

1980 S.C. Op. Atty. Gen. 146 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-94, 1980 WL 81976

Office of the Attorney General

State of South Carolina

Opinion No. 80-94

September 8, 1980

**\*1 SUBJECT: Licensure required for those performing 'Construction Management' Services.**

Licensure as a 'General Contractor' is not required for any person, company, or corporation acting as a 'Construction Manager' in South Carolina so long as the duties of the 'Construction Manager' are supervisory only and the 'Construction Manager' does not directly oversee and superintend the work force of the various multiple prime contractors or actively direct the means and manner of construction of the project on which he is employed.

TO: The South Carolina Board of Architectural Examiners and  
The State Board of Engineering Examiners

**QUESTION:**

Is any person, company, or corporation acting as a 'Construction Manager' in South Carolina required to hold a South Carolina General Contractor's License issued by the Licensing Board for Contractors?

**STATUTES:**

South Carolina Code of Laws (1976), Sections 40-3-10(2), 40-3-20, 40-11-10, 40-21-30 and 40-11-100; [California Business and Professions Code, Sections 7000-7161](#); [Ark. Stat. Ann. Sections 71-701](#)

**DISCUSSION:**

At issue is the licensure required of any person, company, or corporation acting as a 'construction manager' in South Carolina. If such licensure is required, the type of licensure necessary is also a matter of relevance. [Section 40-3-10\(2\), South Carolina Code of Laws \(1976\)](#), defines 'Architectural Practice' to include the 'supervision of construction for the purpose of assuring compliance with the specifications and design, in connection with any building, or site development.' [Section 40-3-20, South Carolina Code of Laws \(1976\)](#), requires that anyone engaging in architectural practice in this State must have a certificate of registration from the State Board of Architectural Examiners. [Section 40-21-10, South Carolina Code of Laws \(1976\)](#), defines the 'Practice of Engineering' to include ' . . . supervision of construction for the purpose of assuring compliance with specifications and design in connection with any public or private utilities, structures, buildings . . .' [Section 40-21-30, South Carolina Code of Laws \(1976\)](#), requires that prior to engaging in the 'Practice of Engineering' a party must hold a certificate of registration issued by the State Board of Engineering Examiners. [Section 40-11-10, South Carolina Code of Laws \(1976\)](#), defines a 'General Contractor' as being one who ' . . . undertakes or offers to undertake the construction or superintending of construction of any building, highway, sewer, grading, improvement, reimprovement, structure, or part thereof, when the cost of the undertaking is Thirty Thousand and <sup>00</sup>/<sub>100</sub> (\$30,000.00) Dollars or more.' The State Licensing Board for Contractors requires licensure for anyone engaging in general contracting, which includes the superintending of construction, pursuant to [Section 40-11-100, South Carolina Code of Laws \(1976\)](#). The confusion as to licensure can only be relieved by rendering a definition of the construction management services referred to. The problem is exacerbated by the broad scope of services encompassed within the term 'Construction Management'.

\*2 'Construction Management' is a concept or a method of construction which ordinarily eliminates the single prime contractor and replaces him with multiple prime contractors whose activities are scheduled and coordinated by the Construction Manager'. A 'Construction Manager' does not assume the role of the single prime contractor but is the agent of the Owner. In this manner, construction costs are expected to be reduced in that the general contractor's mark-up on subcontract work is eliminated and the Owner receives the benefit of the lower multiple sub-contractor bids. The 'Construction Manager' serves exclusively on the basis of a professional fee and should be isolated from any profit motive relative to the cost of construction which he is to supervise.

A 'Construction Manager' furnishes a professional service and is normally employed from the inception of the project. The 'Construction Manager' should give advice to the Owner and coordinate with the Owner's architect concerning the design of the project, plans and specifications for that project, the construction feasibility of the project, and information and advice as to the time, labor, materials, costs, and methods of construction which may be needed. A professional 'Construction Manager' also supervises and coordinates the work of the 'multiple prime contractors' who replace the usual one general constructor. However, there are many variations on this theme. A 'Construction Manager' may guarantee the total cost of the project to the Owner and provide construction services directly to the Owner; to he may provide more or less than the services mentioned herein. The variations may be as numerous as the projects referred to.

