

DISPLAY THIS CARD ON PRINCIPAL FRONTAGE OF WORK CITY OF PORTLAND

Please Read
Application And
Notes, If Any,
Attached

BUILDING INSPECTION PERMIT

Permit Number: 041345

**PERMIT
DENIED**

This is to certify that Pickus Owen B
has permission to change of use: office space to nail salon
AT 978 Forest Ave CRI 143 A065001

provided that the person or persons, firm or corporation accepting this permit shall comply with all of the provisions of the Statutes of Maine and of the Ordinances of the City of Portland regulating the construction, maintenance and use of buildings and structures, and of the application on file in this department.

Apply to Public Works for street line and grade if nature of work requires such information.

Notification of inspection must be given and written permission procured before this building or part thereof is lathed or otherwise closed-in. 24 HOUR NOTICE IS REQUIRED.

A certificate of occupancy must be procured by owner before this building or part thereof is occupied.

OTHER REQUIRED APPROVALS

Fire Dept. _____
Health Dept. _____
Appeal Board _____
Other _____

Department Name

Director - Building & Inspection Services

PENALTY FOR REMOVING THIS CARD

City of Portland, Maine - Building or Use Permit Application

389 Congress Street, 04101 Tel: (207) 874-8703, Fax: (207) 874-8716

Permit No: 04-1345	Issue Date:	CBL: 143 A065001
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PERMIT DENIED

Location of Construction: 978 Forest Ave	Owner Name: Pickus Owen B	Owner Address: 2 Chabot St	Phone: 939-5602
Business Name:	Contractor Name:	Contractor Address:	Phone:
Lessee/Buyer's Name	Phone:	Permit Type: Change of Use - Commercial	Zone: BP

Past Use: Commercial office space	Proposed Use: change of use to nail salon	Permit Fee: \$105.00	Cost of Work: \$0.00	CEO District: 4
		FIRE DEPT: <input type="checkbox"/> Approved <input type="checkbox"/> Denied	INSPECTION: Use Group. Type.	

Proposed Project Description: change of use: office space to nail salon	Signature:	Signature:
PEDESTRIAN ACTIVITIES DISTRICT (P.A.D.)		
Action: <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/Conditions <input type="checkbox"/> Denied		
Signature:	Date:	

Permit Taken By: dmm	Date Applied For: 09/08/2004	Zoning Approval		
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- This permit application does not preclude the Applicant(s) from meeting applicable State and Federal Rules.
- Building permits do not include plumbing, septic or electrical work.
- Building permits are void if work is not started within six (6) months of the date of issuance. False information may invalidate a building permit and stop all work..

Special Zone or Reviews	Zoning Appeal	Historic Preservation
<input type="checkbox"/> Shoreland	<input type="checkbox"/> Variance	<input checked="" type="checkbox"/> Not in District or Landmark
<input type="checkbox"/> Wetland	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Does Not Require Review
<input type="checkbox"/> Flood Zone	<input type="checkbox"/> Conditional Use	<input type="checkbox"/> Requires Review
<input type="checkbox"/> Subdivision	<input type="checkbox"/> Interpretation	<input type="checkbox"/> Approved
<input type="checkbox"/> Site Plan	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Conditions
Maj <input type="checkbox"/> Minor <input type="checkbox"/> MM <input type="checkbox"/>	<input type="checkbox"/> Denied	<input type="checkbox"/> Denied
Date:	Date:	Date:

No floor plans
Attached on
Site plan
Denied

CERTIFICATION

I am the owner of the above named property, or that the proposed work is authorized by the owner of record and that I am acting as his authorized agent and I agree to conform to all applicable laws of this city. If this permit application is issued, I certify that the code official's authorized representative will be available at any reasonable hour to enforce the provision of the code(s) applicable to

SIGNATURE OF APPLICANT _____ ADDRESS _____ DATE _____ PHONE _____

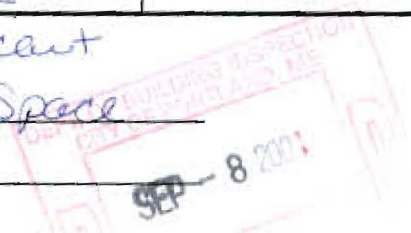
RESPONSIBLE PERSON IN CHARGE OF WORK, TITLE _____ DATE _____ PHONE _____

04/15/11

All Purpose Building Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Location/Address of Construction: <u>980 Forest Ave</u>		
Total Square Footage of Proposed Structure	Square Footage of Lot	
Tax Assessor's Chart, Block & Lot Chart# Block# Lot# <u>143</u> <u>A</u> <u>65</u>	Owner: <u>Owen Pickus</u>	Telephone:
Lessee/Buyer's Name (If Applicable)	Applicant name, address & telephone: <u>Kim Anh Nguyen</u> <u>24 JOSSLYN ST</u> <u>Portland, ME 04102</u> <u>(207) 939-5602</u>	Cost Of Work: \$ Fee: \$ <u>Change use \$30.00</u> <u>280 = \$75.00</u> <u>105</u>
Current use: <u>Rest use office space now vacant</u> If the location is currently vacant, what was prior use: <u>office space</u> Approximately how long has it been vacant: _____ Proposed use: <u>Nail Salon unit # 107</u> Project description: <u>Permit # 04/151</u>		
Contractor's name, address & telephone: <u>Applicant</u> Who should we contact when the permit is ready: <u>Kim Anh Nguyen (207) 939-5602</u> Mailing address: <u>24 JOSSLYN ST</u> <u>Portland, ME 04102</u> We will contact you by phone when the permit is ready. You must come in and pick up the permit and review the requirements before starting any work, with a Plan Reviewer. A stop work order will be issued and a \$100.00 fee if any work starts before the permit is picked up. PHONE:		



IF THE REQUIRED INFORMATION IS NOT INCLUDED IN THE SUBMISSIONS THE PERMIT WILL BE AUTOMATICALLY DENIED AT THE DISCRETION OF THE BUILDING/PLANNING DEPARTMENT, WE MAY REQUIRE ADDITIONAL INFORMATION IN ORDER TO APPROVE THIS PERMIT.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of applicant: <u>Kim Nguyen</u>	Date: <u>9/8/11</u>
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This is NOT a permit, you may not commence ANY work until the permit is issued. If you are in a Historic District you may be subject to additional permitting and fees with the Planning Department on the 4th floor of City Hall



State of Maine
 Department of Public Safety
 Construction Permit



Reviewed
 for Barrier
 Free

14092

Not Sprinkled

MAINE CENTERS FOR HEALTHCARE

Located at: 980 FORREST AVE.

PORTLAND

Occupancy/Use: BUSINESS

143A65

Permission is hereby given to:

DR. OWEN PICKUS

2 CHABOT STREET
 WESTBROOK, ME 04092

to construct or alter the afore referenced building according to the plans hitherto filed with the Commissioner and now approved.

No departure from application form/plans shall be made without prior approval in writing. This permit is issued under the provision of Title 25, Chapter 317, Section 2448 and the provisions of Title 5, Section 4594 - F.

Nothing herein shall excuse the holder of this permit for failure to comply with local ordinances, zoning laws, or other pertinent legal restrictions. Each permit issued shall be displayed/available at the site of construction.

