July 25, 2001

OPINION NO. 2001-032

William N. Wilcox, Executive Director
State Board of Examiners of Architects
77 South High Street, 16th Floor
Columbus, Ohio 43266-0303

Dear Executive Director Wilcox:

You have asked for a formal opinion concerning the use of an architect's seal. Your specific questions are these:

1. When an architect's seal is required on documents submitted to the building department, does the statutory language found in R.C. 3791.04(A) mandate that the building departments require that such seal meet the guidelines of O.A.C. 4703-3-01? To put it simply, if an architect submits improperly sealed plans to a building department, does the building department plans examiner have a duty to require the seal be in proper form?

2. If the building department must require the seal be in proper form, how does the building department implement that duty? Does the plans examiner reject the improperly submitted plans?

3. If the building department fails to meet this duty, what is the recourse?

We are informed that the State Board of Examiners of Architects contends that statutory language requiring an architect's seal on certain documents must be read to prohibit the acceptance of documents that do not have a seal that complies with the Board's standards.[1]

---

[1] The authority of the Attorney General to render legal advice to state boards, such as the State Board of Examiners of Architects, arises under a law stating that "[t]he attorney general, when so requested, shall give legal advice to a state … board … in all matters relating to [its]

In order to address your concerns we must first look to the provisions of law governing architects and their duty to acquire and use seals. R.C. Chapter 4703 establishes the State Board of Examiners of Architects, empowers the Board to hold examinations and issue certificates of qualification to practice architecture, and gives the Board authority to enforce the statutes governing architects. R.C. 4703.01; R.C. 4703.02; R.C. 4703.03(A); R.C. 4703.09-.10. No one may practice architecture without holding such a certificate. R.C. 4703.18(A).

The State Board of Examiners of Architects is authorized to adopt rules "governing the standards of education, service, conduct, and practice to be followed in the practice of the profession of architecture in the state." R.C. 4703.02. The Board may revoke or suspend licenses and may reprimand licensees for rule violations. R.C. 4703.151. A certificate of qualification to practice architecture may be revoked, suspended, or have its renewal denied for various reasons, including fraud or deceit in professional practice; gross negligence, incompetency, or misconduct in the performance of services; signing plans without being the actual architect or having consent of the original architect; and aiding and abetting persons not registered as architects in activities that constitute the practice of architecture. R.C. 4703.15.

With respect to the seal of an architect, the statute states:

> Every holder of such certificate [of qualification to practice architecture] or its renewal *shall secure a seal of the design prescribed* by the rules of the state board of examiners of architects. All working drawings and specifications prepared by or under the supervision of the holder *shall be imprinted with this seal*. No person shall seal any document unless the person is the holder of a certificate currently in good standing.

R.C. 4703.12(A) (emphasis added). Thus, an architect is required to obtain a seal and to imprint the seal upon working drawings and specifications that the architect prepares.

The State Board of Examiners of Architects has adopted a rule requiring that an architect obtain an embossing seal and a rubber stamp or other reproducible facsimile of the seal, to be used to imprint documents as required by R.C. 4703.12. 11 Ohio Admin. Code 4703-3-01(A). The seal must be circular in shape and two inches in diameter. Around the edge of the circle the

---

official duties." R.C. 109.12. Certain of your questions do not relate to the duties of the State Board of Examiners of Architects but, instead, relate to duties of other public bodies, including the Division of Industrial Compliance and certified building departments. In this opinion, we make every effort to address those issues that relate to the official duties of the State Board of Examiners of Architects, but we do not attempt to resolve issues that may confront other state or local governmental entities.

seal must contain the words "state of Ohio" and "registered architects." Within the circle it must contain the name and registration number of the architect. *Id*.

By rule, the imprinting required by R.C. 4703.12 consists of the "application of the architect's embossing seal impression, over the architect's ink signature, to the title or first sheet of bound sets of drawings, to the title page of bound specifications and to other drawings and contract documents required for official filing with building permit agencies." 11 Ohio Admin. Code 4703-3-01(B). Thus, these seal requirements apply to documents submitted to a certified building department.

