

2. Even though a village street commissioner's salary is fixed on a per diem or a per hour basis, the same should be paid from the general fund of the village, and no part of it may lawfully be paid from the village's portion of motor vehicle fuel or license tax receipts.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

142.

ARCHITECTS—EMPLOYEE OF FIRM OF ARCHITECTS EXEMPT FROM EXAMINATION WHEN.

*SYLLABUS:*

*The exemption from the requirement of examination contained in paragraph C of Section 1334-7, General Code, of a member of a reputable firm of architects therein set forth applies not only to such persons as have been partners of such architectural firm but also to such employes of a reputable firm of architects as have been in responsible charge of design or supervision during the period of time set forth in the section.*

COLUMBUS, OHIO, February 14, 1933.

*State Board of Examiners of Architects, 8 East Long Street, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date is as follows:

“Your opinion is requested upon the following question:

May this Board consider an employe of a firm of architects, who has had responsible charge of design and supervision of architectural work in connection with his duties as such employe, as a ‘member’ of such firm within the meaning of the term as used in Subdivision ‘C’ of Section 1334-7, General Code?”

Section 1334-7, General Code, provides in so far as is pertinent as follows:

“The board of examiners may, in lieu of all examinations, accept satisfactory evidence of any one of the qualifications set forth under the following subdivisions of this section:

\* \* \* \* \*

C. The board of examiners shall grant a certificate of qualification to practice and shall register without examination any one who has been engaged in the practice of architecture in this state for at least one year immediately previous to the date of approval of this act as a member of a reputable firm of architects or under his or her own name; provided, that applicants under this subdivision shall present proof of competency and qualifications to the board; and provided further, that the application for such certificate and registration shall be made within one year after the date of approval of this act.

\* \* \* \* \*

Employees of architectural firms who have been engaged in architectural work, which work has included responsible charge of design or supervision, are not exempt from the provisions of Section 1334, et seq., requiring architects to be registered. Section 1334-16 of this act only exempts such persons whose work does not include responsible charge of design or supervision. The pertinent language of the section is as follows:

“The following shall be exempted from the provisions of this act:  
\* \* \* \* \*

2. Engaging in architectural work as an employee of a registered architect, provided that said work may not include responsible charge of design or of supervision.

\* \* \* \* \*”

The term “member”, as used in Section 1334-7, supra, may in my judgment be properly construed to mean not only a person who is one of the partners in a firm of architects, but also a person who although not a partner is associated with the firm in the practice of architecture and working on a salary basis rather than for a percentage of the net profits of the firm.

If the exemption from the requirement of examination shall be construed to apply only to partners of a firm of architects, a serious constitutional question arises. A similar statute relating to the practice of accountancy was held unconstitutional in the case of *Frazer vs. Shelton*, 320 Ill. 253, 150 N. E. 696, 43 A. L. R. 1086. Section 13 of the law there under consideration provided:

“The department of registration and education shall waive the examination and issue a certificate to any person who is a citizen of the United States or has duly declared his intention of becoming a citizen, who resides in the state of Illinois and who applies therefor on or before October 1, 1925, permitting such person to practice as a public accountant, Provided that such person, on July 1, 1925, shall be practicing as a public accountant on his own account, or shall have had five years' experience in the employ of either a certified public accountant or a public accountant.”

The effect of the foregoing section is identical with paragraph C of Section 1334-7, supra, if the term “member” as used therein is to be given the more restricted meaning. The opinion of the court as to this point is as follows:

“There is another unreasonable discrimination appearing in the act. By § 13, as we have seen, examinations are waived, and certificates must be issued to any person who is a citizen of the United States, or has duly declared his intention to become such, who resides in this state, and who applies, on or before October 1, 1925, for a certificate permitting him to practice as a public accountant, provided such person shall on July 1, 1925, be practicing as a public accountant on his own account, or shall have had 5 years' experience in the employ of either a certified public accountant or a public accountant. By this act, one who on June 30, 1925, commences practicing as a public accountant on his own account may register as such on or before October 1, 1925, because he was practicing as a public accountant on his own account on July 1, 1925, and

this though he shall have had no previous experience, while one who has had 4 years and 11 months' experience in the employ of either a certified public accountant or a public accountant cannot receive a certificate as public accountant without examination. There is no reasonable basis for the discrimination between such two persons."

Where a statute is subject to two interpretations, one of which raises serious constitutional question as to its validity and the other results in harmonizing the statute with the Constitution, the courts will adopt the latter construction. This principle is so well established that citation of the numerous authorities in support thereof is deemed unnecessary.

It is a cardinal rule of all statutory construction that full effect must be given to the manifest intent of the legislature. The legislature obviously deemed it unnecessary to require those architects who have, for the period stated, been engaged in the practice of architecture in responsible charge of design or supervision, to take an examination. In so far as the state is concerned, it makes no difference whether an architect's compensation has been dependent upon the net profits of a partnership or upon a fixed salary. The nature of the work which the architect has performed is obviously the only reasonable matter of concern to the state in determining who shall or who shall not be required to take an examination.

In view of the serious constitutional questions raised under the Equal Protection Clause of Section 2, Article I of the Ohio Constitution and the 14th Amendment to the Federal Constitution by construing the term "member" in its more limited sense, and in order to effectuate the obvious intent of the legislature, it is my opinion that the exemption from the requirement of examination contained in paragraph C of Section 1334-7, General Code, of a member of a reputable firm of architects therein set forth applies not only to such persons as have been partners of such architectural firm but also to such employes of a reputable firm of architects as have been in responsible charge of design or supervision during the period of time set forth in the section.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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143.

APPROVAL, NOTES OF MT. ORAB VILLAGE SCHOOL DISTRICT,  
BROWN COUNTY, OHIO—\$736.00.

COLUMBUS, OHIO, February 14, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*