This permit will expire at midnight on the 16th of Decemb 2004

Dated the 17th day of June A.D. 2004

Michael P. Cantara

Commissioner

Copy-3 Code Enforcement Officer

Comments:

Code Enforcement Officer
 PORTLAND, ME

Zoning Division
Marge Schmuckal
Zoning Administrator

Department of Planning & Development
Lee Urban, Director



CITY OF PORTLAND

September 14, 2004

Kim Anh Nguyen
24 Josslyn Street
Portland, ME 04102

RE: 980 Forest Avenue – unit #107 – 143-A-065 – R-P Residential-Professional Zone –
application # 04-1345

Dear Kim,

I am in receipt of your permit application to change the use from office space to a personal service use of a nail salon. Personal services are expressly prohibited in the R-P Zone in which this property is located (section 14-147(b)1). Therefore, your permit application is denied because it does not meet the permitted uses of the R-P Zone. It was also noted that you submitted no floor plans or site plan showing parking as required with such an application.

You have the right to appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal. Please note that a use variance request is the most difficult appeal to have granted by the Zoning Board of Appeals.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Marge Schmuckal', is written over a horizontal line.

Marge Schmuckal
Zoning Administrator

Cc: file



The Sheridan Corporation

PO Box 359, Fairfield, ME 04937
Phone (207) 453-9311, Fax (207) 453-2820
 PO Box 689, Westbrook, ME 04098
Phone (207) 774-6138, Fax (207) 774-2885
www.sheridancorp.com

LETTER OF TRANSMITTAL

DATE	6-17-04	JOB NO.	031053
ATTENTION	Mr. Michael Nugent		
RE	Maine Center for Health Care Building Permit		
	Building Permit Electrical Plan Submission Maine Centers for Health Care 980 Forest Avenue Portland, Maine		

TO Codes Office
Portland City Hall
389 Congress St., Rm. 315, Portland, Maine 04101

GENTLEMEN: for

- WE ARE SENDING YOU Attached Under separate cover via _____ the following items:
- Shop drawings Prints Plans Samples Specifications
- Electrical Plans** Change order _____

143A65

COPIES	DATE	NO	DESCRIPTION
2	6-15-04-	E1	Stamped Electrical Plan
2	6-15-04	E2	Stamped Electrical Plan
2	6-15-04	E3	Stamped Electrical Plan
			Plans received on 6-15-04 at The Sheridan Corp.

THESE ARE TRANSMITTED as checked below:

- For approval Approved as submitted Resubmit _____ copies for approval
- For your use Approved as noted Submit _____ copies for distribution
- As requested** Returned for corrections Return _____ corrected prints
- _____
- FOR BIDS DUE _____ 20 _____ PRINTS RETURNED AFTER LOAN TO US

REMARKS:

Please review my response to your comments made to me yesterday contained in the enclosed letter dated 4-13-04.

Enclosed - please find the stamped electrical plans for the Maine Center for Health Care project at 980 Forest Avenue as previously agreed.



COPY TO: Ms. Connie Nadeau, Gary Owen, P. M for TSC

SIGNED: Alanna C. Stone

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF PROGRAM SUPPORT
HEALTH FACILITIES ADMINISTRATION
129 Pleasant Street, Concord, New Hampshire 03301-3857
TDD Access: Relay NH 1-800-735-2964
Agency Phone Number: 603-271-3021

The facility listed below is requesting to be licensed by the Department of Health and Human Services. Please complete and sign each section. If local approval is not required, please indicate this on the form.

FACILITY NAME: In Home Senior Services
STREET ADDRESS: 980 Forest Ave Suite 101 CBC 143 A 065
OWNER'S NAME: Owen Picus
ADMINISTRATORS NAME: Anita Francoeur
FACILITY TELEPHONE NUMBER: 207 797 0202
PROPOSED TYPE OF FACILITY: In Home Senior Care Facility

HEALTH OFFICER

I HEREBY CERTIFY THAT _____
COMPLIES WITH ALL APPLICABLE HEALTH, SEWAGE AND WATER REGULATIONS FOR THE
CITY/TOWN OF _____

I HEREBY CERTIFY THAT _____
DOES NOT REQUIRE HEALTH, SEWAGE AND WATER APPROVAL OF THIS FACILITY

NUMBER OF BEDS: _____ NUMBER OF ESRD STATIONS: _____ N/A: _____

DATE: _____ SIGNATURE: _____
(NAME AND TITLE OF HEALTH OFFICIAL)

PRINT: _____
(NAME AND TITLE OF HEALTH OFFICIAL)

BUILDING REGULATIONS

I HEREBY CERTIFY THAT _____
COMPLIES WITH ALL APPLICABLE BUILDING REGULATIONS FOR THE CITY/TOWN OF _____

I HEREBY CERTIFY THAT _____
DOES NOT HAVE LOCAL BUILDING CODES OR REGULATIONS.

NUMBER OF BEDS: _____ NUMBER OF ESRD STATIONS: _____ N/A: _____

DATE: _____ SIGNATURE: _____
(NAME AND TITLE OF BUILDING OFFICIAL)

PRINT: _____
(NAME AND TITLE OF BUILDING OFFICIAL)

ZONING REGULATIONS

I HEREBY CERTIFY THAT _____
COMPLIES WITH ALL APPLICABLE ZONING REGULATIONS FOR THE CITY/TOWN OF _____

I HEREBY CERTIFY THAT _____
DOES NOT HAVE LOCAL ZONING REGULATIONS.

NUMBER OF BEDS: _____ NUMBER OF ESRD STATIONS: _____ N/A: _____

DATE: _____ SIGNATURE: _____
(NAME AND TITLE OF ZONING OFFICIAL)

PRINT: _____
(NAME AND TITLE OF ZONING OFFICIAL)

FIRE REGULATIONS

THIS CITY/TOWN USES THE FOLLOWING FIRE CODES: (EXAMPLE NFPA 101 (2000 EDITION)
CHAPTER _____.)

NFPA # 1
and NFPA 101

I HEREBY CERTIFY THAT _____
COMPLIES WITH ALL APPLICABLE FIRE REGULATIONS FOR THIS CITY/TOWN.

I HEREBY CERTIFY THAT THE CITY/TOWN OF _____
DOES NOT HAVE LOCAL FIRE REGULATIONS.

NUMBER OF BEDS: _____ NUMBER OF ESRD STATIONS: _____ N/A: _____

DATE: 3/16/06 SIGNATURE: Jay Kelley
(FIRE CHIEF OR DESIGNEE)

PRINT: Jay Kelley
(FIRE CHIEF OR DESIGNEE)

COMMENTS:

*This office Space meets, all City of Portland Codes, and There are
no violations @ This Time.*

Lambert Coffin

attorneys at law

June 23, 2004

John F. Lambert, Jr.
jlambert@lambertcoffin.com

VIA FACSIMILE & FIRST CLASS MAIL

Warren T. Foster, P.E., Secretary
Board of Registration for Professional Engineers
92 State House Station
Augusta, ME 04333-0092

Re: *Dana C. Sturtevant, P.E.*
The Sheridan Corporation
Complaint No.: E04 001

143 A 65

Dear Mr. Foster:

Please consider this letter as the response of the licensee, Dana C. Sturtevant, P.E., to your notice of complaint, dated May 28, 2004, and received on June 1, 2004. Pending before you is a complaint against Mr. Sturtevant's registration filed by Anthony F. DiGregorio, dated May 18, 2004, alleging that Mr. Sturtevant has provided services that constituted the practice of architecture rather than the practice of engineering on a project for Maine Centers for Healthcare. For the reasons stated herein and as supported by the evidence, Mr. Sturtevant respectfully requests that you dismiss Mr. DiGregorio's complaint because Mr. Sturtevant's work for Maine Centers for Healthcare easily constitutes the practice of engineering and any architectural work was strictly incidental to that engineering work.

