

STATE OF WEST VIRGINIA

**REGULATORY BOARD REVIEW OF THE
BOARD OF ARCHITECTS**

**Board is Carrying Out its
Duties
Board Member Also Serving
as Board's Employee
Board's Interpretation and
Application of Rules are
Resulting in Overcharging
Applicants**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
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July 2000

PE-00-15-173

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July 2000

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Antonio E. Jones, Ph.D.
Director

July 9, 2000

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Regulatory Board Review of the *Board of Architects*, which will be presented to the Joint Committee on Government Operations on Sunday, July 9, 2000. The issues covered herein are "*Board is Carrying Out its Duties; Board Member Also Serving as Board's Employee; and Board's Interpretation and Application of Rules are Resulting in Overcharging Applicants.*"

We conducted an exit conference with the *Board of Architects* on June 29, 2000. We received the agency response on July 3, 2000.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia
Acting Director

JS/wsc

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Executive Summary

Issue Area 1: Board Satisfactorily Complying With Applicable Laws and Rules.

Three areas statutorily required or important in effective operation were examined by the Legislative Auditor. These areas were: 1) the complaint process; 2) open meetings compliance; and 3) continuing education verification. The goal of protecting the public is achieved in part if an adequate complaint process is in place. The Board is responding to complaints and disciplining licensees; compliance with HB4062 would establish a formal complaint process allowing a more effective complaint process to be in place. During the scope of the review the Board has complied with the open meetings law in all but one situation. The Board had filed a notice late with the Secretary of State's office. The Board implemented verification of its licensees continuing education credits last year by randomly auditing 5% of its licensees.

Issue Area 2: Board Member Also Serving as Board's Employee

A Board member is also the Board's employed Deputy Director. The Board member currently holding both positions has done so for at least 16 of the last twenty-eight years. The Executive Director of the Ethics Commission informed the Legislative Auditor there is no clear precedent for this situation and as a potential for conflict exists a formal advisory opinion from the Ethics Commission should be sought. Some opinions from the Ethics Commission have dealt with similar circumstances. In these cases, the Ethics Commission determined that a conflict of interest existed.

Issue Area 3: Board's Interpretation and Application of Legislative Rule §2-1-3.15 Are Not Consistent With Legal Interpretation Resulting In the Board Overcharging Applicants

The Board's interpretation and application of the fee structure established by rule §2-1-3.15 and the submission of applications in rule §2-1-4.1, is in conflict with the legal interpretation. What is labeled as a filing fee for an examination (defined in the rules as the Architectural Registration Exam) has been interpreted and applied as a "processing" of application fee by the Board. This application of rule has resulted in out-of-state applicants being overcharged by \$150 for their initial licensure with West Virginia. Based on the legal interpretation this fee is not authorized nor is a duplicate charge the Board is assessing; resulting in significant refunds being due and a budgetary impact on the Board. Of the Board's 1,021 licensees, approximately 87% or 888 are from out-of-state. For the three fiscal years of 1997, 1998 and 1999 this has resulted in about \$41,000 in excess charges affecting 274 out-of-state applicants.

Review Objective, Scope and Methodology

This regulatory board evaluation of the Board of Architects was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code* as amended. As stated in *Code* a regulatory board evaluation is to determine whether a Board is 1) necessary for the protection of public health and safety, and 2) whether the Board is operating in compliance with applicable laws and rules.

The regulatory board evaluation of the Board covers the period from January 1996 through June 2000. Information compiled in this report has been acquired from the West Virginia *Code*, interviews with the Board and its staff, annual reports, minutes, expenditure schedules and prior reviews.

This review will assist the Joint Committee on Government Operations in making one of three recommendations to the Legislature for its next Regular Session:

1. the agency be terminated as scheduled;
2. the agency be continued and reestablished; or
3. the agency be continued and reestablished, but the statutes governing it be amended in specific ways to correct ineffective or discriminatory practices or procedures, burdensome rules and regulations, lack of protection of the public interest, overlapping of jurisdiction with other governmental entities, unwarranted exercise of authority either in law or in fact any other deficiencies.

