

**ATTORNEY GENERAL OPINION
07-19**

Ms. Jean Williams, Executive Director
Board of Governors of Licensed Architects and Landscape Architects
Landmark Towers
P.O. Box 53430
Oklahoma City, Oklahoma 73152

July 31, 2007

Dear Ms. Williams:

This office has received your request for an Attorney General Opinion in which you ask, in effect, the following questions:

- 1. Amendments made to the State Architectural and Interior Designers Act (“Act”), 59 O.S. 2001 & Supp.2006, §§ 46.1 – 46.41, in 2006 redefined the criteria for buildings requiring the services of licensed architects. Under the exemption language of 59 O.S. Supp.2006, § 46.21b(C)(3), (4), does the construction, addition or alteration of a building no more than two (2) stories in height and no more than one hundred thousand (100,000) square feet in the Code Use Group B – Business, and the construction, addition or alteration of a building no more than two (2) stories in height and no more than two hundred thousand (200,000) square feet in the Code Use Group M – Mercantile, mean the entire square footage of the building or the portion of the building being constructed, added on or altered?**
- 2. Does a building originally exempt under 59 O.S. Supp.2006, § 46.21b(D) or a similar provision remain exempt when renovations or alterations are made at a later time?**
- 3. Under 59 O.S. Supp.2006, § 46.21b(E), may a person not licensed as an architect plan, design and prepare plans for the addition, renovation or alteration of a building when the intended use is not exempt from the provisions of the Act, but the planned addition or alteration, as determined by the applicable building official, does not affect the primary structural, mechanical, or electrical systems, life-safety systems or exit passageways?**

In 2006 the Oklahoma Legislature amended existing laws and enacted several new laws in the State Architectural and Interior Designers Act.¹ The Legislature enacted Section 46.21b of Title 59 at 2006 Okla. Sess. Laws ch. 163, § 17 with an effective date of July 1, 2006. The First Regular Session of the Fifty-first Legislature subsequently amended Section 46.21b in 2007. 2007 Okla. Sess. Laws ch. 50, § 1. Section 46.21b provides in pertinent part:

- A. ***An architect shall be required*** to plan, design and prepare plans and specifications for the following building types ***except where specifically exempt*** from the provisions of the State Architectural and Interior Designers Act. All use groups in this section are defined by the 2003 International Building Code.
- B. The construction, addition or alteration of a building of any size or occupancy in the following Code Use Groups shall be subject to the provisions of the State Architectural and Interior Designers Act:
 1. Code Use Group I – Institutional;
 2. Code Use Group R-2 – Residential, limited to dormitories, fraternities and sororities, and monasteries and convents;
 3. Code Use Group A-1 – Assembly and theaters;
 4. Code Use Group A-4 – Assembly, arenas and courts;
 5. Code Use Group A-5 – Assembly, bleachers and grandstands; and
 6. Buildings for which the designated Code Use Group changes are not exempt from ~~this act~~ the State Architectural and Interior Designers Act.
- C. The ***following shall be exempt*** from the provisions of the State Architectural and Interior Designers Act; provided that, for the purposes of this subsection, a basement is not to be counted as a story for the purpose of counting stories of a building for height regulations:
 1. The construction, addition or alteration of a building no more than two stories in height and with a code-defined occupancy of no more than fifty (50) persons for the Code Use Groups A-2 and A-3 – Assembly and Code Use Group E – Education;
 2. The construction, addition or alteration of a building no more than two stories in height and no more than sixty-four transient lodging

¹ See 2006 Okla. Sess. Laws ch. 163, §§ 1 – 30; 2006 Okla. Sess. Laws ch. 193, §§ 1 – 6.

units per building for the Code Use Group R1 – Residential, including, but not limited to, hotels and motels;

3. The construction, addition or alteration of a building no more than two stories in height and with a gross square footage not exceeding one hundred thousand (100,000) in the Code Use Group B – Business;
4. The construction, addition or alteration of a building no more than two stories in height and with a gross square footage not exceeding two hundred thousand (200,000) in the Code Use Group M – Mercantile[.]

2007 Okla. Sess. Laws ch. 50, § 1 (amending 59 O.S. Supp.2006, § 46.21b) (emphasis added).

I.