Mr. DiGregorio's complaint requires a review of Maine's statutory scheme for licensing architects and engineers. The statutory scheme for architects defines the practice of architecture as follows:

As used in this chapter, the practice of architecture consists of rendering or offering to render service to clients by consultations, investigations, technical submissions and a coordination of structural factors *concerning the aesthetic or structural design and administration of construction contracts or any other service in connection with the designing or administration of construction contracts for buildings located inside the State that have as their principal purpose human occupancy or habitation*, regardless of whether the persons are performing one or all of these duties, or whether they are performed in person or as the directing head of an office or organization performing them.

32 M.R.S.A. § 220(1)(A) (1999) (emphasis added). The statutory scheme, however, includes the following exception:

1. **Practices excepted.** Nothing in this chapter may be construed to affect or prevent the practice of:

477 Congress Street, Post Office Box 15215, Portland, Maine 04112-5215

....

E. *Any person who is qualified under section 1251 to use the title "professional engineer" from performing any professional engineering service as authorized in section 1251. Such service includes, but is not limited to consultation, investigation, evaluation, planning, design and responsible supervision and administration of construction contracts in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, and technical submissions, provided the person does only architectural or landscape architectural work that is incidental to the person's engineering work*

32 M.R.S.A. § 226(1) (1999) (emphasis added). The licensing statute for engineers, in turn, provides in its entirety the following:

Practice of professional engineering. The term "practice of professional engineering" shall be held to mean any professional service, such as consultation, investigation, evaluation, *planning, design* or responsible supervision of construction *in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, wherein the public welfare or the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of engineering principles and data.*

32 M.R.S.A. § 1251(3) (1999) (emphasis added).

By the plain language of this statutory scheme, the Legislature has acknowledged that there are substantial areas in the practice of these professions that overlap in regard to the design, construction and renovation of buildings. Indeed, as summarized by the District Court of Appeal of Florida, "The overlapping nature of the two professions is well recognized. *Verich v. Fl. Bd. of Architecture*, 239 So.2d 29, 31 (Fla. Dist. Ct. App. 1970); *see also, e.g., L.S. Tellier, Annotation, What Amounts to Architectural or Engineering Services within License Requirements*, 82 A.L.R.2d 1013 § 4 (1962-2004) ("The services performed by an architect and by an engineer frequently overlap. . . . The conclusions generally reached is that where, in the case of an engineer, the services in the field of architecture are incidental to the project as a whole, and the latter is an engineering project, no violation of the statutes licensing architects occurs, or vice versa."); 5 Am. Jur. 2d, *Architects*, § 3 (2004) ("Licensing statutes for engineers and architects recognize that there may be some services which may be performed by both an engineer and an architect. . . . In general, where either a licensed architect or a licensed engineer perform services which could properly be regarded as within the reach of both the statutes governing the licensing of the two professions, the architect or engineer is considered to perform under the statute under which he or she was licensed and is not affected by the fact that the services came incidentally within the purview of the other licensing statute.").

Although courts in Maine have not ruled on this issue, the majority of courts in other jurisdictions have interpreted statutory schemes similar to the one in Maine in a way that enables engineers to practice their profession. One of the most recent examples is *Rosen v. Bureau of Professional and Occupational Affairs, State Board of Architects Licensure*, 763 A.2d 962 (Pa. Commw. Ct. 2000). In *Rosen*, a licensed engineer and employee of a drafting company designed renovations to an

existing building, which called for the conversion of some floors into law offices and the fourth floor in an apartment. 736 A.2d at 963-64. A licensed architect who had been underbid for the job filed a complaint with the Architecture Licensure Board, accusing the engineer and drafting company employee of practicing architecture without a license. *Id.* at 964. The board concluded that they had indeed engaged in the unauthorized practice of architecture. *Id.*

On appeal, however, the Commonwealth Court of Pennsylvania reversed the board's decision. *Id.* at 970. Instead, the court held that the actions of the engineer and drafting company employee constituted the practice of engineering and, hence, fell within an exception to the architecture licensing statute for engineers engaging in architectural work incidental to their engineering work. *Id.* at 969-70. The court reasoned as follows:

We believe . . . that the definition under the Engineers' Law is broader than that contained in the Architects' Law. Clearly, the phrase "human habitation or use" limits the range of projects that architects can undertake; but the language in the Engineers' Law does not likewise limit engineers in the same manner.

Id. at 969. Thus, ruled the court,

The practice of engineering, as defined in the statute, permits engineers to design buildings, and engage in construction planning and management. The fact that the practice of architecture encompasses the same activities does not diminish the sphere of the practice of engineering.

Id. Further, the court seemed to rule that statutory scheme precluded inquiry into the extent to which overlapping architectural work was "incidental" to the engineering work:

If the planning and design of a building and the furnishing of supervision of its construction are functions which are encompassed solely within the practice of architecture, then professional engineers are prohibited from engaging in such functions unless incidental to their engineering practice. But paradoxically, the practice of professional engineering expressly includes the planning and design of buildings and the supervision of their construction. Thus, the apparent conflict can only be resolved by concluding that the statutes mean a registered architect can plan and design and supervise construction of a building as the practice of architecture and a registered professional engineer can plan and design and supervise construction of a building as a professional engineer. . . .

Id. (quoting *Verich*, 239 So.2d at 31).

Like the statutory scheme in *Rosen*, Maine law limits architectural services to those concerning buildings "that have as their principal purpose human occupancy or habitation," 32 M.R.S.A. § 220(1)(A), but places no such limit on engineering services, which broadly encompass buildings "wherein the public welfare or the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of engineering principles and data," 32 M.R.S.A. § 1251(3). Also like the statutory scheme in *Rosen*, Maine law includes an

exception to the architecture licensing statute for engineers engaging in architectural work incidental to their engineering work. 32 M.R.S.A. § 226(1)(E).

In the present case, The Sheridan Corporation was engaged to design and construct a new tenant space ("the project") in an existing building at 980 Forest Avenue, Portland, Maine, used to house professional office facilities, and owned by Dr. Pickus c/o Maine Centers for Health Care ("the client"). The project included all work necessary to meet the State Fire Marshall's inspection requirements. Although the primary space requirements were located on the building's second floor, Mr. Sturtevant, a licensed engineer employed by The Sheridan Corporation, initially inspected the entire building to determine whether the new tenant's use (physical therapy) and the presence of a future business tenant, would be compatible with the building's structure. Mr. Sturtevant took measurements of the equipment to be used for purposes of determining floor loads, and he analyzed space requirements and traffic flow.

Mr. Sturtevant performed myriad engineering services pursuant to assembling plans of the existing structure, designing structural changes, seeking approvals, and overseeing the construction of the project. Mr. Sturtevant surveyed the existing building, taking measurements, inspecting the structural condition and floor loads (both existing and expected). He also reviewed the Fire Marshall's report, dated September 12, 2002, noting issues that would need to be addressed, analyzing the implications of these issues with regard to the project, and presenting his findings to the client. These issues included the relocation of a boiler, a modification of a floor truss system to provide proper headroom, a new design to address the handicap access in the lobby, and headroom restrictions in the lower stairway. He and Sheridan contracted with licensed mechanical and electrical engineers to complete the work needed in those specialties and then incorporated their work into Sheridan's product.

Additionally, Mr. Sturtevant oversaw the CAD work involved in drawing the existing building's dimensions and room layout as a basis for planning the new floor plan. He met with the City of Portland's Fire Inspector and Chief Enforcement Officer to review his findings and get their opinions before proceeding with his design and recommendations to the client. Only then did Mr. Sturtevant present his plan to the client, leaving the actual room layout and traffic flow to the client.

