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ARCHITECTURE—UNLICENSED PERSON WHO PRACTICES ARCHITECTURE MAY NOT RECOVER FOR SERVICES PERFORMED, EITHER ON EXPRESS OR IMPLIED CONTRACT, QUASI CONTRACT OR ANY OTHER TYPE OF ACTION— PUBLIC BUILDING—COUNTY COMMISSIONERS.

SYLLABUS:

Where a person practices architecture and is not licensed by the state of Ohio, the fact that he is unlicensed precludes recovery by him for such services rendered, either on an express contract, an implied contract, quasi contract or any other type of action.

Columbus, Ohio, March 22, 1949

Hon. Harry C. Johnson, Prosecuting Attorney
Guernsey County, Cambridge, Ohio

Dear Sir:

I wish to acknowledge receipt of your request for an opinion, enclosing letter written by your predecessor reading as follows:

> "J. W. L. who is skilled in drawing plans and specifications for erection of buildings drew and furnished plans for the erection of a public building at the Guernsey County Home. J. W. L. did

not contract to supervise the work of erecting the building. There was no express agreement for compensation for his services in making the plans and specifications.

"J. W. L. is not and has never been the holder of a certificate of qualification to practice architecture in the State of Ohio under Section 1334-9, G. C. but he is a contractor and is skilled in drawing plans and specifications for the erection of buildings. He submitted to the County Commissioners of Guernsey County, Ohio, a bid for the erection of the building in question but the contract was awarded to another contractor at a lower bid. J. W. L. has presented a bill to said County Commissioners in the amount of $600.00 for his said services in drawing and furnishing said plans and specifications.

"By authority of 38 O. L. A. 449, Maxfield, Appellant, v. Bressler, Appellee, it would seem that J. W. L. could collect from said Board of County Commissioners the fair and reasonable value of his services for drawing and furnishing said plans and specifications."

Section 1334-5, General Code, reads as follows:

"Any person residing in or having a place of business in this state who, upon the date of approval of this act, is not engaged in the practice of architecture in the state of Ohio under the title of 'architect' shall, before engaging in the practice of architecture or before being styled or known as an architect, secure from said board of examiners a certificate of his or her qualifications to practice under the title of 'architect,' and be duly registered with said board as provided by this act.

"Any properly qualified person who shall have been engaged in the practice of architecture under the title of 'architect' for at least one year immediately previous to the date of the approval of this act and who desires to continue in such practice shall secure such certificate and be registered in the manner hereinafter provided by this act.

"Any person holding such certificate and being duly registered pursuant to this act may be styled or known as an architect or as a registered architect.

"No other person shall assume such title or use any abbreviation, or any words, letters or figures, to indicate or imply that he or she is an architect or registered architect."

Sections 1334-16 and 1334-17, General Code, set out those who are not subject to the terms of the act. I assume that the person referred to in your letter does not meet these qualifications.

An architect has been defined in the following manner in 6 C. J. S. 295:

> "An architect is a person who plans and designs buildings, or who plans and designs them and superintends their erection."

Since the person referred to in your request did draw plans and designs for a building, he comes within the above definition and by the facts presented did practice as an architect. The question is thus presented, what is the effect of such practice?

Section 1334-17, General Code, is mandatory in form and provides in part as follows:

> "On and after the date ninety days after this act goes into effect, it shall be unlawful for any person in the state of Ohio to enter upon the practice of architecture in the state of Ohio, or to hold himself or herself forth as an architect or registered architect, unless he or she has complied with the provisions of this act and is the holder of a certificate of qualification to practice architecture issued or renewed and registered under the provisions of this act."

This section prohibits such practice by those other than a certificate holder. That the legislature has the right to prohibit such practice has never been seriously questioned since such practice demands learning, skill and integrity and it is within the police power of a legislature to regulate such practice because the plans and specifications are for a building which may be used by the members of the public, and as such it is a business involving the public safety and health, and therefore a matter of public policy. See 6 C. J. S. 296.

In the instant case the person in question submitted plans and specifications to the county commissioners for use in the construction of a public building. The first question presented is what is the authority of such county commissioners to engage the services of an architect?

Section 2343, General Code, says that:

> "When it becomes necessary for the commissioners of a county to erect or cause to be erected a public building, * * * before entering into any contract * * * they shall cause to be made by a competent architect the following: * * *."

The words "competent architect" obviously refer to one who holds a certificate under Section 1334-17, General Code, or one who meets the exceptions set out under subsequent sections.

Here, however, the person involved was not a "competent" architect or one who does not qualify under the above mentioned sections. Therefore, the second question is what is the effect of a contract between an unlicensed architect and the county commissioners, assuming such contract is expressly made?

The Ohio act regulating the practice of architecture was modeled after the Pennsylvania act, Purdon-Penn. Stat. Ann., Title 63, Sec. 28. It is a mandatory act and expressly says that no one may practice such profession without conforming to the requirements set out in the act. Decisions in Pennsylvania and elsewhere, where the act adopted is mandatory in character, say that a contract with a person, who does not meet the mandatory requirements is void.

Thus in Simons, Brittain & English, Inc., v. Union Trust Company of Washington, Inc., 3 Washington County Reports (Penn.), 96, it is said:

> "Where a license is, by statutory enactment, made a prerequisite to one's practicing a profession, an agreement to perform services of a professional character without such certificate or license is illegal and void, * * * ."

See also 6 C. J. S. 297.

In the instant case, however, there was no express contract. Therefore the third question presented is whether there may be a recovery under the theory of implied contract, quantum meruit, quasi contract or some other theory.

It is a fundamental rule of law as stated by Lord Mansfield:

> "The principle of public policy is this: Ex dolo malo non oritur actio. No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act."

The person in question in this specific case performed an illegal act, namely, practicing the profession of architecture without a license.

The case of Maxfield v. Bressler, cited in the request, is not in point. The question presented in that case depended on the construction of the Kentucky statute and involved a question of conflict of law.

Therefore, in specific answer to your question, I am of the opinion that there can be no recovery either on an express contract, an implied

contract, quasi contract or any other type of action, if the one who practices architecture is not licensed by the state of Ohio.

Respectfully,

HERBERT S. DUFFY,
Attorney General.