Background

The *Board of Architects* was created under Chapter 30 of the *West Virginia Code* in 1921 and reenacted in 1990. There are seven board members, two of whom are lay members. In order to serve, the other five must have at least ten years of active West Virginia practice in the field of architecture (§30-12-1). All are appointed by the Governor for five year terms. Board members do not have term limitations.

<u>Member</u>	<u>Residence</u>	<u>Position</u>	<u>Term Expiration</u>
C. William Bevins	Charleston		June 30, 2003
E. Ted Boggess	Princeton		June 30, 2001
E. Keith Dean	Huntington	Secretary	June 30, 2002
Gregory Williamson	Charleston		June 30, 2004
William E. Yoke, Jr.	Clarksburg	President	June 30, 2000
Gary Markham	Charleston	Lay Member	June 30, 2002
Jan Fox	Charleston	Lay Member	June 30, 2002

As of November 15, 1999, there were 1021 registered architects in West Virginia. As with all licensing Boards, the Board of Architects is required to be self-sufficient through its fee structure.

Persons seeking a license must 1) hold an accredited degree in architecture or satisfy education requirements as determined by the Board; 2) have at least 3 years of practical training in architectural work and 3) have passed the Architectural Registration exam. In order to have a license renewed a licensee must annually complete 12 Professional Development Units.

Issue Area 1: Board Satisfactorily Complying With Applicable Laws and Rules.

The Legislative Auditor finds that the Board is satisfactorily complying with applicable laws and rules. These laws and rules, found primarily within the Board's own article of *Code* and within the general provisions of Chapter 30, are important for an effective operation of a licensing board. However, there are a few areas of operation where the Legislative Auditor's Office feels some improvement can be made.

Verification of Continuing Education to Begin

The Board began requiring continuing education of licensees in 1996 when legislation passed requiring continuing education of Chapter 30 boards. Until last year the Board of Architects' licensing process relied completely on the honor system. However, last year the Board's newsletter states it began randomly auditing 5% of licensees annually. These licensees will be required to submit detailed information about the professional development hours claimed. Should the Board have questions, it may request submission of additional information about the training. If part of the training is found unacceptable by the Board, registrants have 180 days to complete the required hours.

Part of the process of protecting the public is promoting enhancements of professional skills. If continuing education is not being taken in the required amount, then the enhancement of skills will not occur. As the Board begins to implement audits of continuing education, the Board's effectiveness in protecting the public should increase.

The Complaint Process

In the Board's Fall 1998 newsletter, the Board informed licensees of the statutory disciplinary powers of the Board. The Board further explained that a complaint must be initiated in writing on a Board-generated complaint form. Currently, neither the Board's rules nor its article of *Code* outlines the procedure for filing a complaint. For example, there is no mention of time frames, respondent notification, or complainant status reports on the outcome of investigation. The passage of House Bill 4062 in the 2000 Legislative Session requires boards to promulgate rules detailing a procedure for the investigation and resolution of all complaints against licensees. Compliance with this legislation would resolve this issue.

Table 1 illustrates the number and types of complaints filed with the Board during the years 1992-1999.¹ The Board does respond to complaints made in the prescribed form. According to the Board's complaint log book, the Board's action on most cases is to send a letter to the respondent ordering them to cease and desist if they are misusing the architect title, or to send the respondent

¹ *One third of the 21 complaints were made by the Board, a Board member or a Board member's private practice partner.*

a copy of the law, or to inform the respondent a licensed architect must be employed on the project. A licensee has been fined \$500 for practicing architecture without a license and another licensee was suspended six months for practicing prior to registration.