Once the client returned the revised plan, Mr. Sturtevant oversaw the CAD work involved in drawing the revised plan. He then returned the revised plan to the client for a final review. As before, all space planning was done by the client.

Next, Mr. Sturtevant submitted the plan, providing further detail as needed, to the City of Portland's Building Inspector, Michael Nugent, for review. Mr. Sturtevant provided Mr. Nugent with further detail as needed. Mr. Sturtevant also met with the State Fire Marshall, who reviewed and orally approved the revised plan (written approval to follow). At that point, Mr. Sturtevant finalized the plan and resubmitted a building permit application to the City. A building permit was granted approximately two weeks later. Mr. Sturtevant then completed final design of the floor truss system to allow for proper headroom clearance in the lobby.

A licensed electrician determined that an existing wood picket fence would have to be relocated in order to provide adequate horizontal clearance for new exterior electrical panels. As a

result, Mr. Sturtevant commissioned a licensed surveyor to conduct a property survey to determine whether the fence could be relocated. Mr. Sturtevant participated in the survey, and it was determined that the fence could be relocated within the property line to accommodate the electrician's needs.

Once construction began, Mr. Sturtevant reviewed some of the building's elements that became exposed and addressed structural issues as they presented themselves. For example, Mr. Sturtevant reinforced the third floor while providing headroom by using steel channels in lieu of the splice plate system that had been previously submitted.

Furthermore, the second story windows facing Forest Avenue were found to have been leaking, which weakened the wood support posts. In response, Mr. Sturtevant designed a steel channel to more evenly distribute the load over the cantilevered floor joists, and he supervised the installation of new wood headers and jack posts. Because a roof truss bottom chord had been cut by a prior owner, Mr. Sturtevant designed a splice plate to carry the load across the chord.

The client had decided to add a drip edge "eyebrow" canopy to reduce the run-off from the roof against the existing siding, and the electrical subcontractor called for an enclosure to protect his electrical panels and provide security. Therefore, Mr. Sturtevant designed this structure and submitted it to the City for approval. Work on the project continues, and Mr. Sturtevant will inspect this work on a weekly basis until the project is completed.

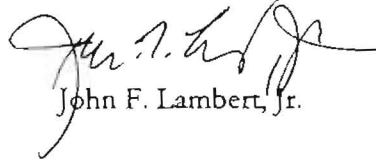
Like the licensed engineer and drafting company employee in *Rosen*, Mr. Sturtevant provided services which involved the renovation of an existing building used to house professional office facilities. As was the case in *Rosen*, the project obviously involved the public welfare as well as knowledge of engineering principles and data insofar as it involved fire resistance standards, building codes, and the modification of load-bearing structural elements. Mr. Sturtevant's role in the project has far surpassed the mere drawing of a set of space use plans, or creating an aesthetic design, both of which in any event were primarily determined by the client. On the contrary, Mr. Sturtevant's professional services have required the application of considerable structural engineering and general engineering experience, principles and data. Such engineering services are inherent in a design/build project such as Maine Centers for Health Care, which involves an existing building that was not in compliance with current codes and which invariably presents unexpected engineering issues as construction progresses. To the extent that Mr. Sturtevant engaged in any architectural services, such services were strictly incidental to his engineering services insofar as all services rendered were necessitated by engineering challenges inherent in the project.

Because Maine's statutory scheme expressly authorizes licensed engineers to apply engineering principles and data in consulting, investigating, evaluating, planning, designing, and

Warren T. Foster
June 23, 2004
Page 6

supervising the construction of buildings as well as engaging in architectural work incidental thereto, Mr. Sturtevant has not violated any licensing statutes. Consequently, the complaint against him should be dismissed.

Very truly yours,



John F. Lambert, Jr.

cc: Anthony F. DiGregorio
Stephen W. Cole, P.E., Complaint Officer
Judith Peters, Assistant Attorney General
Michael Nugent

Westlaw

239 So.2d 29
(Cite as: 239 So.2d 29)

Page 1

C

District Court of Appeal of Florida, Fourth District.

Alex VERICH, Edward J. DeBartolo d/b/a Edward
J. DeBartolo & Associates and
Edward J. DeBartolo Corp., Appellants,

v.

The FLORIDA STATE BOARD OF
ARCHITECTURE, an agency of the State of
Florida,
Appellee.

No. 69-40.

July 29, 1970.

Rehearing Denied Sept. 18, 1970.

Board of architecture filed complaint against registered professional engineer seeking to enjoin him from practicing architecture. From the judgment of the Circuit Court for Palm Beach County, R. O. Morrow, J., the engineer appealed. The District Court of Appeal, Owen, J., held that under statutes a registered architect can plan and design and supervise construction of a building as the practice of architecture and a registered professional engineer can plan and design and supervise construction of a building as a professional engineer.

Reversed and remanded.

Walden, J., dissented.

West Headnotes

[1] Licenses ⇨ 39.40(1)
238k39.40(1) Most Cited Cases
(Formerly 238k39.40)

The planning or design for the erection of buildings for others is the practice of "architecture." F.S.A. § 467.09(1) (a).

[2] Licenses ⇨ 39.40(1)

238k39.40(1) Most Cited Cases
(Formerly 238k39.40)

Under statute, the preparation of plans and design for and responsible supervision of the construction of buildings is the practice of "professional engineering." F.S.A. § 471.02(5).

[3] Licenses ⇨ 39.40(1)
238k39.40(1) Most Cited Cases
(Formerly 238k39.40)

Under statutes, a registered architect can plan and design and supervise construction of a building as the practice of architecture and a registered professional engineer can plan and design and supervise construction of a building as a professional engineer. F.S.A. §§ 467.09(1) (a), 471.01 et seq., 471.02(5).

[4] Licenses ⇨ 39.40(1)
238k39.40(1) Most Cited Cases
(Formerly 238k39.40)

Professional engineers are not limited to the design of buildings of an industrial nature rather than buildings intended primarily for habitation or occupancy by humans in absence of such qualifications or restrictions being explicitly contained in statute. F.S.A. §§ 467.09(1) (a), 471.01 et seq., 471.02(5).

*30 Madison F. Pacetti, of Caldwell, Pacetti, Barrow & Salisbury, Palm Beach, for appellants.

Selig I. Goldin, of Goldin & Jones, Gainesville, and Marks, Gray, Yates, Conroy & Gibbs, Jacksonville, for appellee.

OWEN, Judge.

On complaint filed by the Florida State Board of Architecture appellant Alex Verich, a registered professional engineer, was found to be practicing architecture and enjoined from further practice thereof. We reverse that judgment in what we

239 So.2d 29
(Cite as: 239 So.2d 29)

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believe to be a case of first impression in this jurisdiction.

Mr. Verich was registered as a professional engineer in the State of Florida as provided under Chapter 471, F.S. He prepared or had prepared under his supervision, plans for a shopping center in West Palm Beach, Florida known as the Palm Beach Mall. These plans involved both architecture and engineering. At no time did Mr. Verich hold himself out to be an architect in any manner whatsoever nor did he enter into any contracts to perform architectural services, as he prepared the plans for the Edward J. DeBartolo Corporation for whom he was a fulltime engineer employee. The Palm Beach Mall is owned by Palm Beach Mall, Inc., a corporation wholly owned by the Edward J. DeBartolo Corporation.

