

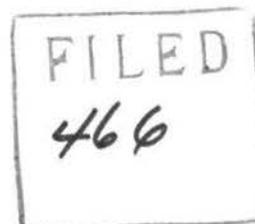
ARCHITECTS:

1. Section 327.030 and Section 327.271, RSMo 1959, which authorized the predecessor of the Missouri State Board for Architects, Professional Engineers and Land Surveyors to issue special permits to architects and to collect fees when such permits were renewed, were repealed when Senate Bill 117 of the 75th General Assembly became law on October 13, 1969, and 2. Senate Bill 117 does not authorize the Missouri Board for Architects, Professional Engineers and Land Surveyors to renew, or collect renewal fees for the renewal, of special permits issued before Sections 327.030 and 327.271 were repealed.

OPINION NO. 466

December 16, 1969

Mrs. Olean Barton, Secretary-Treasurer
Missouri Board for Architects,
Professional Engineers and Land Surveyors
Post Office Box 184
Jefferson City, Missouri 65101



Dear Mrs. Barton:

Your request for an official opinion from this office reads as follows:

"Chapter 327, RSMo 1959, authorized this Board to issue special permits for a single project and also authorized their renewal annually on payment of a \$10.00 renewal fee.

"It often happens that a project cannot be completed in one year and the architect or professional engineer requests renewal of his permit for another year.

"Senate Bill 117, passed by the 75th General Assembly, effective on October 13, 1969, eliminated special permits and made no provision for collection of a renewal fee for those permits previously issued under the provisions of Chapter 327, RSMo 1959.

"Please advise if this Board is authorized to collect renewal fees on and after October 13, 1969, on special permits issued previous to that date."

The special permits to which you refer were authorized and issued pursuant to paragraph 5 of Section 327.030, RSMo 1959, which reads as follows:

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"In lieu of registration under any provision of this subsection, any registered architect, shown by the official certificate of another state board to have been in good standing on its records as a registered architect continuously during a period of at least five years next preceding the date of such certificate, and actively engaged in the practice of architecture during said period, may on payment of the fee required by law, secure a special permit for any single employment or project in this state, described in his request for such permit. Such special permit shall be renewable from year to **year** through the course of such single employment or project, on payment of the fee required by law for such renewal."

The collection of renewal fees was authorized and provided for in Section 327.271, RSMo 1959, as follows:

"For the official service of the board there shall be paid to the collector of revenue, in advance, fees as follows:

* * * *

"(12) For temporary permit, twenty-five dollars; for annual renewal thereof, ten dollars;"

Section 1 of Senate Bill 117, 75th General Assembly, begins with the words "Chapters 327 and 344, RSMo, are repealed . . ." Thus both of these sections from Chapter 327 were repealed by Senate Bill 117. Accordingly, after Senate Bill 117 became effective on October 13, 1969, there could be no authorization for the issuance or renewal of special permits under Section 327.030(5), or the collection of renewal fees under Section 327.271(12) unless it could be held that the recent action of the legislature failed to remove all effect of these sections or that while the sections were in existence, those qualified thereunder acquired rights of which they could not be divested by subsequent legislative action.

In *City of St. Louis v. Kellman*, 139 S.W. 443, 445 (Mo. 1911) the court said:

"[2] Attending to that term, what does the word 'repeal' mean, when used by lawmaker or judge? 'Repeal' is defined as the abrogation or annulling of a previously existing law by the enactment of a subsequent statute, which either

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declares that the former law shall be revoked and abrogated, or which contains provisions so contrary to or irreconcilable with those of the earlier law that only one of the two can stand in force; the latter is the 'implied' repeal heretofore mentioned; the former, the 'express' repeal. Black, L. Dict. tit. 'Repeal.' Bouvier defines it to be: 'The abrogation or destruction of a law by a legislative act.' Bouv. L. Dict. tit. 'Repeal.' (Note the word 'destruction.') Webster defines it: 'To recall; to rescind or abrogate by authority; to revoke.' He gives among its synonyms 'annul,' 'cancel,' 'reverse,' 'abolish.' He defines the noun 'repeal' as meaning 'revocation'; 'rescission'; 'abrogation.' Abrogate, in turn means to annul by an authoritative act; to abolish by the authority of the maker; to repeal. Other instructive shades of meaning come out in accredited definitions of the several synonyms, but the foregoing are enough for our purpose. . . ."