“The fundamental rule of statutory construction is to ascertain and, if possible, give effect to the intention and purpose of the Legislature as expressed in the statute.” *Jackson v. Indep. Sch. Dist. No. 16*, 648 P.2d 26, 29 (Okla. 1982). Section 46.21b(C) lists five exemptions to the provisions of the Act. Subsections (C)(3), (4) contain the language of limitation “no more than two stories in height and with a gross square footage not exceeding one hundred thousand (100,000) in the Code Use Group B – Business” and “two hundred thousand (200,000) in the Code Use Group M – Mercantile,” respectively, which modifies the word “building” in the clause “of a building,” in each subsection. Therefore, the height and square footage limitations in subsections (C)(3), (4) refer to a building as a whole and not just a portion of a building.

If the limitations did not apply to the building as a whole, multiple additions and alterations could be performed incrementally, one after another, by adding one or two additional stories of height or up to 100,000 or 200,000 square feet of business or mercantile space, respectively, without the total sum of these projects ever being planned, designed or prepared by a licensed architect. We do not believe this was the intention of the Legislature. “[A] statute should be given a sensible construction, bearing in mind the evils intended to be avoided or the remedy afforded.” *AMF Telescope Co. v. Hatchel*, 547 P.2d 374, 379 (Okla. 1976).

Therefore, under Section 46.21b(C)(3), a licensed architect is not required to plan, design and prepare plans and specifications to construct a building if it is no more than two stories in height and does not exceed one hundred thousand (100,000) gross square feet in the Code Use Group B – Business. Additions and alterations can be made to such a building without a licensed architect as long as the cumulative total of the original building and the additions and alterations do not exceed two stories in height and one hundred thousand (100,000) square feet in the Code Use Group B – Business.

In like manner, under Section 46.21b(C)(4), a licensed architect is not required to plan, design and prepare plans and specifications to construct a building if it is no more than two stories in height and does not exceed two hundred thousand (200,000) gross square feet in the Code Use Group M – Mercantile. Additions and alterations can be made to such a building without a licensed architect as long as the cumulative total of the original building and the additions and alterations do not exceed two stories in height and two hundred thousand (200,000) square feet in the Code Use Group M – Mercantile. *See AMF Tubescop Co.*, 547 P.2d at 379.

II.

You next ask whether a building originally exempt under Section 46.21b(D) or a similar provision remains exempt when renovations or alterations are made at a later time. Under Section 46.21b(A) an architect is required to plan, design and prepare plans and specifications for the building types identified in Section 46.21b, except where specifically exempt from the provisions of the Act. Subsection (D) is one such exemption:

- D. The renovation or alteration of a building where the *intended use is exempt as new construction* shall be exempt from the provisions of this act.

Id. (emphasis added).

The reference to new construction does not mean the exemption applies only when a building is first built. Rather, the language provides that the type of construction that would be exempt for its intended use as a new building would also be exempt for a renovation or alteration of a building. The time to determine whether a licensed architect is required for the project and its intended use is immediately prior to the renovation or alteration of the building. For example, a building recently used for mercantile purposes could have been exempt from the architect requirement under Section 46.21b(C)(4) or other prior provision, but if it is to be converted to a church (i.e., Group A-3 Assembly) it would have to satisfy the requirements of Section 46.21b(C)(1) and be no more than two (2) stories in height and have a code-defined occupancy of not more than fifty (50) persons.² Therefore, even though the original plan or design of a building may have been exempt from the requirement to use a licensed architect under Section 46.21b(D) or a similar provision, the intended use of each subsequent renovation or alteration determines whether a licensed architect is required.

III.

You last ask whether a person not licensed as an architect may plan, design and prepare plans for the addition, renovation or alteration of a building, although the intended use is not exempt from the provisions of the Act, but where the planned addition or alteration, as determined by the

² See A.G. Opin. 06-38, at 254-57 (discussing Building Code Use Groups A-2 and A-3 – Assembly and E – Education).

applicable building official, does not affect the primary structural, mechanical, or electrical systems, life-safety systems or exit passageways.

As discussed above, Section 46.21b(A) requires an architect to plan, design and prepare plans and specifications for the building types identified in Section 46.21b except where specifically exempt from the provisions of the Act. Subsection (E) is one such exemption:

- E. Addition, renovation or alteration of buildings *where the intended use is not exempt* from the provisions of this act, *but* where the planned addition or alteration, *as determined by the applicable building official*, does *not affect the primary structural, mechanical, or electrical systems, life-safety systems or exit passageways shall be exempt* from the provisions of this act the State Architectural and Interior Designers Act.