'Construction Management' may be strictly a professional service providing services including design and project analysis, scheduling of design and construction, value engineering and advice to the Owner on the cost factors of various construction materials and methods, cost analysis in estimating services, and assistance in obtaining price proposals and the awarding of contracts; and may also inspect, supervise and coordinate the work of of contractors. The professional 'Construction Manager' is in effect a coordinator of the project. In those cases where the 'Construction Manager' has undertaken the duties of inspection or supervising of construction, a license to practice architecture or engineering would be required.

In the 'Construction Management' utilizing the Construction Manager in place of the General Contractor, where the Construction Manager directly takes the contracts in his own name for the Owner, or where the Construction Manager directs the labor and work crews, or where he provides any equipment, or guarantees the cost of the project and provides the bond, a contractor's license would be required. The point at which a General Contractor's license is necessary is the point which separates 'superintending' from 'supervision'.

The State of California, in Opinion of the Attorney General, No. CV 74-160, issued August 23, 1974, ruled that an entity engaging in 'Construction Management' under the [California Business and Professions Code Sections 7000-7161](#), is not required to hold either a contractor's or architect's license. This Opinion is not persuasive, however, in that statutes of the State of California and the State of South Carolina differ specifically in that California's statute defines a contractor in terms that do not include the 'superintending of construction'. Nor does the State of California's definition of architect include the 'supervision of construction' within the practice of architecture. Although [Wallich v. Salkin, 219 Cal.App.2d 157, — P.2d — \(1963\)](#), did hold that the supervision of bids from contractors and subcontractors did come within the 'practice of architecture', at least one California case has held that the supervision of construction alone was not the practice of architecture. [Dorsk v. Spivack, 107 Cal.App.2d 220, 209, 237 P.2d 76 \(1951\)](#).

\*3 The Office of the Attorney General of the State of Arkansas, in Opinion No. 75-28, has stated that a 'Construction Manager' who "assumes charge, in a supervisory capacity or otherwise, or the construction, erection, alteration or repair . . ." of buildings or other improvements or structures, etc . . . must be licensed under the Arkansas Contractor's Law.' However, this Opinion is not apposite here due to the breadth of the Arkansas statute. [Ark. Stat. Ann. Section 71-701](#) provides that:

For the purpose of this act a contractor is defined to be any person, firm, partnership, co-partnership, association, corporation, or other organization, or any combination thereof, who for a fixed price, commission, fee or wage attempts to or submits a bid or bids to construct, or contracts, or undertakes to construct, or assumes charge, in a supervisory capacity or otherwise of the construction, erection, alteration or repair, or has or have constructed, erected, altered, or repaired, under his, their or its direction, any building, highway, sewer, grading or any other improvement or structure, when the cost of the work to be done,

or done, in the State of Arkansas by the contractor, including, but not limited to, labor and materials is Twenty Thousand and <sup>00</sup>/<sub>100</sub> (\$20,000.00) Dollars, or more. (Emphasis added.)

The South Carolina statute defining a 'General Contractor' does not contain the 'supervision of construction' within its breadth of definition.

CONCLUSION:

It is the Opinion of this office that where the 'Construction Manager' does not function as a construction contractor or have any financial or organizational control over construction contractors involved in the construction project on which his services are utilized, where he performs no work with his own forces, and where he has no right to hire or discharge workmen or to control the individual operation of the various multiple prime contractors, and where he has no right to hire or terminate the various multiple primes without the direction of the Owner and in the Owner's name, then a general contractor's license is not required. He would be required to have a license as an architect or as an engineer. However, where the 'Construction Manager' directly 'superintends' the work forces employed on the construction project on which his services are utilized or has the contractual right to hire or discharge the multiple prime contractors and pays wages in his own name, as where the 'Construction Manager' takes the multiple contracts in his own name rather than in the Owner's name, then a 'General Contractor's' license would be required. To reiterate, so long as the 'Construction Manager' acts in a supervisory role only, coordinating the multiple prime contractors without directing the methods and manner of the operations of the multiple prime contractors, then a general contractor's license is not required.

Judith Evans Finuf  
Assistant Attorney General

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