

**Note from the Attorney General's Office:**

1984 Op. Att'y Gen. No. 84-100 was modified by  
2001 Op. Att'y Gen. No. 2001-032.

**OPINION NO. 84-100****Syllabus:**

When drawings, documents, specifications and data are submitted to the state Division of Factory and Building Inspection, or to a certified municipal, township, or county building department pursuant to R.C. 3791.04, the respective enforcing department must accept, review, and approve such plans, if the plans conform with R.C. Chapters 3781 and 3791 and any rules or regulations adopted by the Ohio Board of Building Standards or the municipality, township or county, notwithstanding that such plans are prepared by a person not certified to practice architecture by the Board of Examiners of Architects.

---

**To: William N. Wilcox, Executive Director, State Board of Examiners of Architects, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 31, 1984**

I have before me your request for my opinion in which you pose the following question:

When architectural drawings, documents, specifications and data are submitted to a municipal, township or county building department or to the Division of Factory and Building Inspection of the Ohio Department of Industrial Relations, and when said documents have been prepared by a person not certified by the Board of Examiners of Architects to practice architecture and the documents are not for the preparer's own use, is that department or division authorized to accept, review or approve those documents for the construction of a building?

You have indicated your concern that the preparation of such drawings, documents and specifications is contrary to the provisions of R.C. Chapter 4703 and the administrative regulations promulgated by the Board of Examiners of Architects, see R.C. 4703.02. R.C. 4703.18 restricts the practice of architecture by providing, in relevant part:

(A) No person shall enter upon the practice of architecture, or hold himself forth as an architect or registered architect, unless he has complied with sections 4703.01 to 4703.19 of the Revised Code,

and is the holder of a certificate of qualification to practice architecture issued or renewed and registered under such sections.

(B) Sections 4703.01 to 4703.19 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. (Emphasis added.)

The phrase "practice of architecture," as used in R.C. 4703.18(A), is defined under [1983-84 Monthly Record] Ohio Admin. Code 4703-1-01(B) as follows:

"Practice of architecture"—within the meaning and intent of this act, shall consist of rendering or offering to render service to clients, including any one or any combination of the following practices or professional services, such as advice, consultation, evaluation, planning, design, including aesthetic and structural design, or administration of construction contracts wherein expert knowledge and skill are required in connection with the erection, enlargement or alteration of any building or buildings, or the equipment or utilities thereof, or the accessories thereto, wherein the safeguarding of life, health or property is concerned or involved. The term "building" as used in this rule shall mean a structure intended for use as shelter for man and/or his possessions.

Thus, you are concerned that one who does not hold a certificate of qualification to practice architecture, but prepares drawings, data and specifications for the construction of a building, is engaging in the practice of architecture in violation of R.C. 4703.18(A). It must be recognized, nevertheless, that R.C. 4703.18(B) expressly provides that the lack of a certificate obtained in compliance with R.C. 4703.01 through R.C. 4703.19 does not prevent a person from filing an application for a building permit, so long as the drawings submitted for such building 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." It is therefore clear that the statutes governing the practice of architecture permit non-certified individuals to prepare such drawings, and to submit them to the appropriate authority for approval. However, your specific question is directed to the authority conferred upon municipal, county or township building departments, or the Ohio Department of Industrial Relations, Division of Factory and Building Inspection, to review and approve documents for the construction of a building.

The Division of Factory and Building Inspection, and local building departments are authorized to review construction plans, drawings, data and specifications pursuant to R.C. 3791.04 which provides, in pertinent part:

Before entering into a contract for or beginning the construction, erection, or manufacture of any building to which section 3781.06 of the Revised Code is applicable, including all industrialized units, the owner thereof shall, in addition to any other submission of plans or drawings, specifications, and data required by law, submit the plans or drawings, specifications, and data prepared for the construction, erection, and equipment thereof, or the alteration thereof or addition thereto, which plans or drawings and specifications shall indicate thereon the portions that have been approved pursuant to section 3781.12 of the Revised Code, for which no further approval shall be required, to the municipal, township, or county building department having jurisdiction if such department has been certified as provided in division (E) of section 3781.10 of the Revised Code, and if there is no certified municipal, township, or county building department, to the chief of the division of workshops and factories, for approval.