**Table 1
Types of Complaints**

Complaint	'92	'94	'95	'96	'97	'98	'99
Misuse of Architect Title	1		2	2	2	2	1
Practicing Architecture Prior to Registration					1		
Licensee Violated Another State's Laws				1			
Rules of Professional Conduct Violation				1			
Architect Not Employed on Project		1	1	1	2	1	1
Architect Seal Removed							1

Open Meetings

The Board is required to meet twice annually (§2-1-3.1). In the past three years the Board has met at least twice annually but not more than three times, each time with a quorum. All but a fourth meeting held in 1997 complied with the Open Governmental Proceedings Act. The meeting notice was filed late with the Secretary of State's Office. As the notice was not filed with the Secretary of State's Office in the prescribed manner any action of the Board could have been contested at the time. This is particularly important as in this meeting a licensee was fined for having practiced architecture prior to being licensed. While this person did have the right to appeal, it is an illustration of the significance Board actions can take in meetings.

Recommendation 1:

The Board should continue randomly auditing 5% of licensees' continuing education.

Recommendation 2:

The Board complied with the requirements of HB4062 detailing complaint investigation and resolution by filing rules with the Secretary of State on July 3, 2000.

Recommendation 3:

The Board should comply with the Open Governmental Proceedings Act in all instances.

Issue Area 2:**Board Member Also Serving as Board’s Employee**

The Board member who is simultaneously a Board employee has done so for at least 16 of the last 28 years. The Executive Director of the Ethics Commission informed the Legislative Auditor that there is no clear precedent for this situation. Since a potential for conflict exists, a formal advisory opinion from the Ethics Commission should be sought. Some opinions from the Ethics Commission have dealt with similar circumstances. In these cases, the Ethics Commission determined that a conflict of interest existed.

The Board annually elects from among its members a President and a Secretary. According to the Board’s legislative rules, the Secretary shall be paid an amount determined by the Board. The Board’s personal services expenditure schedule lists two individuals. This includes a full time administrative secretary and the part-time Secretary of the Board, titled as Deputy Director on the expenditure schedule.

In addition to per diem and expenses received as a Board member, the member is also a part time employee of the Board receiving a yearly salary of \$25,000 as Secretary. This individual has held the dual roles, gubernatorial appointee and paid employee, for at least 16 of the last 28 years the member has been on the Board. In the July 1999 Board meeting, the Board voted to raise the Secretary/Deputy Director’s salary to \$27,000. Table 2 illustrates the salary, per diem and compensation the member received FY in 1999.

**Table 2
Payments Made to Board Member/Secretary**

	FY 1999
Salary as Secretary	\$25,000
Per Diem as Board member	\$650
Compensation as Board member	\$460
Total	\$26,110

Ethics Commission Ruling

According to the Ethics Commission, there is no clear precedent for a board member also serving as an employee of the same board. Articles one and two of chapter six-b govern whether this member’s dual relationship is improper. In particular, §6B-2-5 (b) (1) is of relevance which provides that “*a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.*” Interpretation of the “ethics act” is provided by the Ethics Commission’s advisory opinions. As a **potential conflict of interest exists**, a formal advisory opinion from the full Ethics Commission should be sought by the Board. The summary of the legal opinion from Legislative

Services reads, (See Appendix A for the complete legal opinion.)

In summary, I would make the following observations regarding the Architecture Board case before us:

1. I would advise/direct the Architecture Board as a whole to seek a formal Advisory Opinion from the Ethics Commission to determine whether the board member can continue to serve simultaneously in that position and as “administrator” to the board. While it may be possible that legislative members involved in the oversight of boards and commissions may have some status to directly request an Advisory Opinion from the Ethics Commission, this is uncharted territory and there is no precedent on this issue. As I indicated previously, the Commission generally does not issue Advisory Opinions at the request of third parties. If for some reason the Architecture Board resists seeking an Advisory Opinion, there is still recourse to file a complaint with the Ethics Commission at a later date.

2. It appears to me that the decision by the Ethics Commission will probably hinge on what the actual scope of the Architecture Board member’s administrative role is. If the Commission finds that the board member’s duties are such that he is, in effect, acting as the executive administrator of the board and is doing so on a long-term/permanent basis, then the Commission will most likely decide under WVC §6B-2-5 9 (b) (1) that he cannot hold both positions simultaneously. If the Commission finds that his duties are of a much more limited nature, then they may rule otherwise.