The architect's rubber stamp or other reproducible facsimile must be of the same design as the embossing seal and must be applied on all tracings to produce legible reproduction on all copies or prints made from the tracings. 11 Ohio Admin. Code 4703-3-01(A) and (C). An architect may imprint a seal only if the architect was the author of the documents or was in responsible charge of their preparation. 11 Ohio Admin. Code 4703-3-01(D).

Let us now consider the seal requirement to which your request refers. That requirement pertains to situations in which plans for building construction must be approved under standards established by the Board of Building Standards. *See* R.C. 3781.10; R.C. 3791.04. The Board of Building Standards is responsible for adopting rules governing the construction of buildings and is authorized to certify municipal, township, and county building departments to exercise enforcement authority, to accept and approve plans and specifications, and to make inspections. R.C. 3781.10(A) and (E); *see also* R.C. 3781.03; R.C. 3791.04; *City of Middleburg Heights v. Ohio Bd. of Bldg. Standards*, 65 Ohio St. 3d 510, 605 N.E.2d 66 (1992); 1997 Op. Att'y Gen. No. 97-023; 1984 Op. Att'y Gen. No. 84-100. Each certified building department is established pursuant to provisions of law and is subject to rules adopted by the Board of Building Standards. *See* R.C. 307.37; R.C. 505.75; R.C. 3781.01; R.C. 3781.10; R.C. 3791.04. The Board of Building Standards and the various local bodies may adopt rules regulating the requirements for the submission of plans and specifications to the building departments and for the processing of those plans and specifications. R.C. 3791.04(D).

The statute in question provides that "[t]he seal of an architect registered under [R.C. Chapter 4703] or an engineer registered under [R.C. Chapter 4733] shall be required for any plans, drawings, specifications, or data submitted for approval" to the certified municipal, township, or county building department having jurisdiction or to the superintendent of the Division of Industrial Compliance in the Department of Commerce. R.C. 3791.04(A).[2] Certain

---

[2] In addition to the registration of architects, R.C. Chapter 4703 provides for the registration of landscape architects. R.C. 4703.30-.46. Landscape architects are governed by the State Board of Landscape Architect Examiners. R.C. 4703.31. Provisions relating to stamps and seals of landscape architects appear in R.C. 4703.32(D) and 11 Ohio Admin. Code 4703:1-1-04(B). In addition to the registration of professional engineers, R.C. Chapter 4733 provides for

exceptions to the seal requirement are provided. R.C. 3791.04; *see* also R.C. 4703.18. A related requirement is set forth in a rule adopted by the Board of Building Standards, as follows: "Construction documents, when submitted for inspection as required under rule 4101:2-1-17 of the Administrative Code, shall bear the seal of a registered design professional pursuant to [R.C. 3791.04]." 9 Ohio Admin. Code 4101:2-1-20(B). Again, exceptions are provided. *Id*. When no exception applies, a seal is required for any documents submitted to a certified building department for the purpose of obtaining a building permit.[3]

The approval of plans and specifications provides a license for the holder to proceed in accordance with the plans. R.C. 3791.04(E). No owner may proceed without plan approval. R.C. 3791.04(B). Failure to approve plans or specifications within thirty days of filing, or disapproval of the plans and specifications, constitutes an adjudication order denying the issuance of a license, and an adjudication hearing is required. R.C. 3791.04(E). When plans are approved, the structure and particulars in the plan are conclusively presumed to comply with R.C. Chapters 3781 and 3791 and rules issued thereunder, in the absence of fraud or a serious safety or sanitation hazard, if construction is performed in accordance with the plans and rules in effect at the time of approval. R.C. 3791.04(D).

---

the registration of professional surveyors. R.C. 4733.01-.22. Provisions relating to stamps and seals of professional engineers and surveyors appear in R.C. 4733.14 and 11 Ohio Admin. Code 4733-23-01. Fire protection system designers are authorized to submit certain types of documents to certified building departments. R.C. 3791.041; *see also* R.C. 3781.105; 9 Ohio Admin. Code Chapter 4101:2-87. Because you have asked only about requirements relating to seals on documents submitted by architects, this opinion does not consider documents submitted by other persons.