2007 Okla. Sess. Laws ch. 50, § 1 (amending 59 O.S. Supp.2006, § 46.21b) (emphasis added).

We need to examine the meaning of “applicable building official” as it is used in Section 46.21b(E). “Statutes are to be construed by reading their provisions with the ordinary and common definitions of the words used unless the context dictates a special or technical definition is to be utilized.” *State ex rel. W. State Hosp. v. Stoner*, 614 P.2d 59, 63 (Okla. 1980). The term “applicable building official” is defined in the Act:

13. “Applicable building official” means the official responsible for the application of the adopted building code as implemented by the local, municipal or county jurisdiction in which a building is located. Where no building code has been adopted by the local, municipal or county jurisdiction, the applicable building official shall be defined as the State Fire Marshal[.]

59 O.S. Supp.2006, § 46.3(13).

The *Building Safety Journal* provides the following instructive explanation:

A building official or code official is an appointed officer responsible for the administration and enforcement of a jurisdiction’s various codes and ordinances related to building safety. His or her primary responsibility is to ensure that the health and safety of the public are maintained through adherence to the requirements established by law for the construction, alteration or use of new and existing buildings. The economic interests of the community are also a highly significant concern, with the ultimate goal being the development of a safe and sustainable building stock for the generations to follow.

Lynn Underwood, *What is a Building Official?*, 5 Bldg. Safety J. 28 (2007), available at http://www.iccsafe.org/news/bsj/0207_WhatBldgOfficial.pdf.

In answer to your last question, a person not licensed as an architect under the Act can plan, design and prepare plans for the addition, renovation or alteration of a building although the intended use is not exempt from the provisions of the Act, as long as the building official appointed by the local, municipal, or county jurisdiction, or the State Fire Marshal when there is no local building code, determines the planned addition or alteration will “not affect the primary structural, mechanical, or electrical systems, life-safety systems or exit passageways.” 2007 Okla. Sess. Laws ch. 50, § 1(E) (amending 59 O.S. Supp.2006, § 46.21b(E)).

It is, therefore, the official Opinion of the Attorney General that:

- 1. a. Architects licensed pursuant to the State Architectural and Interior Designers Act, 59 O.S. 2001 & Supp.2006, §§ 46.1 – 46.41, are not required to plan, design and prepare plans and specifications for buildings to be constructed under Section 46.21b(C)(3), in the Code Use Group B – Business, if the buildings are no more than two stories in height and do not exceed one hundred thousand (100,000) square feet. 2007 Okla. Sess. Laws ch. 50, § 1(C)(3) (amending 59 O.S. Supp.2006, § 46.21b(C)(3)). Additions and alterations can be made to such buildings without a licensed architect as long as the cumulative total of the original building and the additions and alterations do not exceed two stories in height and one hundred thousand (100,000) square feet in the Code Use Group B – Business. *Id.***
- b. Licensed architects are not required to plan, design and prepare plans and specifications for buildings to be constructed under Section 46.21b(C)(4) in the Code Use Group M – Mercantile, if the buildings are no more than two stories in height and do not exceed two hundred thousand (200,000) square feet. 2007 Okla. Sess. Laws ch. 50, § 1(C)(4) (amending 59 O.S. Supp.2006, § 46.21b(C)(4)). Additions and alterations can be made to such buildings without a licensed architect as long as the cumulative total of the original building and the additions and alterations do not exceed two stories in height and two hundred thousand (200,000) square feet. *Id.***
- 2. Even though the original plan or design of a building may have been exempt from the requirement to use a licensed architect under Section 46.21b(D) or a similar provision, the intended use of each subsequent renovation or alteration will determine if a new exemption could apply. 2007 Okla. Sess. Laws ch. 50, § 1(D) (amending 59 O.S. Supp.2006, § 46.21b(D)).**

3. **A person not licensed as an architect under the Act can plan, design and prepare plans for the addition, renovation or alteration of a building although the intended use is not exempt from the provisions of the Act, as long as the building official appointed by the local, municipal, or county jurisdiction, or the State Fire Marshal when there is no local building code, determines the planned addition, renovation or alteration will not affect the primary structural, mechanical or electrical systems, life-safety systems or exit passageways. 2007 Okla. Sess. Laws ch. 50, § 1(E) (amending 59 O.S. Supp.2006, § 46.21b(E)).**

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