The Ethics Commission has released four opinions somewhat related to this issue. In one opinion a member of another state board was permitted to serve temporarily, with compensation, as Executive Director until the board could fill the vacancy. A second opinion held that a Chairperson of another state board could be temporarily hired as the Executive Director. In the other two related opinions the Ethics Commission disallowed the Chairman of the Solid Waste Authority from also holding the paid Director’s position.

Recommendation 4:

The Board should seek a formal advisory opinion from the Ethics Commission on whether or not simultaneous service as a Board member and Deputy Director is improper.

Recommendation 5:

Should the Board not promptly seek a formal advisory opinion from the Ethics Commission, the Legislature may wish to consider directing the Legislative Auditor to file a complaint with the Ethics Commission.

Issue Area 3: Board's Interpretation and Application of Legislative Rule 2-1-3.15 Are Not Consistent with Legal Interpretation Resulting In the Board Overcharging Applicants.

The Board's interpretation and application of the fee structure established by legislative rule §2-1-3.15 and the submission of applications in rule §2-1-4.1, is in conflict with the legal interpretation. What is labeled as a **filing fee for an examination** in rule has been interpreted and applied as a "**processing fee**" of application by the Board. This application of rule has resulted in out-of-state applicants being overcharged by \$150 for their initial licensure with West Virginia. Based on the legal interpretation this fee is not authorized nor is a duplicate charge the Board is assessing; resulting in significant refunds being due thus a budgetary impact on the Board.

The Board interprets subsection §2-1-4.1 of its legislative rule, stated below, as allowing it to charge a \$100 filing fee. This rule reads,

*Submission of Applications. – Every person seeking a certificate of registration shall submit an application as prescribed by the Board accompanied by the **non-refundable filing fee established in subsection 3.15 of this rule.** [Emphasis added]*

However §2-1-3.15.1 reads,

*The applicant shall pay with his or her application a **non-refundable filing fee for the examination** in the amount of one hundred dollars (\$100.00) [Emphasis Added]*

As defined in the legislative rules "examination" is the current Architect Registration Examination. A legal opinion (include in full in Appendix B) from an attorney in Legislative Services states that the rules do not authorize requirement of the \$100 fee for any purpose except the examination. The legal opinion states §2-1-4.1 appears to need clarification to avoid conflict with the earlier subsection identifying the \$100 fee as being for the examination.

Hand Seal And Certificate

The Board interprets subsection §2-1-3.15.3 below, to allow it to collect \$50 of the \$400 assessed and reads,

The applicant shall pay the Board fifty dollars (\$50.00) for a hand seal and certificate of registration as a registered architect.

In this manner the Legislative Auditor feels an out-of-state applicant is being charged twice for a certificate of registration. The legal opinion from Legislative Services reads,

There is also opportunity for confusion because of the wording of §2-1-3.15.3, which identifies a \$50 fee as being for a hand seal and certificate of registration as a registered architect. Because that subsection seems to include both the certificate and the seal for one fee, it could be argued that the \$250 fee charged for the reciprocal registration certificate also includes the cost of the seal...The rules should be amended to clarify when the fee for examination is required and whether the Legislature intended to approve a \$250 fee for reciprocal certification which did not include payment for the hand seal.

Effect

As established by legislative rule, the Board is to assess \$250 for a certificate of reciprocal registration. The Board’s web-site indicates that \$400 is the charge. This breaks down to \$100 for a filing fee, \$250 for a reciprocal certificate of registration and \$50 for a hand seal and certificate of registration. The Board’s periodic ledgers demonstrate this has been the amount collected by the Board for at least three years. For FY 1999 this fee affected approximately 117 licensees. This resulted in excess collections of \$17,550. In FY 1998 excess collections totaled \$10,650 from 71 licensees, and in FY 1997 the amount was \$12,900 for 86 licensees. For the three fiscal years of 1997, 1998 and 1999, 274 out-of-state applicants were overcharged by at least \$41,100. Of the Board’s 1,021 licensees, approximately 87% or 888 are from out-of-state.