[3] Under earlier law, an architect was required to sign his drawings as a registered architect and provide the serial number of his certificate of qualification to practice. *See* 1973 Ohio Laws, Part I, 358, 361 (Am. S.B. 101, amending, *inter alia*, R.C. 4703.12); Ohio Legislative Service Comm'n, *Summary of 1973 Enactments January–September*, at 81, 82 (1973) (Am. S.B. 101). The statutes did not require a seal, and it was found that the Board of Building Standards lacked authority to impose such a requirement by rule. *See* 1972 Op. Att'y Gen. No. 72-012; *see also City of Springdale v. Ohio Bd. of Bldg. Standards*, 59 Ohio St. 3d 56, 570 N.E.2d 268 (1991) (finding that a certified municipal building department lacked authority to require that plans be certified by an architect or engineer when such a requirement was not imposed by statute); 1984 Op. Att'y Gen. No. 84-100 (concluding that building plans must be approved if they conform to standards of statute and rule even if they are prepared by someone who is not certified to practice architecture). *See generally* 1972 Op. Att'y Gen. No. 72-108, *overruled in part by* 1999 Op. Att'y Gen. No. 99-053. Because the statutes have been amended and R.C. 3791.04 now requires that plans bear the seal of an architect or engineer unless an exception applies, 1984 Op. Att'y Gen. No. 84-100 and 1972 Op. Att'y Gen. No. 72-012 must be modified accordingly.

Let us now consider your specific questions. Your first question refers to a situation in which an architect's seal is required pursuant to R.C. 3791.04(A) and asks whether the building departments must require that the seal meet the guidelines of rule 4703-3-01. *See* 11 Ohio Admin. Code 4703-3-01. More specifically, you ask: "if an architect submits improperly sealed plans to a building department, does the building department plans examiner have a duty to require the seal be in proper form?"

The statute provides that the seal of an architect or an engineer "shall be required" for plans, drawings, specifications, or data submitted to a certified building department for approval, unless an exception applies. R.C. 3791.04(A). The Board of Building Standard's rule also requires that construction documents submitted for approval "shall" bear the seal of a registered design professional. 9 Ohio Admin. Code 4101:2-1-20(B). Use of the word "shall" indicates that the requirement is mandatory. *See, e.g., Dorrian v. Scioto Conservancy Dist*., 27 Ohio St. 2d 102, 102, 271 N.E.2d 834, 835 (1971) (syllabus, paragraph 1). Hence, R.C. 3791.04(A) and 9 Ohio Admin. Code 4101:2-1-20(B) mandate that certain documents submitted to a certified municipal, township, or county building department for approval bear the seal of either an architect registered under R.C. Chapter 4703 or an engineer registered under R.C. Chapter 4733. *See generally Jamison Plumbing & Heating Co. v. Rose*, 14 Ohio App. 2d 47, 50, 236 N.E.2d 561, 563 (Franklin County 1967) (discussing requirement that rules adopted by the Board of Building Standards pursuant to R.C. 3781.12 bear the seal of the Department of Industrial Relations and stating: "where express admonitions such as this appear in a statute, the agency concerned therewith should heed them").[4]

---

[4] Before the enactment of the statutory language in R.C. 3791.04(A) requiring (subject to exceptions) that items submitted for approval bear the seal of an architect or engineer, various authorities concluded that the entities administering the statutes could not impose a seal requirement. *See* note 3, *supra*. The statutory seal requirement was enacted in 1995-1996 Ohio Laws, Part II, 2907 (Sub. H.B. 231, eff. Nov. 24, 1995). Interestingly, however, the title of the act did not focus on instances in which the seal was required but stated instead that the legislation was intended "to specify that plans and other materials relative to obtaining building permits *are not required to be prepared by registered architects for certain buildings and structures*." *Id*. at 2907 (emphasis added). The Legislative Service Commission's digest of the act expands upon this concept, stating that the legislation:

