

OPINION NO. 66-058

Syllabus:

1. Section 4703.18 (B) Revised Code, contains a proviso permitting persons other than the owner or an architect to file applications for building permits, to obtain such permits on drawings prepared by persons other than registered architects but does not mean that such persons can practice architecture.

2. The term "for their own use" as used in Section 4703.18 (B) Revised Code, is not to be limited to buildings which will be occupied exclusively by the owner and his family but must be determined by considering the facts and circumstances in each instance.

To: Burt V. Stevens, Executive Secretary, State Board of Examiners of
Architects, Columbus, Ohio
By: William B. Saxbe, Attorney General, March 7, 1966

I have before me your request for my opinion which in essence asks for a clarification of Section 4703.18 (B), Ohio Revised Code.

Section 4703.18 (B) Revised Code, reads as follows:

"(B) Sections 4703.01 to 4703.19, inclusive, of the Revised Code, shall not prevent persons other than architects from filing application for building permits or obtaining such permits, providing the drawings for such buildings are signed by the authors with their true appellation as engineer, contractor, carpenter, or other appellation, but without the use of any form of the title architect, nor shall it prevent such persons from designing buildings and supervising the construction thereof for their own use."

This section in effect provides that the following operations are not prohibited by unlicensed persons:

1. The filing of an application for a building permit, or obtaining such permit, even though the drawing therefor is not signed by a registered architect.
2. The designing of a building and supervising the construction thereof by the owner thereof for his own use.

The Court in McGill v. Carlos, 39 O.O. 502 in interpreting Section 1334-17, General Code, (Now Section 4703.18, Ohio Revised Code) said at page 504 in reference to the above two ex-

ceptions:

" * * * * * * * *"

"The court feels that these two exceptions were intended primarily to enable an owner to design plans and specifications for the construction of a building for his own use and when required, to file and obtain a building permit therefor. This statute also seems to permit persons other than the owner or an architect to file applications for and obtain building permits on drawings prepared by persons other than registered architects. * * *

" * * * * * * * *"

I shall discuss later what is meant by "own use" as the term is used in the last sentence of Section 4703.18 (B), supra.

In regard to the first part of Section 4703.18 (B), supra, in relation to filing applications for building permits the Court in McGill v. Carlos, supra, only stated that Section 1334-17, General Code, (Section 4703.18 (B), Revised Code) permits persons other than the owner or an architect to file applications for and obtain building permits. The court did not say this meant others could draw and prepare plans or perform other duties permitted only by architects. If the wording of the statute meant more than just permission for others than architects or owners to file building permits the requirement that architects be licensed would, in effect, be eliminated.

The court at page 505 of McGill v. Carlos, supra, defined the practice of architecture and then concluded its opinion by stating quite clearly who are permitted to practice architecture in Ohio, as follows:

"to enter upon the practice of architecture,' means to exercise the profession of an architect. Primarily, an architect is a person who plans, sketches and presents the complete details for the erection, enlargement, or alteration of a building or other structure for the use of the contractor or builder when expert knowledge and skill are required in such preparation. The practice of architecture may also include the supervision of construction under such plans and specifications.

"It would appear from the foregoing that in this state:

"(1) An owner may employ a builder to construct a building for him without the services of a registered architect, there being no such requirement.

"(2) That an owner may design a building and supervise the construction thereof for his own use without being a licensed architect under the exception in Section 1334-17, General Code.

"(3) That a builder who is not a registered architect may contract to furnish plans and specifications for the construction of a building for an owner provided the plans and specifications are prepared by a registered architect.

"But the court is of the opinion that under the laws of the state of Ohio, a builder who is not a registered architect may not prepare complete plans and specifications for the construction of a building for another, when expert knowledge and skill are required in such preparation, and that such laws apply to persons engaging in single isolated architectural transactions as well as persons attempting to practice architecture as a business or profession."

The one remaining question to be answered is what is meant by the language, "* * *nor shall it prevent such persons from designing buildings and supervising the construction thereof for their own use," as used in Section 4703.18 (B).

McGill v. Carlos, supra, at page 505, paragraph numbered (2), quoted above, makes it clear that the person designing a building and supervising the construction thereof for his own use must also be the owner of the building.

I find no case or statutory law in Ohio directly in point with the problem now before me, however, I find that the States of North Carolina and New Jersey have statutory provisions similar to Section 4703.18 (B), Revised Code.

Section 83-12, General Statutes of North Carolina, reads in pertinent part as follows:

"* * * * *"

"Nothing in this chapter shall be construed to prevent any person from making plans or data for buildings for himself.* * *

"* * * * *"

The New Jersey Statutes Annotated, Section 45:3-10, prohibits the illegal practice of architecture, and has an express exception as follows:

"Nothing herein contained shall * * * prohibit any person in this State from acting

as designer of any building that is to be constructed by himself for his own occupancy or occupancy by a member or members of his immediate family.* * *

The Supreme Court of North Carolina in North Carolina Board of Architecture v. C.A. Lee, 143 S.E. 2d 643, decided June 18, 1965, discussed the two statutes quoted above. The North Carolina Board of Architecture, the Plaintiff in that case contended that the Defendant, Lee, in making plans for a building which he was going to lease to a automobile agency, did not come within the statutory exception of Section 83-12, General Statutes of North Carolina, quoted above.

The Supreme Court of North Carolina said at page 649:

"This contention is untenable, for there is nothing in the express exception in General Statutes, Section 83-12 to justify such a contention. The words "buildings for himself" contained in the express statutory exception are broad and comprehensive, State v. Cuthress, 235 N.C. 173, 69 S.E. 2d, 233; 12 C.V.S. Building, pages 380-381, and contain no limitation of any kind. Our statutory exemption differs from that of the State of New Jersey. The New Jersey Statutes Annotated, Section 45:3-10, prohibits the illegal practice of architecture, and has an express exception as follows:

"'Nothing herein contained shall * * * prohibit any person in this state from acting as designer of any building that is to be constructed by himself for his own occupancy or occupancy by a member or members of his immediate family.* * *'

"* * * Obviously, a building may be erected for any one or more of many purposes. It seems plain that the statutory exception contemplates possession by the designer of the building for whatever lawful purpose he may choose. If the General Assembly had intended the statutory exception to be limited to buildings actually occupied by the designer, and not for lease and use by the public, it could quite easily have said so. The General Assembly having thus formally and clearly expressed its will, the Court is without power to interpolate or superimpose conditions and limitations which the statutory exception does not of itself contain."

The General Assembly of Ohio also could have limited "own use" as used in Section 4703.18 (B), supra, had it intended to limit the statutory exception to be limited to buildings which will be occupied exclusively by the owner and his family, i.e., residence, farm building, shop or of-

office used only by himself and not for lease or use by the public. However, the General Assembly of Ohio did not see fit to do so. What constitutes practicing architecture for your "own use" can only be answered by considering the facts and circumstances in each instance.

Therefore it is my opinion and you are hereby advised that:

1. Section 4703.18 (B) Revised Code, contains a proviso permitting persons other than the owner or an architect to file applications for building permits, to obtain such permits on drawings prepared by persons other than registered architects but does not mean that such persons can practice architecture.

2. The term "for their own use" as used in Section 4703.18 (B) Revised Code, is not to be limited to buildings which will be occupied exclusively by the owner and his family but must be determined by considering the facts and circumstances in each instance.