Table 3 illustrates the Board’s current financial state. Refunding the overcharges would need to be figured into the Board budget. The Legislative Auditor does not have a figure for FY2000, but the years 1997, 1998 and 1999 would suggest overcharges in the range of \$10,000-18,000 in FY2000.

**Table 3
Board’s Fiscal Status**

	Amount
Balance June 30, 1999	\$139,249
Expenses to Other State Agencies	(\$3,327)
Expenses FY2000 as of June 25, 2000	(\$121,262)
Revenues in FY2000 as of June 25, 2000	\$117,350
Cash Balance as of June 25, 2000	\$131,957

Conclusion

The Board’s interpretation and application of the rule is not consistent with the legal opinion provided by Legislative Services. The board does not administer an examination thus the \$100 fee should not be charged by the Board. If the Board considers this fee as a processing fee, the rules should reflect it. Based on legal interpretation of the rules, the Board has overcharged applicants and should consider refunding these fees.

Recommendation 6:

The Board should submit amended rules to clarify the definitions and fee structure to avoid confusion.

Recommendation 7:

The Legislature should consider directing whether the Board of Architects should take action to refund the amount of overcharges.

APPENDIX A

Legal Opinion Regarding Ethics Commission Ruling

WEST VIRGINIA LEGISLATURE
Legislative Services Division

Building 1, Room E-140
1900 Kanawha Boulevard, East
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MAY 26 2000

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Memo

To: Jill Mooney, PERD
From: George Freeman
Date: May 25, 2000
Subject: Architecture Board member - possible ethics violation under WVC §6B-2-5

This is in response to your question as to the propriety of a person serving simultaneously as a member of the Board of Architecture and as a part-time paid "administrator" to the board. Although this board member uses the titles of "Secretary-Treasurer" and/or "Deputy Director," there are apparently no other administrative staff persons serving the board other than a secretary/clerk person, and it appears that the board member is, in many respects, acting in the capacity of executive administrator to the board.

The question of whether this board member's dual relationship with the Board of Architecture is an improper one is governed by articles one and two, chapter six-b of the West Virginia Code, which relate to governmental ethics and conflicts of interest. Most of the ethical standards set forth for elected and appointed officials and public employees are found in §6B-2-5. Of particular relevance to the issue at hand is §6B-2-5 (b) (1), which provides that "a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person."

Further interpretation of the "ethics act" is provided by the Advisory Opinions which are issued by the Ethics Commission on a case by case basis in response to requests by government officials or employees seeking clarification regarding potential job conflicts or ethics violations in their various governmental dealings. Once the Ethics Commission has issued an Advisory Opinion stating that a government official or employee's conduct is not a violation of the ethics act, then that person

Joint Committee on Government and Finance

is "immunized" from any future sanctions under the ethics act with respect to that conduct. When a number of Advisory Opinions have been issued pertaining to a particular issue or course of conduct and clear precedent has been established with respect to that issue or conduct, the Executive Director of the Ethics Commission will routinely issue an opinion to a government official or employee seeking clarification without submitting the issue to the full Ethics Commission for a formal Advisory Opinion. When there is no clear precedent regarding a particular issue or course of conduct, the Executive Director will advise that the matter be submitted to the Ethics Commission for a formal Advisory Opinion.

As to the Architecture Board issue before us, I have been advised by Richard Alker, the Executive Director for the Ethics Commission, that there is no clear precedent from previous Advisory Opinions that would enable him to render an opinion on the matter, and that the issue should be submitted to the Ethics Commission for a formal Advisory Opinion. I am advised by Mr. Alker that the request for an opinion should come from the individual involved or from the Architecture Board as a whole. Generally, the Ethics Commission does not act on third party requests for an advisory opinion regarding the propriety of someone else's conduct. As I understand it, the only way a third party can intervene is to file a formal complaint with the Ethic Commission, which would then trigger an investigation into the individual's conduct. I discussed with Mr. Alker whether the Legislature would have special status as a "third party" to request an Advisory Opinion since the Legislature is statutorily charged with an oversight role over the Architecture Board and all other such boards. Mr. Alker advised that there is no precedent in that regard and that he did not know if the Legislature, or legislative members, could request the Ethics Commission to issue a formal Advisory Opinion regarding the conduct of a board member.