> Specifies that plans and other materials relative to obtaining building permits are not required to be prepared by registered architects or engineers for buildings that are subject to energy conservation requirements, exempt from the Building Standards Law, or constructed as industrialized one-, two-, or three-family units or structures; allows persons other than architects and engineers to prepare drawings and data relative to obtaining building permits for improvements, alterations, repairs, painting, or decorating for buildings that are

The State Board of Examiners of Architects is given the responsibility of prescribing by rule the seal used by architects. R.C. 4703.02; R.C. 4703.12. The Board has adopted requirements for such a seal in rule 4703-3-01. 11 Ohio Admin. Code 4703-3-01. Under Ohio law, a rule that has been promulgated under a valid grant of authority from the legislature is part of the law of the state, provided that it is not unreasonable or in conflict with statutes or constitutional provisions. *See State ex rel. DeBoe v. Industrial Comm'n*, 161 Ohio St. 67, 67, 117 N.E.2d 925, 926 (1954) (syllabus, paragraph 1); *State ex rel. Kildow v. Industrial Comm'n*, 128 Ohio St. 573, 580, 192 N.E. 873, 876 (1934). The seal rule adopted by the State Board of Examiners of Architects, on its face, does not appear to conflict with any provision of statute or constitution or to be unreasonable. Accordingly, we conclude that the seal rule is part of the law of the State of Ohio, and that the portion of R.C. 3791.04(A) requiring the seal of a registered architect must be construed to require a seal that complies with the seal criteria established by rule. Therefore, when documents prepared by an architect are submitted to a certified municipal, township, or county building department pursuant to R.C. 3791.04, the documents must bear a seal that meets the criteria established by 11 Ohio Admin. Code 4703-3-01.

Your remaining questions concern the responsibility of a building department to implement the requirement that documents bear a valid architect's seal, and the recourse available if implementation is not effectively performed. The statutes do not establish a specific procedure to be followed if a document submitted to a building department does not bear a proper architect's seal.

By statute, the responsibility for implementing R.C. 3791.04 has been given to the Division of Industrial Compliance, the Board of Building Standards, and the various certified building departments. *See, e.g.*, R.C. 3791.04(D) and (H). Within the limits imposed by statute, those entities have been granted discretion to exercise their judgment in determining how to carry

---

> subject to the Building Standards Law when plans or specifications are not required for approval; provides that *the seal of a registered architect or engineer is not required for approval of plans and other materials* relative to obtaining building permits for buildings that are subject to energy conservation standards, exempt from the Building Standards Law, or erected as industrialized one-, two-, or three-family units, or for improvements, alterations, repairs, painting, decorating, or installing replacement equipment or systems of specified buildings if plans or specifications are not required for approval ….

Ohio Legislative Service Comm'n, *Digest of Enactments, 121st General Assembly 1995*, at 105, 106 (1996) (Sub. H.B. 231) (emphasis added). It must be inferred from these statements of legislative intent that when no exception applies, plans and other materials relative to obtaining building permits are required to be prepared by licensed architects or engineers, and to bear the appropriate seals.

out that responsibility. The Attorney General is not empowered, in rendering opinions, to exercise discretion on behalf of other public officials, nor do we find it appropriate to advise one public body on matters concerning the powers and duties of another public body. *See* 1986 Op. Att'y Gen. No. 86-076, at 2-422 (the Attorney General is "not authorized to exercise on behalf of another officer or entity of the government discretion that has been bestowed by statute on that officer or entity"); note 1, *supra*. Instead, we defer to the judgment of the Division of Industrial Compliance, the Board of Building Standards, and the certified building departments. Those entities have the authority and expertise to determine how to administer the seal requirement of R.C. 3791.04 in carrying out their statutory functions. *See* 1986 Op. Att'y Gen. No. 86-076, at 2-422 ("[w]here the Board [of Building Standards] is given the authority to carry out a particular function but no statutory direction is given as to the manner in which the function is to be performed, the Board may perform the function in any reasonable manner"); 1982 Op. Att'y Gen. No. 82-048. *See generally* 9 Ohio Admin. Code 4101:2-1-06(A) (the Ohio Basic Building Code "shall be liberally construed in order to promote its purpose").