Not unexpectedly, the plaintiff called as witnesses three architects all of whom testified that in their opinion the drawings, plans and specifications for the Palm Beach Mall constituted the work product of the practice of an architect. The defendant called as witnesses several registered professional engineers who expressed the opinion that the preparation of the plans for the Palm Beach Mall constituted the practice of engineering. The engineers testified that in their opinion the engineering services in preparing the necessary drawings and plans constituted approximately 75% Of the work and that architecture was approximately 25% Of the work. Both the engineers and architects agreed that the Palm Beach Mall was a building and that the plans for the same required the use or knowledge of mathematics and the principles of engineering. While we mention the foregoing conflicts in the testimony, our decision does not turn on a factual basis.

That there is an overlapping between the two professions appears to be readily recognized *31 by the language of F.S. Section 467.09(1)(a), F.S.A. which provides in substance that registered professional engineers are not prohibited from performing architectural services which are purely incidental to their engineering practice, and that registered architects are not prohibited from performing engineering services which are purely incidental to their architectural practice. The overlapping nature of the two professions is well recognized. See 82 A.L.R.2d 1026; 5 Am.Jur.2d,

Architects, s 3; 6 C.J.S. Architects s 1.

F.S. Section 467.09(1)(a), F.S.A. defines the practice of architecture in a somewhat negative manner. After first providing for certain exemptions, the statute then defines the practice of architecture in the following terms:

'Otherwise, any person who shall be engaged in the planning or design for the erection, enlargement or alteration of buildings for others of furnishing architectural supervision of the construction thereof shall be deemed to be practicing architecture and be required to secure a certificate and all annual renewals thereof required by the laws of this state as a condition precedent to his so doing.'

[1] Stated in rather broad and general terms, the planning or design for the erection of buildings for others is the practice of architecture. The same statute expressly provides that no professional engineer shall practice architecture or use the designation 'architect' or any term derived therefrom, but at the same time also expressly provides that nothing in the state law shall be held to prevent a registered professional engineer (or their employees or subordinates under their responsible supervising control) from performing architectural services which are purely incidental to their engineering practice. Standing alone, this statute appears to contain some contradictions in and of itself.

[2] Chapter 471, F.S. pertains to professional engineers and by definition (Section 471.02(5)) the term 'professional engineering' includes, among other things, any professional service requiring use or knowledge of mathematics and the principles of engineering rendered or offered to be rendered for public or private buildings and any consultation, investigation, plan, design, or responsible supervision of construction in any public or private buildings. Thus, it can be seen that the preparation of plans and design for and responsible supervision of the construction of buildings is by statute defined as the practice of professional engineering.

[3] If the planning and design of a building and the furnishing of supervision of its construction are functions which are encompassed solely within the practice of architecture, then professional engineers are prohibited from engaging in such functions

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unless incidental to their engineering practice. But paradoxically, the practice of professional engineering expressly includes the planning and design of buildings and the supervision of their construction. Thus, the apparent conflict can only be resolved by concluding that the statutes mean a registered architect can plan and design and supervise construction of a building as the practice of architecture and a registered professional engineer can plan and design and supervise construction of a building as a professional engineer. Of course, the professional engineer cannot represent himself as being an architect nor can the architect represent himself as being a professional engineer.

[4] Appellee contends that the statutory definition of 'professional engineering' by necessary implication has reference to 'buildings' of an industrial nature designed primarily to house machinery and equipment rather than designed primarily for habitation or occupancy by humans. Admittedly, such a qualification as to the type of buildings upon which professional *32 engineers were authorized to plan and supervise construction would help preserve a line of demarcation between the two professions consistent with generally accepted concepts. We feel however that had it been the legislative intent to thus limit or restrict to industrial buildings the type of buildings which professional engineers were authorized to design and supervise construction upon, such qualifications or restrictions would have been explicitly contained in the statute. We are concerned here with statutory construction and not historical differences of these two professions.

The final judgment is reversed and the cause remanded for entry of a judgment favorable to appellant.

REED, J., concurs.

WALDEN, J., dissents, without opinion.

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Commonwealth Court of Pennsylvania.

Robert R. ROSEN, d/b/a Robert R. Rosen
Associates and Harold Murray, d/b/a
Murray Drafting Services, Petitioners,

v.

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS, STATE
ARCHITECTS LICENSURE
BOARD, Respondent.Argued March 7, 2000.
Decided Dec. 13, 2000.

Engineer and employee of drafting company, who was hired by building owner to survey the building and create a set of drawings based on owner's conception of the renovation project, appealed from an order of the Bureau of Professional and Occupational Affairs, State Architects Licensure Board, Nos. 0675-41-96 & 0502-41-96, enjoining them from engaging in the practice of architecture without a license and imposing civil penalties. The Commonwealth Court, No. 2166 C.D. 1999, Doyle, President Judge, held that: (1) Architects Licensure Law and the Engineer, Land Surveyor and Geologist Registration Law should be read in pari materia; and (2) practices of engineer and drafting company employee in renovating building were within the practice of engineering and, as such, fell squarely within purview of Architects Licensure Law provision stating that nothing contained in this act shall be construed to prohibit engineers from performing such services included in the practice of architecture as may be incidental to their engineering work.

Reversed.

West Headnotes

[1] Licenses ⇨8(1)
238k8(1) Most Cited Cases[1] Statutes ⇨223.2(18)
361k223.2(18) Most Cited Cases

Architects Licensure Law and the Engineer, Land Surveyor and Geologist Registration Law should be read in pari materia because each statute explicitly recognizes that there is indeed an overlapping of the professions, and neither one establishes a clear, mutually exclusive, delineation between the two; primary purpose of both statutes is to protect the public by assuring that licensed architect or engineer will be retained when client requires their services, and purpose of statutes is not to erect unreasonable barriers between the two professions. 63 P.S. §§ 34.1-34.22, 148-158.2.

[2] Licenses ⇨8(1)
238k8(1) Most Cited Cases[2] Licenses ⇨11(1)
238k11(1) Most Cited Cases

Primary purpose of the Architects Licensure Law is to protect the health, safety and property of the people of the Commonwealth, and this goal is to be accomplished by allowing no one to practice architecture unless that person has the qualifications and competency required by the statute. 63 P.S. § 34.2.

[3] Statutes ⇨219(1)
361k219(1) Most Cited Cases[3] Statutes ⇨219(4)
361k219(4) Most Cited Cases

Although courts often defer to an agency's interpretation of the statutes it administers, where the meaning of the statute is a question of law for the court, when convinced that the agency's interpretation is unwise or erroneous, that deference is unwarranted.

[4] Licenses ⇨11(1)
238k11(1) Most Cited Cases

Practice of engineering, as defined in Engineer,

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Land Surveyor and Geologist Registration Law, permits engineers to design buildings and engage in construction planning and management, and fact that the practice of architecture, as defined in Architects Licensure Law, encompasses the same activities does not diminish the sphere of the practice of engineering. 63 P.S. §§ 34.1-34.22, 149(a).

[5] Licenses ⇐ 11(1)
238k11(1) Most Cited Cases

Since practice of engineering, as defined in Engineer, Land Surveyor and Geologist Registration Law, included design of buildings and structures, practices of engineer and drafting company employee in renovating building were within practice of engineering and, as such, fell squarely within purview of Architects Licensure Law provision stating that nothing contained in this act shall be construed to prohibit engineers from performing services included in practice of architecture as may be incidental to their engineering work. 63 P.S. §§ 34.15(2), 149.

*963 Sheldon L. Albert, Philadelphia, for petitioners.

Leonidas Pandeladis, Harrisburg, for respondent.

Before DOYLE, President Judge, KELLEY, Judge, and NARICK, Senior Judge.

