

FEBRUARY 16, 1953.

MAJOR WILLIAM O, NICOL, *Secretary and Executive Officer,*
Bureau of Tenement House Supervision,
1060 Broad Street,
Newark, New Jersey.

FORMAL OPINION—1953. No. 6.

DEAR MAJOR NICOL:

This will acknowledge receipt of your communication of January 30, 1953, and supplement of February 11, 1953, wherein you request an opinion concerning R. S. 45:3-10 as amended by Chapter 249 of the Laws of 1950. The question presented in your communication is:

Shall the Tenement House Bureau accept plans from one, other than a licensed architect or a licensed professional engineer, if such person files an affidavit setting forth only that he is the designer of the plans?

Your further question is:

Whether your present procedure—accepting an affidavit from a person who certifies that he drew the plans—should be changed.

My answer is that the procedure presently adopted and being followed by you should be changed.

A study of the 1950 amendment reveals that no radical change was made to the existing law. It does, however, show an enlargement of the principles theretofore existing. The 1950 amendment is set forth with italics, which italics shows the words which were added to the existing law.

"45:3-10. Any person who shall pursue the practice of architecture in this State, or shall engage in this State in the business of preparing plans, specifications and preliminary data for the erection or alteration of any building, except buildings designed by licensed professional engineers incidental or supplemental to engineering projects, or use the title architect or registered architect, or shall advertise or use any title, sign, card or device to indicate that such person is an architect, without a certificate thereof *or while his certificate is suspended*, in accordance with the provisions of this chapter, or any person aiding or assisting such person not having a certificate to practice architecture *or while his certificate to practice architecture is suspended*, shall be liable to a penalty of not less than fifty dollars (\$50.00), nor more than two hundred dollars (\$200.00) for the first offense, and a penalty of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) for a second or each subsequent offense, which penalty shall be sued for, and recovered by and in the name of the board. *The payment to the board of an amount at least equal to the minimum penalty prescribed in this act, prior or subsequent to the commencement of proceedings for the recovery of a penalty shall be deemed and construed to be a conviction, and any subsequent violation shall be considered an additional offense.*

Any single act or transaction shall constitute engaging in business or the practice of architecture within the meaning of this chapter.

Nothing herein contained shall prohibit students or employees of licensed architects from acting upon the authority of such licensed architects, *whose certificates have not been suspended*, where said students or employees are under the immediate supervision of such licensed architect, or to prohibit any person in this State from acting as designer of any building that is to be constructed by himself for his own *occupancy* or *occupancy by a member or members of his immediate family*, but no licensed architect shall permit his name to be used in connection with the name of any other person not licensed to practice architecture in this State in any advertisement, sign, card or device in such a manner as to indicate that such other person is a licensed architect."

The changes may be summarized as follows:

1. Prohibition of the pursuit of the practice of architecture while certificate is suspended.
2. Prohibition of person aiding or assisting a person in the practice of architecture while certificate is suspended.
3. Payment of minimum fine, whether before or after commencement of proceedings, shall be construed as a conviction.
4. Allows any person to act as designer of any building that is to be constructed for himself for his own occupancy or occupancy by a member or members of his immediate family.

We are concerned principally with this last category, and it seems to me that the Legislature specifically granted an exemption to persons acting in their own behalf as it did in permitting an individual, non-licensed to practice law, the right to plead his own case or defend himself in a pending action.

R. S. 45:3-10 presents limitations to the pursuit of the practice of architecture. This section specifically permits one non-licensed, to design a building to be constructed for his own occupancy, etc.

In this connection, it is significant to refer to N. J. S. A. 52:32-3 (L. 1948, Ch. 293) and N. J. S. A. 40:55-52 (L. 1948, Ch. 294) which sections are to be read together with R. S. 45:3-10. These sections above referred to pertain to the *filing* of plans in a State department or a municipality. These laws set forth a prohibition against filing plans and specifications for buildings, in a department in the State or the municipality unless same have the seal of a licensed professional engineer or a licensed architect of the State, or in lieu thereof, an affidavit sworn to by the person who drew or prepared the same. These two laws included "licensed professional engineer" in the category of licensed architects. As previously stated, R. S. 45:3-10 is the section of the law pertaining to the practice of architecture, whereas the 1948 laws hereinabove mentioned made reference to the filing of plans.

The procedure presently adopted by you does not strictly follow the provisions of the 1950 statute hereinbefore referred to.

It is, therefore, recommended that the Tenement House Bureau accept the affidavit of the designer of a building *only* if the affidavit states that the building is to be constructed by himself for his own occupancy or occupancy by a member or members of his immediate family.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: OSIE M. SILBER,
Deputy Attorney General.