Within the limits imposed by law, certified municipal, township, and county building departments may determine which staff members administer the seal requirement of R.C. 3791.04(A) and the manner in which the requirement is implemented. Whether those functions are performed by the building department plans examiner or by another official, and how those functions are carried out, are matters that are left to the discretion of the Division of Industrial Compliance, the Board of Building Standards, and the certified building departments.[5]

You have also asked what recourse may be available if the seal requirement is not implemented. Under the statute, fines of up to five hundred dollars may be imposed for violations of R.C. 3791.04, *see* R.C. 3741.04(J), and violations may be charged against an "architect, designer, engineer, builder, contractor, subcontractor, or any officer or employee of a municipal, township, or county building inspection department," R.C. 3791.04(I). Other provisions authorize fines of up to one thousand dollars for violations of R.C. Chapter 3781 or R.C. Chapter 3791 or rules or orders thereunder. R.C. 3791.03 (prohibition applicable to architect, engineer, builder, plumber, carpenter, mason, contractor, subcontractor, foreman or employee); *see also* R.C. 3791.01. In addition, criminal penalties may be imposed for the unauthorized practice of architecture, and anyone who has knowledge of such practice may file an affidavit with the prosecuting attorney for the purpose of having a complaint filed. R.C. 4703.19; R.C. 4703.99(A); *see also* R.C. 4703.18(A). Thus, pursuant to R.C. 3791.03, R.C. 3791.04, R.C. 4703.18(A), R.C. 4703.19, and R.C. 4703.99(A), fines may be imposed for violations of R.C. 3791.04 and criminal charges may be brought for the unauthorized practice of architecture.

---

[5] One response that might be taken upon receipt of a document that lacks strict compliance with the seal requirements established by the State Board of Examiners of Architects would be to advise the Board of such lack of strict compliance and allow the Board to take whatever action it deems appropriate.

In appropriate circumstances, other legal proceedings may be available. For example, injunctions may be used to prevent the erection of buildings in violation of relevant provisions of law. *See* R.C. 307.40; R.C. 715.30. Further, when a public official fails to perform duties that are required by law, it may be possible to bring an action in mandamus or an action for a mandatory injunction.[6] When a public official exercises judicial or quasi-judicial power in a manner that is not consistent with the law, it may be possible to bring an action for writ of prohibition.[7]

In addition, as discussed above, the State Board of Examiners of Architects has authority to revoke or suspend certificates or to otherwise discipline licensees who fail to comply with statutes and rules governing the profession of architecture, including provisions relating to architects' seals. *See* R.C. 4703.02-.03; R.C. 4703.15-.151. Therefore, an architect who submits documents without providing a seal as required by R.C. 3791.04 may be subject to discipline by the Board in accordance with its statutory authority.

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. R.C. 3791.04(A) and 9 Ohio Admin. Code 4101:2-1-20(B) mandate that certain documents submitted to a certified municipal, township, or county building department for approval bear the seal of either an architect registered under R.C. Chapter 4703 or an engineer registered under R.C. Chapter 4733. When documents prepared by an architect are submitted to