No owner shall proceed with the construction, erection, alteration, or equipment of any such building until such plans or drawings, specifications, and data have been so approved, or the industrialized unit inspected at the point of origin. No plans or specifications shall be approved or inspection approval given unless the building represented thereby would, if constructed, repaired, erected, or equipped according to the same, comply with Chapters 3781. and 3791. of the Revised Code and any rule made under such chapters.

.....  
Subject to section 3791.042 of the Revised Code, the board of building standards or the legislative authority of a municipal corporation, township, or county may, by rule, regulate the requirements for the submission of plans and specifications to the respective enforcing departments and for the processing of the same by such departments. The board of building standards or the legislative authority of a municipal corporation, township, or county may adopt rules to provide for the approval, subject to section 3791.042 of the Revised Code, by the department having jurisdiction of the plans for construction of a foundation or any other part of a building or structure before the complete plans and specifications for the entire building or structure have been submitted. When any plans are approved by the department having jurisdiction, the structure and every particular thereof represented by those plans and disclosed therein shall, in the absence of fraud or a serious safety or sanitation hazard, be conclusively presumed to comply with Chapters 3781. and 3791. of the Revised Code and any rule issued pursuant thereto, if constructed, altered, or repaired in accordance with those plans and any such rule in effect at the time of approval.

Thus, the fourth paragraph of R.C. 3791.04 permits the Ohio Board of Building Standards, see R.C. 3781.07, or the legislative authority of a municipality, township, or county to establish requirements for the submission of plans and processing of such plans by the respective enforcement department. This provision does not stand alone; it must be construed *in pari materia* with the remaining provisions of R.C. 3791.04, as well as other provisions of law regulating the design and construction of buildings. See *State v. Mehaffey*, 112 Ohio St. 330, 147 N.E. 506 (1925); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916).

The second paragraph of R.C. 3791.04 provides for approval of plans or specifications when the building represented by such documents would, if constructed, comply with R.C. Chapters 3781 and 3791 and regulations adopted thereunder. This paragraph thus appears to address the substantive requirements for plan approval. In contrast, the authority to promulgate regulations that is conferred under the initial sentence of the fourth paragraph of R.C. 3791.04 is limited to adoption of rules for the submission and processing of plans and specifications, *i.e.*, procedural requirements. One must therefore refer to provisions of law regarding promulgation of substantive regulations concerning the construction of buildings, as well as provisions regarding the authority of local building departments to approve plans and specifications, in order to determine whether the state Division of Factory and Building Inspection, or local building departments or legislative authorities, may impose a requirement that the author of plans, specifications or drawings for the construction of a building be an architect who has been certified in accordance with R.C. Chapter 4703.

R.C. 3781.10 sets forth the rule-making authority of the Ohio Board of Building Standards by providing, in relevant part:

The board of building standards shall:  
 (A) Formulate and adopt rules governing the erection, construction, repair, alteration, and maintenance of all buildings or classes of buildings specified in section 3781.06 of the Revised Code, including land area incidental thereto, the construction of industrialized units, the installation of equipment, and the standards

of requirements for materials to be used in connection therewith. Such standards shall relate to the conservation of energy in and to the safety and sanitation of such buildings. The rules shall be the lawful minimum requirements specified for such buildings or industrialized units, except that no rule which specifies a higher requirement than is imposed by any section of the Revised Code shall be enforceable; the rules shall be acceptable as complete lawful alternatives to the requirements specified for such buildings or industrialized units in any section of the Revised Code; and the board shall on its own motion, or on application made under sections 3781.12 and 3781.13 of the Revised Code, formulate, propose, adopt, modify, amend, or repeal the rules to the extent necessary or desirable to effectuate the purposes of sections 3781.06 to 3781.18 of the Revised Code.

....  
 (E) Certify municipal, township, and county building departments to exercise enforcement authority and to accept and approve plans and specifications, and to make inspections pursuant to sections 3781.03 and 3791.04 of the Revised Code. (Emphasis added.)