DOYLE, President Judge. [FN1]

FN1. This matter was reassigned to the opinion writer on October 3, 2000.

Robert R. Rosen (Petitioner Rosen), d/b/a Robert R. Rosen Associates, [FN2] and Harold Murray (Petitioner Murray), d/b/a Murray Drafting Services (collectively "Petitioners"), appeal from an order of the Bureau of Professional and Occupational Affairs (Bureau), State Architects Licensure Board (Board), enjoining Petitioners from engaging in the practice of architecture without a license and imposing civil penalties on Petitioner Rosen in the amount of \$1,000.00 and on Petitioner Murray in

the amount of \$300.00.

FN2. Robert R. Rosen Associates is a professional engineering firm.

The sole issue before the Court is whether the Architects Licensure Law (Architects' Law) [FN3] and the Engineer, Land Surveyor and Geologist Registration Law (Engineers' Law) [FN4] are *in pari materia*, [FN5] requiring that they be construed together so as to achieve a consistent result.

FN3. Act of December 14, 1982, P.L. 1227, as amended, 63 P.S. §§ 34.1-34.22.

FN4. Act of May 23, 1945, P.L. 913, as amended, 63 P.S. §§ 148-158.2.

FN5. Section 1932 of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1932, states:

(a) Statutes or parts of statutes are *in pari materia* when they are related to the same persons or things or to the same class of persons or things.

(b) Statutes *in pari materia* shall be construed together, if possible, as one statute.

In addition, our Supreme Court has indicated that statutes may be *in pari materia* when they encompass "the same subject matter." *Hamilton v. Unionville-Chadds Ford School District*, 552 Pa. 245, 249, 714 A.2d 1012, 1015 (1998).

The relevant facts are as follows. Charles Bowser, Esq., a prominent Philadelphia lawyer, owns a four-story building in Philadelphia that was previously used as a private club. He sought to renovate the structure into law offices and hired Murray to survey the building and create a set of drawings based on Bowser's conception of the renovation project. The project called for the conversion of the first three floors into law offices and the conversion of the fourth floor into an

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apartment. The most substantial aspect of the renovation involved the addition of an elevator shaft to the rear of the building and reinforcement of the first floor to accommodate a law library. The renovation would leave *964 the facade of the building substantially unaltered, and ingress and egress to the building unchanged.

Satisfied with the proposed plans, Bowser notified Murray that he desired to proceed with construction, but was informed by Murray that he would have to hire a licensed design professional to approve the structural integrity of the proposed alterations and to affix a professional seal to the drawings so that the City would issue the necessary building permits. Bowser then contacted Charles Lomax, a licensed professional architect, who reviewed the renovation plans and agreed to manage the project. Bowser subsequently declined to hire Lomax because his fee was too high, and requested that Murray recommend another design professional who could review, approve, and seal the drawings. Murray contacted Rosen, owner of a professional engineering firm, who reviewed the drawings, and agreed to manage the project for a fee acceptable to Bowser. Following Rosen's application of his professional seal on the plans, the City issued the necessary permits to renovate the building. Upon learning that an engineer had sealed the design documents, Lomax filed a complaint with the Architects Licensure Board asserting that Petitioners had engaged in the practice of architecture without a license in violation of section 18(a) of the Architects' Law. 63 P.S. § 34.18(a).

Acting on Lomax's complaint, the Bureau issued a rule to show cause why civil penalties should not be imposed against Petitioners. Following Petitioners' answer, the Board appointed a hearing examiner who conducted a hearing wherein the parties presented expert testimony addressing the degree to which the project involved the disciplines of architecture and engineering. The Bureau presented the testimony of its own investigating officer and two registered architects, Lomax and Harry Rutledge. Both Petitioners, Rosen and Murray, testified, but the hearing examiner excluded the testimony of their expert witness. Following an appeal to the Board by the Petitioners, the Board remanded the matter to the hearing examiner with instructions to admit the expert's

testimony after reaching the conclusion that the testimony was improperly precluded on procedural grounds. On remand, Petitioners presented the testimony of Artis T. Ore, a contractor, and Barton Klingerman, a registered professional engineer. The Board's expert witnesses and Petitioners' expert witness all testified that the project at issue was simultaneously "architectural" and "engineering" in nature, differing only as to the estimated percentage that they allocated to each field. Thereafter, the hearing examiner credited the Bureau's expert testimony, which indicated that the project was 80% architectural and 20% engineering work. The hearing examiner discredited Petitioners' witnesses and issued a proposed adjudication concluding that Petitioners had violated Section 18(a) of the Architects' Law governing the unauthorized practice of architecture. The Board adopted the hearing examiner's proposed adjudication and imposed a civil penalty of \$1,000 against Rosen and \$300 against Murray. This appeal ensued. [FN6]

FN6. This Court's standard of review in an appeal from an agency adjudication is limited to determining whether constitutional rights were violated, an error of law was committed or whether necessary findings of fact are supported by substantial competent evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Singer v. Bureau of Professional and Occupational Affairs, State Board of Psychology*, 159 Pa.Cmwlth. 385, 633 A.2d 246 (1993).

Initially we must look at Section 3 of the Architects' Law, which defines the practice of architecture as follows:

"Practice of Architecture." The rendering or offering to render certain services, hereinafter described, in connection with the design and construction of a structure or group of structures which *965 have as their principal purpose **human habitation or use**, and the utilization of space within and surrounding such structures. The services referred to in the previous sentence

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include planning, providing preliminary studies, designs, drawings, specifications, and other design documents, construction management and administration of construction contracts. The foregoing shall not be deemed to include the practice of engineering as such, for which separate registration is required under the provisions of the [Engineers' Law], excepting only engineering work incidental to the practice of architecture.

63 P.S. § 34.3 (emphasis added).

We are then obliged to consider Section 2 of the Engineers' Law, which defines the practice of engineering as:

(a)(1) "Practice of Engineering" shall mean the application of the mathematical and physical sciences for the design of public or private buildings, structures, machines, equipment, processes, works or engineering systems, and the consultation, investigation, evaluation, engineering surveys, construction management, planning and inspection in connection therewith, the performance of the foregoing acts and services being prohibited to persons who are not licensed under this act as professional engineers unless exempt under other provisions of this act.

* * * *

(3) The forgoing shall not be deemed to include the practice of architecture as such, for which separate registration is required under [the Architects' Law], excepting only architectural work incidental to the "practice of engineering."

63 P.S. § 149(a)(1), (3) (emphasis added).

The instant appeal represents, in our view, an ongoing turf war between these two learned professions over the application of their professional disciplines to the design of buildings, and to the construction and renovation of buildings and structures within the Commonwealth of Pennsylvania. On appeal, Petitioners concede that while these two professional disciplines are different, there are substantial areas which overlap relating to the design, construction and renovation of structures. Petitioners further maintain that the purpose of the two professional regulatory statutes is to protect the *public safety* rather than to protect the private interests of one discipline over the other. Petitioners argue that, as a matter of statutory construction, sections of the Architects' Law,

essentially 63 P.S. § 34.3, and the Engineers' Law, essentially 63 P.S. § 149, should be read *in pari materia*, thus harmonizing each statute's relevant provisions to give a uniform effect to each. Petitioners assert that such a construction would preclude sanctions in the instant matter because the services rendered on the renovation project in this case may legitimately be regarded as within the reach of *both* the architectural and engineering disciplines. The Board, on the other hand, asserts that it properly applied the Architects' Law to the record evidence and that substantial evidence supports its findings and conclusions.