Although there may not be clear precedent sufficient for Mr. Alker to render an opinion in the Architecture Board case, there are Advisory Opinions which provide insight into this matter. In particular, Advisory Opinions 91-16 and 91-50 both dealt with the issue of whether the Chairman of the Solid Waste Authority could become the paid executive director of the of the Authority. In both cases the Ethics Committee found that the chairman could apply for the position of executive director, as long as certain protocols were observed to ensure fairness in the selection process. However, in both cases the Ethics Commission found that these individuals could not serve simultaneously as the Chairman of the Solid Waste Authority and as the paid Executive Director of the Solid Waste Authority.

Two other relevant Advisory Opinions are 92-42 and 98-01, where the Ethics Commission allowed the Chairperson of a State Board in one instance, and a member of a State Board in the other instance, to simultaneously serve and receive compensation on an interim basis as the acting Executive Director of their respective Boards. In both cases, the Ethics Commission found that the hirings would not violate the ethics act's prohibition against the use of public office for private gain because there were compelling circumstances which justified the temporary hirings to maintain the proper functioning of the respective boards. However, it is clear from both Advisory Opinions that the decisions were made with the understanding that the respective boards would each hire another person to permanently fill their respective Executive Director positions. In Advisory Opinion 92-42,

the Ethics Commission specifically noted that Advisory Opinions 91-16 and 91-50 established that an individual may not serve simultaneously as a member of a board and as the paid executive director of that board, and further noted that Advisory Opinion 92-42 was clearly distinguishable from those cases because the Board Chairman's service as Acting Executive Director was strictly a temporary arrangement necessitated by exigent circumstances.

In a related matter, both Advisory Opinions 92-42 and 98-01 discuss the board member/board chairperson's responsibilities under WVC §6B-1-2 (c) while serving as a paid part-time Acting Executive Director. This provision provides that a part-time public official should seek to be excused from voting, deciding, or otherwise acting on a matter that has become "personal", which the Ethics Commission deems to include any matter involving a direct or indirect pecuniary interest. The Ethics Commission stated that the board member/board chairperson must recuse himself or herself from any board votes affecting salary or other compensation matters relating to the executive director position. This provision would also apply to the Architecture Board member regarding board votes on matters relating to his "administrative" position, although as I understand it, he apparently has been recusing himself from votes on these issues.

In summary, I would make the following observations regarding the Architecture Board case before us:

1. I would advise/direct the Architecture Board as a whole to seek a formal Advisory Opinion from the Ethics Commission to determine whether the board member can continue to serve simultaneously in that position and as "administrator" to the board. While it may be possible that legislative members involved in the oversight of boards and commissions may have some status to directly request an Advisory Opinion from the Ethics Commission, this is uncharted territory and there is no precedent on this issue. As I indicated previously, the Commission generally does not issue Advisory Opinions at the request of third parties. If for some reason the Architecture Board resists seeking an Advisory Opinion, there is still recourse to file a complaint with the Ethics Commission at a later date.

2. It appears to me that the decision by the Ethics Commission will probably hinge on what the actual scope of the Architecture Board member's administrative role is. If the Commission finds that the board member's duties are such that he is, in effect, acting as the executive administrator of the board and is doing so on a long-term/permanent basis, then the Commission will most likely decide under WVC §6B-2-5 (b) (1) that he cannot hold both positions simultaneously. If the Commission finds that his duties are of a much more limited nature, then they may rule otherwise.

I have enclosed a copy of the Ethics Commission Advisory Opinions that I discussed.

APPENDIX B

Legal Opinion Regarding Fees

WEST VIRGINIA LEGISLATURE
Legislative Services Division

PREPARED BY	DATE	REFERENCE
CSR	6/7/00	43
CHECKED BY		
APPROVED BY		

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John Homburg
Director
RECEIVED

JUN 7 2000

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

June 6, 2000

Harvey Burke
P.E.R.D.
Building 1, Room W-134
Capitol Building
Charleston, WV 25301

Re: Board of Architects - examination fee.

