

OPINION NO. VR, S. 2007



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

September 5, 2007

Mr. Armando N. Alli
Chairman
Professional Regulatory Board
of Architecture (PRBoA)
P. Paredes Street, Sampaloc
Manila



Sir:

This refers to your request for opinion on the queries stated therein relating to the implementation and enforcement of the provisions of Republic Act NO. 9266, otherwise known as "The Architecture Act of 2004," more specifically those relating to the preparation, signing and dry-sealing of architectural plans and documents.

The request, it appears, is made in connection with the legal opinion rendered by this Department on January 9, 2004, wherein, interpreting certain provisions of the Civil Engineering Law (R.A. No. 545), as amended, and the National Building Code of the Philippines (P.D. No. 1096), we, in part, said:

Indeed, the language of both laws (R.A. No. 544 & 545) confirms this distinction. The **practice of civil engineering embraces services in the form of preparation of structural plans, designs, specifications, etc.,** and construction of streets, bridges, highways, canals and **other engineering structures** specifically mentioned in section 2 of R.A. 544. The law, however, is silent on whether the practice covers the preparation of architectural plans/designs of said engineering structures. Upon the other hand, **the practice of architecture clearly concerns with the act of planning, architectural and structural designing of buildings as well as the architectural designs of engineering structures** or any part thereof.

Having these in mind, it can, therefore, be safely said that the proposal to limit the preparation, signing and sealing of architectural plans and designs to architects and the preparation, signing and sealing of structural plans and designs to civil engineers to be in order.

Recd. AN ALLI
25 Sept 2007

Read to ANWA
25 Sept 07

Read:
[Signature]

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You state that "despite the full effectivity of R.A. No. 9266 since 10 April 2004 (over 3 years ago), registered and licensed civil engineers ('CEs') continue to **prepare, sign and dry-seal architectural** documents, plans, designs, specifications, estimates, contract documents and the like"; and that these acts appear to be clear, unequivocal, continuing, orchestrated and willful violations of R.A. No. 9266, its IRR and derivative regulations.

For these reasons, you not only call for the nationwide implementation and enforcement of R.A. No. 9266 and its IRR especially those provisions that "**limit the preparation, signing and dry-sealing of all architectural documents only to Architects registered and licensed by the state.**" You also want this Department to rule on the (7) queries stated in your request.

Your inquiries, it appears, can be summed up into whether or not the architects are the rightful and possibly the sole professionals who are authorized to prepare, sign and dry-seal architectural plans and documents nationwide such that the acts of civil engineers in continuously performing said functions can be considered as willful and flagrant violations of R.A. No. 9266.

With regret, this Department is constrained to decline to render opinion on your queries.

Republic Act No. 8981, also known as the "PRC Modernization Act of 2000, pertinently states:

SEC. 7. Powers, Functions and Responsibilities of the (Professional Regulation Commission. - The powers, functions and responsibilities of the Commission are as follows:

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(o) To exercise administrative supervision over the various professional regulatory boards and its members;

(p) To adopt and promulgate rules and regulations as may be necessary to effectively implement policies with respect to the regulation and practice of professions;

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(w) To initiate an investigation, upon complaint under oath by an aggrieved party, of any person, whether a private individual or professional, local or foreign, who practice the regulated profession or occupation without being authorized by law, or without being registered with and licensed by the concerned regulatory board and issued the corresponding license/professional identification card or temporary or special permit, or who commits any of the prohibited acts provided in the regulatory laws of the various professions, which acts are criminal in nature, and if the evidence so warrants, to forward the records of the case to the office of the city or provincial prosecutor for the filing of the corresponding information in court by the lawyers of the legal services of the Commission who may prosecute the case/s upon being deputized by the Secretary of Justice;

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(y) To perform such other functions and duties as may be necessary to carry out the provisions of this Act, the various professional regulatory laws, decrees, executive orders and other administrative issuances. (stress supplied)

Undeniably, the resolution of the issues raised herein primarily falls within the jurisdiction of the Professional Regulation Commission, a government agency beyond the revisory authority of the Department of Justice does not pass upon matters over which another office or agency has primary jurisdiction (Sec. of Justice Op. 75, s. 2006) and those the resolution of which pertains to offices that are beyond the revisory and/or supervisory authority of this Department (Ibid, Op. No. 32, current series; and No. 26, s. 2006).

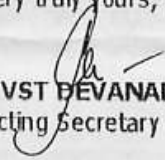
Besides, the instant request amounts to "opinion shopping" since, admittedly--and the records support this, the PRBoA had already sought the aid of the PRC and the Department of Public Works and Highways (DPWH) on the matters in issue (Id., No. 195, s. 1988). Sound administrative practice, more than official courtesy, demands that said offices be accorded first the opportunity to consider and resolve the above-enumerated questions. This time-honored policy is also dictated by practical consideration and due respect and deference for the competence and expertise on, as well familiarity with, the policies relating to the subject not to mention the rightful exercise of jurisdiction by a co-equal and coordinate branch or government (Id., No. 24, s. 1999; No. 7, s. 1996; and No. 1, s. 1983).

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Finally, the queries involve the substantive rights of private parties, i.e., the Professional Regulatory Board of Civil Engineers (PRCoCE) and its members, upon whom the opinion of the Secretary of Justice, which is merely advisory (Id., No. 33, s. 2005), would have no binding effect, and which might, in all probability, be litigated judicially (Id., 31, s. 2005). As matter of settled policy, the Secretary of Justice does not rule on issues that, as in this case, are judicial in nature or might be the subject of court litigation (Id., Nos. 78, 64 and 52, s. 2006).

Very truly yours,


AGNES VST DEVANADERA
Acting Secretary

78 Sept 2012