[1] We conclude that these two statutes should be read *in pari materia* because each statute explicitly recognizes that there is indeed an overlapping of the professions, and neither one establishes a clear, mutually exclusive, delineation between the two.

[2] The primary purpose of the Architects' Law is to protect "the health, safety and property of the people of the Commonwealth ...," [FN7] and this goal is to be accomplished by allowing no one to practice architecture unless that person has the qualifications and competency required by the statute. *See, i.e., Baker v. Chambers*, 183 Pa.Super. 634, 133 A.2d 589 (1957) (awarding compensation to a licensed *966 architect employed by an engineering firm); *Rudy v. Friedman*, 54 D. & C.2d 628 (1971) (denying compensation to the estate of an individual who performed architectural services without being registered as an architect).

FN7. 63 P.S. § 34.2.

Likewise, the primary purpose of the Engineers' Law is also to "safeguard life, health or property...." 63 P.S. § 150(a). *See, i.e., Lindholm v. Mount*, 163 Pa.Super. 36, 60 A.2d 422 (1948) (denying compensation to an individual who performed engineering services without being registered as an engineer). Therefore, the primary purpose of *both* licensing laws is to protect the lay public and their property by assuring, subject to limited exceptions, that a licensed architect or a licensed engineer will be retained when the client requires their professional services to guarantee the structural integrity of all manner and types of buildings and construction, including, but certainly not limited to,

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bridges, subways, office buildings, multi-level garages, stadiums, etc. Obviously, the purpose of these regulatory statutes is not to erect unreasonable barriers or boundaries between the two professions, or to carve out areas of "turf" for one profession at the expense of another. Each profession is regulated, therefore, primarily to ensure that there are fundamental baseline standards with regard to education and experience for each, and the fact that there is no clear mutually exclusive demarcation between the two professions is acknowledged in both licensing laws. Each relates to the application of professional mathematical knowledge to the planning and design of structures, and the supervision of their erection. The waters are palpably muddied by provisions in both statutes which allow architects to practice engineering and professional engineers to practice architecture, if the practice of the allied profession is incidental to the practice of the profession for which the practitioner had been registered. Moreover, and more to the point, while the definitions of the two disciplines may appear superficially to be mutually exclusive, a close inspection of the definition in each statute belies such an all-encompassing division.

In analyzing the problem, we refer first to *McKeown v. State Architects Licensure Board*, 705 A.2d 524 (Pa.Cmwith.1998), where we reviewed the Architects' Law relative to the alleged unlawful practice of architecture by a contractor. We there refused to adopt a strict *per se* application of the definition of architecture in the Architects Law and stated:

Although [the Architects'] Law defines the practice of architecture in such a way that almost any offer of design services would constitute a violation, a *per se* application of the definition would result in the imposition of penalties on persons who never contemplated an offer to provide architectural design documents.

Id. at 527.

Second, Petitioners, unable to find factually analogous appellate precedent in this Commonwealth, have called our attention to other jurisdictions to support their position. They principally rely on *Verich v. Florida State Board of Architecture*, 239 So.2d 29 (Fla.App.1970), *State of Alabama, Board of Registered Architects v Jones*, 289 Ala. 353, 267 So.2d 427 (1972), and *Georgia*

State Board for Examination, Qualification and Registration of Architects v. Arnold, 249 Ga. 593, 292 S.E.2d 830 (1982). [FN8] In each of these cases, the respective state architects' licensing board *967 determined that either an engineer or a draftsman had engaged in the practice of architecture without a license. Given the substantial similarity in the statutory language of the licensing statutes summarized in *Verich, Jones*, and *Arnold*, in the interests of brevity we shall only present the relevant portions of Florida's licensing statutes, which define the practice of architecture and engineering as follows:

FN8. In addition to *Verich, Jones*, and *Arnold*, Petitioners summarize the decisional law of various states that have addressed issues similar to that raised in the instant matter including: *Rabinowitz v. Hurwitz-Mintz Furniture Co.*, 19 La.App. 811, 133 So. 498 (1931); *Smith v. American Packing & Provision Co.*, 102 Utah 351, 130 P.2d 951 (1942); *Lehmann v. Dalis*, 119 Cal.App.2d 152, 259 P.2d 727 (1953); *Johnson v. Delane*, 77 Idaho 172, 290 P.2d 213 (1955); *People ex rel Aramburu v. City of Chicago*, 73 Ill.App.2d 184, 219 N.E.2d 548 (1966); and *Sardis v. Second Judicial District Court*, 85 Nev. 585, 460 P.2d 163 (1969).

Architecture

[A]ny person who shall be engaged in the planning or design for the erection, enlargement or alteration of buildings for others or furnishing architectural supervision of the construction thereof shall be deemed to be practicing architecture and be required to secure a [license to practice architecture]. [FN9]

FN9. Florida has subsequently changed its definition of architecture to read: " 'Architecture' means the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services including planning, providing

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preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts." Fla. Stat. ch. 481.203 (2000).

* * * *

Engineering

The term professional engineer includes ... any professional service requiring use or knowledge of mathematics and the principles of engineering rendered ... for public or private buildings and any consultation, investigation, plan, design, or responsible supervision of construction in any public or private buildings. [FN10]

FN10. Florida has also changed its definition of engineering which is lengthy, more detailed, but substantially the same as the definition recited.

Verich, 239 So.2d at 31 (based on F.S. § 467.09(1)(a) and F.S. § 471.02(5)).

In analyzing these definitions of the practice of architecture and engineering, the *Verich* court concluded that Florida's licensing statutes recognized the overlap between these complementary disciplines but did not provide a clear demarcation line for a reviewing court to assess where the practice of one discipline would end and the other begin. *Verich*, 239 So.2d at 31-32. In reviewing their respective state statutes, the *Jones* and *Arnold* courts similarly concluded that the definitions of the two professions focused on similar tasks and activities employed by each in designing structures. *Jones*, 267 So.2d at 430 (although attempting to distinguish the practice of the professions of architecture and engineering the wording of the statutes creates only distinctions without differences); *Arnold*, 292 S.E.2d at 833 (the statutory definition of the practice of architecture is sufficiently broad as to include the design drawings of engineers and various construction tradesman, and thus provides no basis to distinguish the practice of architecture from engineering).

We have found this review of the case law from our sister jurisdictions to be instructive regarding our disposition of the present appeal. Our review of *Verich*, *Jones* and *Arnold*, reveals that the licensing statutes in each case, as here, lacked a clear basis

and "bright line" by which to distinguish between the practice of architecture and engineering. In each case the respective courts determined that the statutes at issue defined the practice of these respective disciplines strictly in terms of the types of similar tasks and activities commonly employed in the design and construction of buildings.

The Board argues that, as the only agency within the Commonwealth responsible for regulating the practice of architecture, it is entitled to great deference when interpreting the statutes that it is responsible for overseeing. The Board is correct that the courts of this Commonwealth, faced with interpreting statutory language, afford substantial deference to the interpretation rendered by the administrative *968 agency overseeing the implementation of such legislation. *Chappell v. Pennsylvania Public Utility Commission*, 57 Pa.Cmwlth. 17, 425 A.2d 873 (1981). However, the present matter involves the administration of overlapping disciplines, which does not render the Board uniquely qualified to interpret both statutes at issue here; and of course, it is necessary to interpret both statutes to reach a just result. The Board is not the only agency in the Commonwealth which is charged with the responsibility of regulating the division between these professions and we can envision a situation where the Architects Licensure Board and the State Registration Board for Professional Engineers [FN11] could each view the *same* work as being essentially within the purview of its own governing statute.

