political subdivisions in which the local governmental entity has created a fire prevention bureau. *See* La. R.S. 40:1563(C).

for new construction and renovation is to ensure that the plans themselves "comply with the laws, rules, regulations, and codes of the state." *Id.*

The office of the fire marshal has confirmed that it requires the use of discipline-specific seals by engineers who sign plans submitted for approval by the fire marshal as follows:

(a) The plans must be submitted under the signature of a principal design professional who is responsible for the entire project, and that professional must be a licensed architect or a licensed civil engineer. If the principal design professional is a civil engineer, then the engineer must be listed as a civil engineer and must use a discipline-specific seal.

(b) If the overall plans include plans for building subsystems, and those subsystem plans are prepared and signed by a licensed engineer, that engineer must be listed in the particular discipline that would encompass that subsystem, and must use a discipline-specific seal.

In the latter case, for example, if a building owner submits plans for a new building, and the building plans include plans for a heating and air conditioning ("HVAC") system prepared by a licensed engineer, the fire marshal will not consider or approve the overall plans unless that engineer is listed as a mechanical engineer and that engineer's seal reflects that he or she is listed as a mechanical engineer.

In order to determine whether the fire marshal is properly requiring that engineers be listed in certain disciplines, and that said engineers use discipline specific seals, in order for their work to be considered for approval, we must determine whether any "laws, rules, regulations and codes of the state" are being enforced by these requirements. La. R.S. 40:1574(A) & (B). The fire marshal advises that its requirements are necessary to enforce the laws regulating the practice of architecture, La. R.S. 37:141, *et. seq.*, ("Architecture Laws") specifically La. R.S. 37:155 and LAC 46.I:1307.

Under the *Chevron* doctrine, an agency is normally accorded deference in its interpretation of the statutory scheme that it is charged with administering. *Chevron Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844-45 (1984); *see also Oakville Community Action Group v. Louisiana Dep't of Env. Quality*, 2005-1365 (La. App. 1 Cir. 5/5/06), 935 So.2d 175 ("A state agency is charged with interpreting its own rules and regulations and great deference must be given to the agency's interpretation.") In this matter, however, the fire marshal is interpreting the statutes and regulations that are administered by the Board of Architectural Examiners, rather than the fire marshal itself. The *Chevron* doctrine therefore does not apply to the matters at hand.
As a general rule, the Architecture Laws prohibit the practice of architecture by persons

who are not licensed as an architect under the Architecture Laws. La. R.S. 37:145(A). The legislature has long recognized, however, that the fields of architecture and engineering overlap with regard to buildings. Louisiana Revised Statutes 37:155 recognizes this overlap by exempting civil engineers from the prohibition on the unlicensed practice of architecture:

> A. The provisions of this Chapter, except as provided in this Section, requiring persons to be registered and licensed and forbidding the practice of architecture by unlicensed persons shall not apply to:
>
> * * *
>
> (2) Civil engineers licensed in accordance with the terms of R.S. 37:681 through 703 or acts amendatory thereto, if such engineers do not use the designation "architect" or any term derived therefrom. . . .

La. R.S. 37:155(A)(2). This exemption for civil engineers was present in the original version of the modern architecture law, enacted in 1972. Acts 1972, No. 69, § 157(2). Thus, according to La. R.S. 37:155, civil engineers are permitted to practice architecture without an architecture license, while other engineers are not so permitted. *Id.*

According to the fire marshal, when a person signs plans as the principal design professional and submits those plans for approval, that person is engaging in the practice of architecture. If the principal design professional is an engineer, and uses a generic seal that simply identifies the engineer as a "licensed engineer," the fire marshal has no way of knowing whether or not the engineer is a civil engineer and therefore is permitted to practice architecture. In other words, the requirement for a discipline-specific seal by civil engineers submitting plans as the principal design professional is purportedly necessary to assist the fire marshal in preventing the unlicensed practice of architecture by engineers who are not listed as civil engineers.

We look to the definition of the practice of architecture to see whether an engineer who prepares plans, or subsystem plans, for construction or renovation would be engaging in the practice of architecture. The legislature re-wrote the definition of the practice of architecture in 1995 to read as follows:

> The "practice of architecture" is the rendering or offering of the services specified in this Paragraph in connection with the design, construction, enlargement, or alteration of a building, a group of buildings, or the space within and surrounding buildings which have human occupancy or habitation as their principal purpose. Such services shall include the following: planning, providing preliminary studies, designs, drawings,

> specifications, and other technical submissions; administration of construction contracts; and the coordination of any element of technical submissions prepared by others, including but not limited to engineers and landscape architects, as appropriate. . . .