Dear Mr. Burke:

This letter is in response to your questions concerning the appropriate fees to be charged by the Board of Architects for certificates of registration for applicants who have already successfully taken the architect registration examination and are therefore not required to take the examination in West Virginia.

CSR §2-1-3.15.1 states that the applicant shall pay \$100 for a filing fee "for the examination". CSR §2-1-7.5 states that the fee for the examination or a division of the examination is determined under provisions of §2-1-3.15. CSR 2-1-4.1 requires "every person seeking a certificate of registration" to submit an application accompanied by "the non-refundable filing fee established in subsection 3.15 of this rule". The rules do not authorize requirement of the \$100 fee for any purpose except an examination. Therefore, applicants not required to take the examination are not required to pay the \$100 fee established in subsection 3.5. When read together, CSR §2-1-4.1 appears to need clarification to avoid conflicting with the earlier subsections identifying the \$100 fee as being for the examination.

There is also opportunity for confusion because of the wording of §2-1-3.15.3, which identifies a \$50 fee as being for a hand seal and certificate of registration as a registered architect. Because

Joint Committee on Government and Finance

that subsection seems to include both the certificate and the seal for one fee, it could be argued that the \$250 fee charged for the reciprocal registration certificate also includes the cost of the seal. Applicants for reciprocal certificates of registration now required to pay \$250 as specified in subsection 3.15.5, and the \$50 fee in subsection 3.15.3, appear to be required to pay for both an original certificate along with the hand seal, as well as a reciprocal certificate.

The rules should be amended to clarify when the fee for examination is required and whether the Legislature intended to approve a \$250 fee for reciprocal certification which did not include payment for the hand seal. It is not unusual for a board to build in some reasonable extra charge for verifying credentials out of state, but discrimination against out-of-state businesses for reasons of economic protection are generally forbidden under the federal constitution.

In addition to the filing fee for the examination, CSR2-1-315.2 requires the applicant to pay a fee to the Board in the amount of the cost of the examination charged the Board by the National Council of Architectural Registration Boards. An accounting of the receipts and disbursements of those fees should be found in the report required to be submitted to the Legislature pursuant to W. Va. Code §30-1-12.

Sincerely,



SHARON STEORTS, Esq.
Counsel, Joint Committee on
Government and Finance

APPENDIX C

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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Antonio E. Jones, Ph.D.
Director

June 26, 2000

E. Keith Dean, Secretary
Board of Architects
916 5th Avenue, Suite 203
Huntington, West Virginia 257-20-0589

VIA FACSIMILE 528-5826

Dear Mr. Dean:

This letter is to transmit a draft copy of the regulatory board review on the Board of Architects. We would appreciate your response by July 3, 2000. We would like to meet with you Thursday, June 29 at 10:00 a.m. in your office to discuss any questions related to factual errors or if you need clarification on any part of the report.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Harvey Burke", with a long, sweeping underline.

Harvey Burke
Research Manager

Attachment

Joint Committee on Government and Finance

APPENDIX D

Agency Response



WEST VIRGINIA BOARD OF ARCHITECTS

P.O. Box 589
916 5TH AVENUE SUITE 203
HUNTINGTON, WEST VIRGINIA 25710-0589

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(304) 528-5797
FAX: (304) 528-5826

E-MAIL: lewilex@wvnm.wvnet.edu
WEB SITE: wvbrdarch.org

July 3, 2000

Harvey Burke, Research Manager
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Charleston WV 25305-0610

RECEIVED

JUL 3 2000

**RESEARCH AND PERFORMANCE
EVALUATION DIVISION**

Dear Mr. Burke:

The West Virginia State Board of Architects received a draft of your report by fax on Monday, June 26, 2000 at 5:00 p.m. You requested an exit conference for Thursday, June 29, 2000 at 10:30 a.m. with a written response by Monday, July 3, 2000. We met Thursday, June 29, 2000 at 10:30 a.m. for the exit conference. We received your revised fax copy of the report Friday, June 30, 2000 at 5:00 p.m. The revised draft stipulates in Issue Area 3 an interpretation by the performance review committee that we are in complete disagreement.