---

[6] For a writ of mandamus to issue, the court must find: (1) that the relator has a clear legal right to the relief requested; (2) that the respondent is under a clear legal duty to perform the requested act; and (3) that there is no plain and adequate remedy at law. *The Chapel v. City of Solon*, 40 Ohio St. 3d 3, 350 N.E.2d 1321 (1988); *see* R.C. Chapter 2731. *See generally State ex rel. Sinay v. Sodders*, 80 Ohio St. 3d 224, 685 N.E.2d 754 (1997) (a person must be beneficially interested in a case to bring a mandamus action; a writ of mandamus cannot be used to control the exercise of discretion, but it can correct an abuse of discretion by a nonjudicial public body); *State ex rel. Willis v. Sheboy*, 6 Ohio St. 3d 167, 451 N.E.2d 1200 (1983) (mandamus compels the performance of a present existing duty and is not granted to take place prospectively; it is not available when there is a remedy by way of appeal); *State ex rel. Broadway Petroleum Corp. v. City of Elyria*, 18 Ohio St. 2d 23, 247 N.E.2d 471 (1969). A mandatory injunction is the proper remedy to secure a continuing practice by a public entity. *See Curran v. Board of Park Comm'rs*, 22 Ohio Misc. 197, 259 N.E.2d 757 (Lake County 1970); *see also City of Columbus ex rel. Willits v. Cremean*, 27 Ohio App. 2d 137, 152, 273 N.E.2d 324, 333 (Franklin County 1971).

[7] For a writ of prohibition to lie, the court must find: (1) that the court or officer against whom the writ is sought is about to exercise judicial or quasi-judicial power; (2) that the exercise of such power is unauthorized by law; and (3) that the exercise of the power will result in injury for which no other adequate remedy exists. *State ex rel. Berger v. McMonagle*, 6 Ohio St. 3d 28, 29, 451 N.E.2d 225, 227 (1983), *cert. denied*, 464 U.S. 1017 (1983).

a certified municipal, township, or county building department pursuant to R.C. 3791.04, the documents must bear a seal that meets the criteria established by 11 Ohio Admin. Code 4703-3-01. (1984 Op. Att'y Gen. No. 84-100 and 1972 Op. Att'y Gen. No. 72-012, modified on the basis of legislative change.)

2. Within the limits imposed by law, certified municipal, township, and county building departments may determine which staff members administer the seal requirement of R.C. 3791.04(A) and the manner in which the requirement is implemented.

3. Pursuant to R.C. 3791.03, R.C. 3791.04, R.C. 4703.18(A), R.C. 4703.19, and R.C. 4703.99(A), fines may be imposed for violations of R.C. 3791.04 and criminal charges may be brought for the unauthorized practice of architecture. In appropriate circumstances, other legal proceedings may be available.

4. The State Board of Examiners of Architects has authority to revoke or suspend certificates or to otherwise discipline licensees who fail to comply with statutes and rules governing the profession of architecture, including provisions relating to architects' seals.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

July 25, 2001

William N. Wilcox, Executive Director
State Board of Examiners of Architects
77 South High Street, 16th Floor
Columbus, Ohio 43266-0303

SYLLABUS: 2001-032

1. R.C. 3791.04(A) and 9 Ohio Admin. Code 4101:2-1-20(B) mandate that certain documents submitted to a certified municipal, township, or county building department for approval bear the seal of either an architect registered under R.C. Chapter 4703 or an engineer registered under R.C. Chapter 4733. When documents prepared by an architect are submitted to a certified municipal, township, or county building department pursuant to R.C. 3791.04, the documents must bear a seal that meets the criteria established by 11 Ohio Admin. Code 4703-3-01. (1984 Op. Att'y Gen. No. 84-100 and 1972 Op. Att'y Gen. No. 72-012, modified on the basis of legislative change.)

2. Within the limits imposed by law, certified municipal, township, and county building departments may determine which staff members administer the seal requirement of R.C. 3791.04(A) and the manner in which the requirement is implemented.

3. Pursuant to R.C. 3791.03, R.C. 3791.04, R.C. 4703.18(A), R.C. 4703.19, and R.C. 4703.99(A), fines may be imposed for violations of R.C. 3791.04 and criminal charges may be brought for the unauthorized practice of architecture. In appropriate circumstances, other legal proceedings may be available.

4. The State Board of Examiners of Architects has authority to revoke or suspend certificates or to otherwise discipline licensees who fail to comply with statutes and rules governing the profession of architecture, including provisions relating to architects' seals.