La. R.S. 37:141(B)(3). Taken alone, this portion of the definition indicates that a licensed engineer who prepares plans, or subsystem plans, for any buildings or other structures that have "human occupancy or habitation as their principal purpose" would be engaging in the practice of architecture. *Id.* Unless the engineer were a civil engineer, or was also licensed by the Architecture Board, the practice of architecture by an engineer would be prohibited by La. R.S. 37:154. La. R.S. 37:155. Taken to its logical conclusion, no engineer, save for a civil engineer, would be permitted to perform any work in connection with any building or structure primarily intended for human occupancy or habitation. For example, under this interpretation, a licensed engineer listed as an electrical engineer would be prohibited by the architecture laws from designing or preparing plans for an electrical system for a commercial office building or an apartment building.

One need not reach this conclusion, however, because when it adopted the foregoing definition of the practice of architecture, the legislature also specifically excluded the practice of engineering from that definition:

> . . . **The practice of architecture shall not include the practice of engineering as defined in R.S. 37:682**; however, a registered architect may perform such engineering work as is incidental to the practice of architecture.

La. R.S. 37:141(B)(3) (emphasis added). Under this exclusion, any licensed engineer can perform work that might fall within the definition of the practice of architecture, but that work would not be legally classified as the "practice of architecture" as long as that work could also be classified as the practice of engineering. Using the preceding example, an electrical engineer can design the plans for the electrical system in an apartment building, and as long as the design of the electrical system qualifies as the practice of engineering, the engineer would not be engaging in the practice of architecture without a license.

It has been suggested that the language excluding the practice of engineering from the practice of architecture was intended to address only the permitted scope of practice of an architect, and was not intended to exempt engineers from the architectural licensing laws. In other words, the portion of the definition that reads "[t]he practice of architecture shall not include the practice of engineering" is only meant to specify that

architects are not permitted to practice engineering. La. R.S. 37:141(3). That general rule is then followed by the exception to the rule: "however, a registered architect may perform such engineering work as is incidental to the practice of architecture." The purpose of entire sentence is therefore limited to the creation of an exception to the engineering laws for architects whose architecture practice can also be classified as engineering.

This argument ultimately proves unpersuasive. First, such an interpretation would render the first phrase superfluous. The Engineering Laws already prohibit the practice of engineering without a license. La. R.S. 37:681. Furthermore, the legislature could have simply said that "a registered architect may perform such engineering work as is incidental to the practice of architecture," which would have been sufficient to create the exception. As the courts and this office have long observed, "[a]s a general rule, the legislature does not enact vain and useless legislation." *Johnston v. Morehouse Parish Police Jury*, 424 So.2d 1053, 1056-57 (La.App. 2 Cir.,1982), *citing Staton v. Hutchinson*, 370 So.2d 106 (La.App. 1st Cir.1978).

Second, as discussed above, if we were to interpret the definition as suggested, then engineers would be prohibited from performing work on any buildings that are intended for human occupancy, since such work would meet the definition of the practice of architecture. We find that result to be contrary to actual practice and common sense. "Judicial construction must aim to attribute reasonable meaning to an entire statutory framework and context." *Id.*, *citing McGee v. Police Jury of Caddo Parish*, 63 So.2d 153 (La.App. 2d Cir.1953).

Third, our interpretation of the definition of the practice of architecture is consistent with the reciprocal exemptions existing between the professions of architecture and engineering. The engineering laws specify that the prohibition of the unlicensed practice of engineering does not apply to or prohibit the practice of architecture. La. R.S. 37:702 ("This Chapter shall not be construed to prevent or affect ... [o]ther professions or trades including the practice of architecture as defined in [La. R.S. 37:141(3)] . . . .") The rules promulgated by the Engineering Board and by the Architecture Board each recognize the overlap between the fields of architecture and engineering, and recognize the existence of reciprocal exemptions. According to the Engineering Rules:

> The board recognizes in the design of buildings and similar structures that there is overlap between the work of architects and engineers. It is recognized that an architect who has complied with all of the current laws of Louisiana relating to the practice of architecture has a right to engage in some activities properly classifiable as professional engineering insofar as

> it is necessarily incidental to his/her work as an architect. Likewise, it is recognized that the professional engineer who has complied with all of the current laws of Louisiana and is properly licensed has the right to engage in some activities properly classifiable as architecture insofar as it is necessarily incidental to his/her work as an engineer. . . .