This case was followed by the Supreme Court in *State ex inf. Crain ex rel. Peebles v. Moore*, 99 S.W.2d 17, 19 (Mo. en banc 1936) where the court said:

" . . . The repeal of a law means its complete abrogation by the enactment of a subsequent statute. . . ."

In view of these decisions, it is apparent that Senate Bill 117 effected an "express repeal" of Sections 327.030 and 327.271, RSMo 1959, thereby completely eliminating them from legal existence.

It is well settled that a right cannot be regarded as vested unless it amounts to something more than the mere expectation of the continuance of existing law. In *Curators of Central College v. Rose*, 182 S.W.2d 145, 148 (Mo. 1944) the court said:

" . . . No person has a vested right in any general rule of law or policy of legislation entitling him to insist that it shall remain unchanged for his benefit (citing case). 'Neither corporations nor citizens of a state have any vested right in its statutes.' . . ."

The General Assembly in exercising its police power has enacted Senate Bill 117 to prescribe qualifications for the right to practice

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architecture in Missouri. No person may acquire a vested right to practice, without a license, a profession controlled by the police power of the state.

The case of State v. Davis, 92 S.W. 484, 489 (Mo. 1906) grew out of a conviction of the defendant for practicing medicine without a license. One of the defenses advanced therein was that the defendant had engaged in the practice of medicine in Missouri almost fifty years prior to the enactment of the statute under which he was being prosecuted and that he had thereby secured the right to practice without obtaining a license. The court held with respect to this contention, l.c. 489:

" . . . It is apparent that the General Assembly of Missouri, in the enactment of the provisions of law regulating the practice of medicine and surgery in this state, intended to fix a standard as to fitness, skill, and qualification which would authorize the practice of that profession. This law does not undertake to deprive any person of a vested right, for there can be no such thing as a vested right in the practice of medicine. It does not undertake to suppress or prohibit the practice of medicine or surgery, nor to prohibit any particular person from practicing as a physician or surgeon, but it simply undertakes to require the necessary and essential qualifications for that purpose. The correctness of the conclusions as herein indicated are fully supported by the well-considered cases of this country (citing cases). We see no necessity for pursuing this subject further. It is clearly manifest that the defendant had no vested right to practice medicine in this state by virtue of his former practice here in 1857. Upon returning to this state to practice his profession, his qualifications, fitness, and skill to do so must be judged by the law in force at the time he so returns, and before he will be authorized to engage in the practice of his profession and reap the rewards from such practice, there is no reason why he should not comply with the conditions imposed upon him by the law in force at the time he so undertakes to engage in the practice."

The Davis case was followed by the Supreme Court in State ex rel. Collet v. Errington, 317 S.W.2d 326, 330 (Mo. 1958) in which

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the court ruled that a person had no natural right to engage in the practice of naturopathy without benefit of a license to practice medicine.

Persons who contract concerning matters which may be regulated by virtue of the police power of government necessarily enter into their engagement subject to the possible exercise of that power, although it may be latent at the time the agreement was made. 11 Am.Jur., Section 264, Page 1000.

Section 327.381 of Senate Bill 117 provides:

"The board may in its discretion issue a certificate of registration to any architect . . . who has been registered in another state, . . . provided that the board is satisfied . . . that his qualifications for registration are at least equivalent to the requirements for initial registration in Missouri . . ."

Thus, it clearly was not contemplated by the General Assembly when it passed Senate Bill 117 that there should be two groups of recognized architects in this state, or that part should be issued certificates of registration and part should be issued special permits.

CONCLUSION

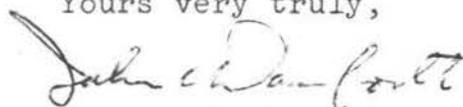
Therefore it is the opinion of this office that:

1. Section 327.030 and Section 327.271, RSMo 1959, which authorized the predecessor of the Missouri Board for Architects, Professional Engineers and Land Surveyors to issue special permits to architects and to collect fees when such permits were renewed, were repealed when Senate Bill 117 of the 75th General Assembly became law on October 13, 1969, and

2. Senate Bill 117 does not authorize the Missouri Board for Architects, Professional Engineers and Land Surveyors to renew or collect renewal fees for the renewal, of special permits issued before Sections 327.030 and 327.271 were repealed.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Yours very truly,



JOHN C. DANFORTH
Attorney General