It is essential and only fair that prior to preparing our written response to the revised report and meeting with the Government Operations Committee on Sunday, July 9, 2000 or Monday, July 10, 2000 that the total board meet to prepare a written response. The necessary open meeting law requirement of 5 days does not allow for sufficient time for the board to meet and prepare the necessary response prior to the meetings of July 9, or July 10, 2000.

The West Virginia State Board of Architects request that our written report and presentation before the Government Operations Committee be postponed until the August meeting. The postponement is essential in order for the board to prepare an appropriate response to such an important performance evaluation.

Sincerely,

WEST VIRGINIA STATE BOARD OF ARCHITECTS

E. Keith Dean
E. Keith Dean
Secretary/Member

William E. Yoke, Jr., President
Clarksburg

Gregory A. Williamson, Member
Charleston

Gary Markham, Lay Member
Charleston

E. Ted Boggess, Member
Princeton

E. Keith Dean, Secretary
Huntington

C. William Bevins, Member
Charleston

Jan Fox, Lay Member
Charleston

Lexa C. Lewis
Board Administrator

APPENDIX E

Agency Response #2



WEST VIRGINIA BOARD OF ARCHITECTS

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WEB SITE: wvboardarch.org

July 5, 2000

Harvey Burke, Research Manager
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

RECEIVED

JUL 5 2000

**RESEARCH AND PERFORMANCE
EVALUATION DIVISION**

Dear Mr. Burke:

Please be advised that our request for a postponement from the July 9th and 10th meetings to the August meeting of the Government Operations Committee has not been granted. Our request for postponement was to create sufficient time for the preparation of the written response of your revised draft report of the Board of Architects. A draft of the revised report copy was faxed and received at the Board Office on Friday, June 30, 2000 at 5:00 p.m. You indicated that Aaron Allred was the only one that could grant the postponement and we should contact Aaron Allred. Gary Markham, an attorney and lay member of the Board of Architects, telephoned Mr. Allred on Monday, July 3rd and was told Mr. Allred was on vacation and they did not know when he would return; consequently, postponement to the August meeting of the Government Operations Committee does not seem to be possible.

The Board does plan to attend with our legal counsel the meeting of the Government Operations Committee on Sunday, July 9, 2000. Due to the extremely unreasonable short notice given to the Board our legal counsel is not available to meet on Monday, July 10, 2000. Therefore, the Board must be put on the agenda for Sunday, July 9, 2000 meeting or the August, 2000 meeting of the Government Operations Committee.

The Board of Architects is being prevented from presenting and submitting a thorough written response to the Government Operations Committee due to the unreasonable time restraints imposed on the Board by the Performance Evaluation and Research Division and the Legislative Auditor. Recommendation #7 is based upon legislative services' legal opinion. The Board strongly disagrees with this opinion and hereby request that prior to the Government Operations Committee accepting recommendation #7 that the Board of Architects be granted the right to submit a written legal opinion expressing the rationale for our disagreement. Recommendation #7 states the following:

"The Legislature should consider directing whether the Board of Architects should take Action to refund the amount of overcharges."

William E. Yoke, Jr., President
Clarksburg

Gregory A. Williamson, Member
Charleston

Gary Markham, Lay Member
Charleston

E. Ted Boggess, Member
Princeton

E. Keith Dean, Secretary
Huntington

C. William Bevins, Member
Charleston

Jan Fox, Lay Member
Charleston

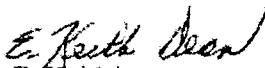
Lexa C. Lewis
Board Administrator

It is the absolute position of the Board of Architects that overcharges have not been imposed or collected and therefore, it is not necessary to make refunds.

If the Government Operations Committee considers implementing Recommendation #7, the Board requests that we be given sufficient time and opportunity to respond to the legal opinion of the Legislative Services, Attorney,

Sincerely,

WEST VIRGINIA STATE BOARD OF ARCHITECTS


E. Keith Dean
Secretary/Member

cc: Board Members