FN11. 63 P.S. § 151.1 creates the State Registration Board for Professional Engineers, Land Surveyors and Geologists with the authority to review and determine the unauthorized practice of engineering, and 63 P.S. § 158 provides that a violation of the Engineers' Law results in a criminal conviction, which carries a fine or imprisonment or both.

[3] Furthermore, we have also previously held that we need not give deference to an agency where its construction of a statute frustrates legislative intent. *Scanlon v. Department of Public Welfare, Department of Aging*, 739 A.2d 635 (Pa.Cmwlth.1999). Therefore, although courts

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often defer to an agency's interpretation of the statutes it administers, where, as here, the meaning of the statute is a question of law for the court, when convinced that the agency's interpretation is unwise or erroneous, that deference is unwarranted. *Gilmour Manufacturing Co. v. Commonwealth*, 717 A.2d 619 (Pa.Cmwth.1998). See also, *McClellan v. Health Maintenance Organization of PA.*, 546 Pa. 463, 686 A.2d 801 (1996); *Philadelphia Fire Officers Association v. Pennsylvania Labor Relations Board*, 470 Pa. 550, 369 A.2d 259 (1977). Moreover, by applying an unwarranted deference standard, we can foresee the real potential that this Court could unwittingly escalate a turf war between the Registration Board for Professional Engineers and the State Architects Licensure Board.

The cornerstone of the Board's conclusion to punish the petitioners in this case is that where a project involves "human habitation or use," the project must perforce be "architecture." The Board asserts that our Architects' Law differentiates the practice of these two learned professions by reserving the design of certain types of structures to the profession of architecture. Specifically, it contends that the Architects' Law provides that only licensed architects may engage in "the design and construction of a structure or group of structures which have as their principal purpose **human habitation or use.**" 63 P.S. § 34.3. The Board maintains that, by focusing on the intended use of the structure, the General Assembly has provided a demarcation line between these overlapping and complementary disciplines.

Petitioners, on the other hand, argue that this view is overly expansive because nearly all buildings and structures are intended for human habitation *or use*, leaving only the design of barns and chicken coups for the engineering profession and we agree with Petitioners that the Board's interpretation is extraordinarily broad. There are few structures that do not have **human habitation or use** as their principal purpose. Even barns and chicken coops have a strong component of human use in their principal purpose. Certainly office buildings do, but so would the multi-level parking garage adjacent to the office building. Workers in industrial and manufacturing facilities, utilities and warehouses would certainly attest to the fact that these facilities are likewise used by human beings. Building code restrictions are no less stringent for

these latter facilities, nor are health and sanitation requirements lessened, because the Board may, by definition, place them outside the practice of architecture and, therefore, not primarily for human habitation.

*969 If anything, the definition of engineering is even broader than the definition of architecture. A careful look at the statute reflects that while architects are limited to designing structures for human habitation or use, engineers are not so limited. Moreover, engineers are not precluded under the Engineers' Law from designing structures for human habitation or use. In *Verich*, the Architect's Board argued that there was an implication that the term "buildings" referenced in the engineering statute meant those of an industrial nature designed primarily to house machinery and equipment rather than designed primarily for human habitation. The court indicated that, if the Florida legislature had intended to limit engineers to the design of industrial buildings, it would have done so. Here, our General Assembly has inserted into the Architects' Law the words "human habitation or use." But the General Assembly has not seen fit, at the same time, to limit the type of buildings that engineers can design. The licensing statute applicable to engineers **does not say** "application of the mathematical and physical sciences for the design of public or private buildings [**not for human habitation or use.**]" 63 P.S. § 149(a)(1) (altered from original). We believe, therefore, that the definition under the Engineers' Law is broader than that contained in the Architects' Law. Clearly, the phrase "human habitation or use" limits the range of projects that architects can undertake; but the language in the Engineers' Law does not likewise limit engineers in the same manner.

[4] Furthermore, the Board in this instance failed to conduct a full analysis of the complete issue. The issue here is not only whether Petitioners engaged in the practice of architecture, but whether under Section 2 of the Engineers' Law, 63 P.S. § 149(a)(1), (3), what they did was lawfully encompassed within the practice of engineering. We believe that it was. The practice of engineering, as defined in the statute, permits engineers to design buildings, and engage in construction planning and management. The fact that the practice of architecture encompasses the same activities does not diminish the sphere of the

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practice of engineering.

We are concerned that, on the testimony entered in this record, had Mr. Lomax been awarded the project, the Engineers' Board could have assessed civil penalties against him for the unauthorized practice of engineering. It is noted that the engineering expert witnesses testified that the project comprised 80% engineering and 20% architecture, even though the architectural expert witnesses testified that the project was 80% architectural and 20% engineering.

The District Court of Appeals of Florida, Fourth District, in *Verich* cogently pointed the way for what the proper conclusion should be in this appeal when it said:

If the planning and design of a building and the furnishing of supervision of its construction are functions which are encompassed solely within the practice of architecture, then professional engineers are prohibited from engaging in such functions unless incidental to their engineering practice. But paradoxically, the practice of professional engineering expressly includes the planning and design of buildings and the supervision of their construction. **Thus, the apparent conflict can only be resolved by concluding that the statutes mean a registered architect can plan and design and supervise construction of a building as the practice of architecture and a registered professional engineer can plan and design and supervise construction of a building as a professional engineer.** Of course, the professional engineer cannot represent himself as being an architect nor can the architect represent himself as being a professional engineer.

Verich, 239 So.2d at 31. (Emphasis added.)

*970 Mr. Rosen was registered as a professional engineer in the State of Pennsylvania. He reviewed and approved the plans of Mr. Murray as a professional engineer. At no time did Mr. Rosen hold himself out to be an architect, nor did he enter into a contract with Mr. Bowser to provide architectural services.

[5] Under Section 2 of the Engineers' Law, 63 P.S. § 149, the practice of engineering includes "the design of public or private buildings, structures, machines, equipment, ..." which contains no

delimiter or modifier. Therefore, since the practice of engineering includes the design of buildings and structures, the practices of Petitioners were within the practice of engineering and, as such, fall squarely within the purview of Section 34.15(2), 63 P.S. § 34.15(2). The Board reads the Architects' Law as limiting the practice of engineering, when in fact it limits the practice of architecture.

Accordingly, we reverse the Board in this matter and strike the civil penalties.

ORDER

NOW, December 13, 2000, the order of the Bureau of Professional and Occupational Affairs, Architects Licensure Board, in the above-captioned matter is hereby reversed and we strike the civil penalties assessed against Petitioner Rosen and Petitioner Murray.

Senior Judge NARICK dissents.

763 A.2d 962

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CITY OF PORTLAND, MAINE

Department of Building Inspections

9-8 20 04

Received from Kevin Ann Nguyen

Location of Work 980 Forest Ave

Cost of Construction \$ _____

Permit Fee \$ 105⁰⁰/100

Building (I1) _____ Plumbing (I5) _____ Electrical (I2) _____ Site Plan (U2) _____

Other _____

CBL: 143A 65

Check #: cash

Total Collected \$ 105⁰⁰/100

THIS IS NOT A PERMIT

No work is to be started until PERMIT CARD is actually posted upon the premises. Acceptance of fee is no guarantee that permit will be granted. PRESERVE THIS RECEIPT. In case permit cannot be granted the amount of the fee will be refunded upon return of the receipt less \$10.00 or 10% whichever is greater.

WHITE - Applicant's Copy
YELLOW - Office Copy
PINK - Permit Copy