Thus, the Board of Building Standards may adopt rules<sup>1</sup> governing the construction of all buildings specified in R.C. 3781.06,<sup>2</sup> provided that no such rule specifies a higher requirement than is imposed by any section of the Ohio Revised Code. R.C. 3781.11 further addresses the rule-making authority of the Board of Building Standards, in part, as follows:

The rules and regulations of the board of building standards shall:

(A) Provide uniform minimum standards and requirements for construction...to make buildings safe and sanitary as defined in section 3781.06 of the Revised Code;

....  
 The rules and regulations of the board of building standards shall supersede and govern any order, standard, rule or regulation of the department of commerce, division of fire marshal, the department of industrial relations and the division of workshops and factories therein, and the department of health, and of counties and townships, in all cases where such orders, standards, rules or regulations are in conflict with the rules and regulations of the board of building standards.

R.C. 3781.11 thus acknowledges that townships and counties are authorized to adopt certain substantive regulations related to construction of buildings. Townships may regulate the construction of one, two, and three-family dwellings, as well as adopt regulations necessary for participation in the national flood insurance program pursuant to R.C. 505.75. Similar authority is conferred upon counties pursuant to R.C. 307.37. In addition, townships and counties may adopt procedural rules regarding submission and processing of plans for the construction of buildings pursuant to R.C. 3791.04.

---

<sup>1</sup> The rules adopted by the Ohio Board of Building Standards pursuant to R.C. Chapter 3781 are codified under Chapter 4101 of the Ohio Administrative Code, and are commonly known as the Ohio Basic Building Code.

<sup>2</sup> R.C. 3781.06(B) states that "[a] building' is any structure consisting of foundations, walls, columns, girders, beams, floors, and roof, or a combination of any number of these parts, with or without other parts or appurtenances." However, R.C. 3781.06 provides that R.C. 3781.06 through R.C. 3781.18 and R.C. 3791.04 do not apply to one-family, two-family, and three-family dwelling houses which are not constructed as industrialized units, or to buildings or structures "which are incident to the use for agricultural purposes of the land on which such buildings or structures are located, provided such buildings or structures are not used in the business of retail trade."

Municipalities are authorized to adopt building regulations pursuant to R.C. 3781.01, which states:

Chapters 3781 and 3791 of the Revised Code do not prevent the legislative authority of a municipal corporation from making further and additional regulations, not in conflict with such chapters or with the rules and regulations of the board of building standards. Such chapters or the rules and regulations of the board of building standards do not modify or repeal any portion of any building code adopted by a municipal corporation and in force on September 13, 1911, which is not in direct conflict with such chapters or with such rules and regulations.

Further, Ohio Const. art. XVIII, §3 provides that "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations as are not in conflict with general laws." It is well settled that R.C. Chapters 3781 and 3791 are general laws of the state and constitute police regulations. In re Decertification of Eastlake, 66 Ohio St. 2d 363, 422 N.E.2d 598, cert. denied, 454 U.S. 1032 (1981). The statutes regulating the practice of architecture are also an exercise of the police power, Elephant Lumber Co. v. Johnson, 120 Ohio App. 266, 202 N.E.2d 189 (Ross County 1964), and, consequently, general laws within the meaning of Ohio Const. art. XVIII, §3. Village of West Jefferson v. Robinson, 1 Ohio St. 2d 113, 205 N.E.2d 382 (1965) (syllabus, paragraph 3). Thus, it is clear that the legislative authority of a municipal corporation may not pass any regulation which is in conflict with R.C. Chapter 3781, R.C. Chapter 3791, R.C. Chapter 4703, or a rule or regulation of the Board of Building Standards.

As previously discussed, R.C. 4703.18(B) permits persons other than certified architects to author drawings used to obtain building permits when the drawings are properly signed by the author. The approval of drawings or plans by the state Division of Factory and Building Inspection or the appropriate local building department constitutes a license to construct the building in accordance with the approved plans. R.C. 3791.04. It is therefore clear that R.C. 4703.18(B) expressly recognizes that one may obtain such permission to build based upon drawings prepared by one who is not an architect, so long as the author of such drawings signs the documents with his true appellation. This opinion does not, of course, address the question of what other activities engaged in by such author might constitute the unauthorized practice of architecture.