LAC 46.LXI.105. The Architecture Rules contain a nearly identical passage:

> It is recognized that in certain fields of practice there is a broad overlap between the work of architects and engineers. This is particularly true in the field of buildings and similar structures. It is recognized that an architect, who has complied with all of the current laws of Louisiana relating to the practice of architecture [*sic*] has a right to engage in activities properly classifiable as professional engineering insofar as it is necessarily incidental to his work as an architect. Likewise, it is recognized that the professional engineer, who has complied with all of the current laws of Louisiana, and is properly registered in that branch of engineering for which he may be qualified, has a right to engage in activities classifiable as architectural insofar as is necessarily incidental to his work as an engineer. . . .

LAC 46.I:1307(A). The statutory basis for the exemption of architects from the prohibition on the unlicensed practice of engineering is found both in the engineering laws and the architecture laws. La. R.S. 37:702; La. R.S. 37:141(3) The statutory basis for the exemption of engineers from the prohibition on the unlicensed practice of architecture is found in our interpretation of the definition of the practice of architecture. La. R.S. 37:141(3).

It therefore appears to be the intent of the legislature for the professions of engineering and architecture to be governed by their respective regulatory schemes, and for neither profession to be hindered by the fact that their practices may encroach on activities regulated by the other. By excluding the practice of engineering from the definition of the practice of architecture, the legislature effectively extended the preexisting exemption for civil engineers found in La. R.S. 37:155 to all licensed engineers who are practicing engineering. The practice of architecture without a license issued pursuant to the Architecture Laws, La. R.S. 37:141, *et seq.*, therefore does not apply to the practice of engineering by any licensed engineer.

In order to determine whether a licensed engineer who signs building plans or building

subsystem plans for submission to the fire marshal is exempt from the Architecture Laws, we must determine whether the engineer is engaging in the practice of engineering. The practice of engineering is defined in the Engineering Laws as follows:

> "Practice of engineering" shall mean responsible professional service which may include consultation, investigation, evaluation, planning, designing, or inspection of construction in connection with any public or private utilities, structures, machines, equipment, processes, works, or projects wherein the public welfare or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of engineering principles and the interpretation of engineering data.

La. R.S. 37:682(12)(a). As evidenced by this definition, a licensed engineer is deemed to be practicing engineering when he or she plans or designs public or private structures.[5] It follows that an engineer is engaging in the practice of engineering when designing plans or subsystem plans for new construction or renovation that must be submitted to the fire marshal for approval under La. R.S. 40:1574(A) & (B). The Architecture Laws do not prohibit an engineer, whether said engineer is listed as a civil engineer or as any other discipline, from signing plans and specifications for submission to the fire marshal. Therefore, the prohibition on the unlicensed practice of architecture set forth in La. R.S. 37:154 does not form any basis for the fire marshal to require the use of discipline-specific seals by an engineer.

The fire marshal also relies on Section 1307 of the Architecture Rules, cited above, as authority for the requirement that an engineer be listed in a particular discipline and use a discipline-specific seal when working on plans for structures intended for human occupancy. Specifically, the fire marshal cites the following portion of that rule:

> Likewise, it is recognized that the professional engineer, who has complied with all of the current laws of Louisiana, **and is properly registered in that branch of engineering for which he may be qualified,** has a right to engage in activities classifiable as architectural insofar as is necessarily incidental to his work as an engineer.

LAC 46.I:1307 (emphasis added). The fire marshal interprets the highlighted text to

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[5] The definition of the practice of architecture refers to "buildings" rather than "structures." La. R.S. 37:141(B)3. Nevertheless, the term "structure" is inclusive of the term "building;" in fact, the very definition of a building is a "structure with walls and a roof, esp. a permanent structure." Black's Law Dictionary (9th Ed. 2009).

limit engineers to practicing those disciplines in which they are listed, and to require the use of a discipline-specific seal.

Once again, we cannot agree with the fire marshal's interpretation of LAC 46.I:1307. First, the cited language, by its literal terms, does not limit the practice of an engineer and does not require the use of a discipline specific seal. Second, every licensed engineer is listed in one or more particular branches of engineering pursuant to La. R.S. 37:693(A)(2), therefore every licensed engineer would meet that qualifier. Third, LAC 46.I:1307 appears to be intended to exempt engineers from the architectural rules, rather than to place additional restrictions on the practice of engineering.

Finally, the Architecture Board does not have the authority to place limitations on the practice of engineering. The Architecture Board promulgated the foregoing rule in 2003 in accordance with the authority granted by La. R.S. 37:144(C). LAC 46.I:1307. That statute authorizes the Architecture Board to promulgate rules governing the practice of architecture:

> C. The board shall have the power to adopt and amend such rules and regulations as are reasonably necessary for the proper performance of its duties, for carrying out the purposes of this Chapter, for continuing education, for the regulation of the proceedings before it, and for the regulation of the practice of architecture under the laws of this state.

La. R.S. 37:144(C). As noted above, the practice of engineering is specifically excluded from the statutory definition of the practice of architecture. La. R.S. 37:682(12)(a). It necessarily follows that the Architecture Board is without authority to promulgate rules regulating the practice of engineering. LAC 46.I:1307 therefore cannot be interpreted to require a licensed engineer to be listed or properly registered in a particular discipline in order to engage in engineering work that might be classifiable as the practice of architecture.

We have concluded that an engineer is not required to be listed in a certain discipline in order to practice engineering, but only that he be competent to do so. We have also concluded that the prohibition on the practice of architecture without a license issued pursuant to the Architecture Laws, La. R.S. 37:141, *et seq.*, does not apply to the practice of engineering by any licensed engineer. We have further concluded that LAC 46.I:1307 does not require a licensed engineer to be listed or properly registered in a particular discipline in order to engage in engineering work that that might be classifiable as the practice of architecture. In light of these conclusions, this office is of the opinion that the fire marshal currently has no authority to require that an engineer be listed in a particular discipline, or use a discipline-specific seal, in order to sign plans

and specifications that are submitted to the fire marshal for approval under La. R.S. 40:1574(A) & (B).

We nevertheless acknowledge that the Engineering Laws fail to provide the general public with consistent objective indicia of an engineer's competence in the areas in which he or she may legally practice. An engineer is free to practice any discipline in which he or she may be competent, but there are no objective indicia of competence outside the discipline in which the engineer is listed. And, as discussed above, an engineer may, but is not required, to use a discipline-specific seal. As the fire marshal has correctly pointed out, one cannot determine an engineer's competence if the engineer uses a generic seal, or if the engineer engages in practice outside of the his or her listed discipline.

As noted above, there is nothing in the Engineering Laws that would preempt a validly enacted law, or a validly promulgated rule or emergency rule, requiring a licensed engineer to be listed in a particular discipline for certain purposes. Our opinion is limited to the particular facts presented by your opinion request letter, and the laws and regulations cited by the fire marshal, La. R.S. 37:155 and LAC 46.I:1307. Our opinion that there is no current authority for the fire marshal to require the use of a discipline-specific seal is based on the lack of any existing law or rule in the Engineering Laws or the Architecture Laws requiring the use of such seal, since the fire marshal's authority is based on its duty to ensure that submitted plans comply with all current laws and rules of the state. La. R.S. 40:1574(A) & (B).

Nevertheless, we are compelled to observe that the fire marshal is vested with broad authority for the protection of the public:

> The fire marshal shall take all steps necessary and proper to protect life and property from the hazards of fire and of panic which may arise from fire or from the threat of fire or explosion.

La. R.S. 40:1563(A). In furtherance of this duty, the fire marshal is authorized to promulgate rules and regulations as necessary to fulfill its statutory duties:

> The fire marshal shall have the authority in order to carry out the purposes of this Part or any other law for which he is given responsibility for supervision or enforcement, including but not limited to R.S. 40:1561 et seq., R.S. 49:148 et seq., R.S. 51:650 et seq., and R.S. 51:911.21 et seq., to prepare, adopt, and promulgate rules and regulations in accordance with the Administrative Procedure Act . . . .

La. R.S. 40:1563(F). In the interest of public safety, we therefore advise that the fire marshal is authorized to promulgate rules to enable it to fulfill its duties, and appears to have the authority to promulgate rules concerning the permitted areas of practice, as well as the use of a discipline-specific seal, by engineers who sign plans and/or subsystem plans that are submitted to the fire marshal.[6]

We trust that this opinion adequately responds to your request, and thank you for the opportunity to be of service. If you have any questions or comments, please contact our office.

Sincerely yours,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: _____
Charles W. Belsom, Jr.
Assistant Attorney General

JDC:CWB:lrs

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[6] In fact, the fire marshal has promulgated such rules in the past, although said rules pre-dated the current reciprocal exemption afforded to engineers. *See* LAC 55.V.3307.