Moreover, R.C. 3791.042 addresses the authority of local building departments to review plans and specifications for the construction of buildings by providing:

If a building department certified under division (E) of section 3781.10 of the Revised Code does not have personnel in its full-time employ as described in division (E)(1)(a) of section 3781.10 of the Revised Code who are certified by the board of building standards to do plan and specification review, plans and specifications submitted to the building department shall be examined by the approved building official and shall be approved by him if the plans and specifications are determined to conform with the Ohio building code and Chapters 3781 and 3791 of the Revised Code, and if the plans and specifications satisfy both of the following requirements:

(A) The plans and specifications were prepared by an architect who is certificated and registered pursuant to Chapter 4703 of the Revised Code, or by a professional engineer who is registered pursuant to Chapter 4733 of the Revised Code.

(B) The plans and specifications contain a written certification by an architect or professional engineer, as described in division (A) of this section, that indicates that the plans and specifications conform to the requirements of the Ohio building code and Chapters 3781 and 3791 of the Revised Code.

Thus, the law expressly recognizes that plans and specifications which are submitted for review by local building departments may be prepared by persons who are not certified as architects in accordance with R.C. Chapter 4703.

One must, then, question whether the Ohio Board of Building Standards, or a municipality, county, or township, may adopt a regulation which would prohibit submission of plans to the appropriate enforcing department unless such plans are prepared by an architect. The dispositive inquiry is whether such an ordinance would be in conflict with the general laws, Ohio Const. art. XVIII, §3; R.C. 3781.01, or whether such a rule would specify a higher requirement than is imposed by any section of the Revised Code, R.C. 3781.10(A); R.C. 3781.11. An ordinance is in conflict with general laws if it prohibits that which the statute permits. Village of Struthers v. Sokol, 108 Ohio St. 263, 140 N.E. 519 (1923) (syllabus, paragraph 2). As R.C. 3791.042 and R.C. 4703.18(B) expressly permit one who is not an architect to submit plans for approval by a department certified to regulate building construction, an ordinance which proscribed such action would be in conflict with the general law. Thus, such an ordinance would exceed the authority conferred upon municipalities pursuant to R.C. 3781.01 and the home rule provisions of the Ohio Constitution which apply to municipalities.

Similarly, the Ohio Board of Building Standards is without authority to adopt a regulation prohibiting submission of plans by one who is not an architect. Such a regulation would purport to impose a requirement higher than that prescribed by R.C. 3791.042 or R.C. 4703.18(B), and would be unenforceable pursuant to R.C. 3781.10(A). The Board of Building Standards has accordingly promulgated a rule which merely requires that plans submitted for inspection bear the identification of the person primarily responsible for their preparation. 4 Ohio Admin. Code 4101:2-1-20. Furthermore, plans prepared by a registered architect or professional engineer who certifies that such plans conform to building regulations "pertaining to design loads, stresses, strength, and stability, or other requirements involving technical analysis, need be examined by the building official only to the extent necessary to determine conformity of such plans with other requirements" of the building code. [1982 Monthly Record] Ohio Admin. Code 4101:2-1-22(B). Thus, the Board of Building Standards clearly permits plans prepared by persons other than architects to be submitted and reviewed for approval. Further, such plans must be approved if the requirements of the building code are met. R.C. 3791.04. A regulation promulgated by a township or county which would purport to prohibit submission or approval of plans which are not prepared by architects would be in conflict with the rules promulgated by the Ohio Board of Building Standards. In such a situation, the rules of the Board of Building Standards would supersede a contrary regulation adopted by a township or county. R.C. 3781.11.

Therefore, in response to your question, it is my opinion, and you are advised that when drawings, documents, specifications and data are submitted to the state Division of Factory and Building Inspection, or to a certified municipal, township, or county building department pursuant to R.C. 3791.04, the respective enforcing department must accept, review, and approve such plans, if the plans conform with R.C. Chapters 3781 and 3791 and any rules or regulations adopted by the Ohio Board of Building Standards or the municipality, township or county, notwithstanding that such plans are prepared by a person not certified to practice architecture by the Board of Examiners of Architects.