STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
of

THE ARIZONA REGISTRAR OF CONTRACTORS

OCTOBER 1979

THE REGISTRAR OF CONTRACTORS HAS NOT ADEQUATELY PROTECTED THE PUBLIC FROM INCOMPETENT, UNSCRUPULOUS OR INSOLVENT CONTRACTORS.

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 79-14

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

[redacted]

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

SUITE 600
112 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004
255-4385

SUITE 820
33 NORTH STONE AVENUE
TUCSON, ARIZONA 85701
882-5465

October 5, 1979

The Honorable Bruce Babbitt, Governor
Members of the Arizona Legislature
Aaron Kizer, Registrar of Contractors

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona Registrar of Contractors. This report is in response to a September 19, 1978 resolution of the Joint Legislative Budget Committee and a January 18, 1979 resolution of the Joint Legislative Oversight Committee.

A summary of this report is found on the blue pages at the front of the report. A response to this report by the Registrar of Contractors is found on the yellow pages preceding the appendices of the report.

My staff and I will be happy to meet with the appropriate legislative committees, individual legislators or other state officials to discuss or clarify any items in this report or to facilitate the implementation of the recommendations.

Respectfully submitted,

Douglas R. Norton

Douglas R. Norton
Auditor General

Staff: Gerald A. Silva
Dwight Ochocki
Steve Schmidt
Kim Beck

OFFICE OF THE AUDITOR GENERAL

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SUMMARY

The Office of the Registrar of Contractors (Registrar) was established by the Legislature in 1931. The agency is responsible for the licensing and control of contractors in Arizona.

The Registrar has a staff of 63 full-time employees and is funded through the State General Fund.

Our review has shown that the Registrar of Contractors has not adequately protected the public from incompetent, unscrupulous or insolvent contractors in that:

- The Registrar's methods used to screen applicants prior to licensing are ineffective as a means to evaluate the prospective contractor's competency. (page 12)
- The examination procedures of the Registrar, which are designed ostensibly to determine the technical competency of prospective contractors, are not in compliance with state law and are not an effective method of screening applicants to protect the public against incompetent contractors. (page 24)
- Consumers are provided little in the way of protection under the current contractor bonding requirements. (page 33)
- Improvements are needed in the procedures used by the Registrar to resolve complaints against contractors and punish licensees found guilty of offenses. (page 43)
- The annual renewal process is not in compliance with statutory requirements. Additionally, internal controls over the license renewal process are inadequate. (page 56)
- Changes are needed in the annual renewal process to improve efficiency. (page 62)

It is recommended that:

1. Financial statements, letters of recommendation and other extraneous information currently required of applicants, which serve no useful purpose in the evaluation of prospective contractors, not be required as a condition of licensure. (page 23)
2. The forms and procedures used to evaluate an applicant's prior experience be changed to allow the Registrar to more accurately evaluate an applicant's technical qualifications for licensure. (page 23)
3. The trade examination currently given to most applicants to determine their technical ability be discontinued and replaced with a revised method of experience verification. (page 32)
4. Additional methods be developed to educate applicants for licensure in busic business skills. (page 32)
5. The recovery fund method of consumer protection be adopted to remove inequities in the present bonding system. (page 42)
6. The Registrar adopt procedures and/or rules and regulations to reduce the time it takes to resolve complaints filed against contractors. (page 55)
7. Procedures be adopted to assure that closed appeals of Registrar decisions be noted in a timely manner and appropriate action taken by the Registrar. (page 55)
8. Sufficient internal controls be implemented to assure the propriety of the license renewal process. (page 61)
9. Changes be made in the annual renewal of licenses to improve efficiency. (page 64)

INTRODUCTION AND BACKGROUND

In response to a September 19, 1978 resolution of the Joint Legislative Budget Committee and a January 18, 1979 resolution of the Joint Legislative Oversight Committee, we have conducted a performance audit as a part of the sunset review of the Registrar of Contractors in accordance with ARS 41-2351 through 41-2374.

The Office of the Registrar of Contractors (Registrar) was established by the Legislature in 1931. Over the past 48 years 13 Registrars have been appointed by the various Governors, the current Registrar being Aaron Kizer appointed May 25, 1979.

The agency's stated goals and objectives are:

1. To promote and maintain high quality construction throughout the state, and
2. To provide redress for individual cases of substandard performance.

To accomplish these objectives the Registrar of Contractors performs the following activities:

- Screens and evaluates applicants for construction licenses,
- Administers examinations,
- Licenses successful applicants,
- Annually renews licenses,
- Processes consumer complaints,
- Investigates unlicensed activity,
- Conducts hearings as part of the complaint process, and
- Acts as a consultant to state, county and municipal governments as well as school officials and contractors when considering construction programs.

Due to the rapid increase in construction activity throughout Arizona, the workload of the Registrar has increased substantially, primarily in the area of consumer complaints. Because of this rapid increase, the backlog of unresolved complaints has nearly tripled from June 30, 1977 to May 1, 1979, increasing from 1,067 to 3,055, respectively.

Budget information for the Registrar for fiscal years 1974-75 through 1979-80 is shown in Table 1. Also shown is a summary of the growth in the Registrar's activity level during the same period.

Regulation Of Contractors

The regulating of contractors across the country is highly diverse in nature. As shown in Table 2, as of September 1979, Arizona was one of 20 states, that licenses a majority of contractors, however, some licensing requirements involve little more than mere registration. An additional 17 states plus the District of Columbia license only a segment of the contracting industry. That segment is generally comprised of electricians and electrical contractors. The remaining 13 states have no licensing requirements of contractors at the state level.

The Office of the Auditor General expresses its gratitude to the Registrar of Contractors and the administrative staff for their cooperation, assistance and consideration during the course of our audit.

TABLE 1

REVENUE, EXPENDITURES AND ACTIVITY LEVELS FOR THE REGISTRAR OF CONTRACTORS DURING FISCAL YEARS 1974-75 THROUGH 1979-80

	FY 74-75	FY 75-76	FY 76-77	FY 77-78	FY 78-79*	Estimated FY 79--80
Revenues						
License fees, sales and service	$862,492	$1,309,101	$1,432,243	$ 453,620	$ 489,089	$ 495,900
Renewals	**	**	**	443,935	1,425,765	1,165,100
Interest on cash bond fund	60,772	49,022	66,841	119,176	236,649	220,000
Miscellaneous			496	4,049		
Total Revenues	$923,264	$1,358,123	$1,499,580	$1,020,780	$2,151,503	$1,881,000
Expenditures						
Full-time employees	55.5	57.0	60.0	62.7	62.7	64.7
Personal services (incl. employee related)	$662,800	$ 728,900	$ 783,800	$ 853,700	$ 973,728	$1,136,471
Professional services	23,000	31,500	25,700	23,200	27,417	45,629
Travel	38,100	42,500	50,300	46,800	44,075	67,800
Other operating expenses	89,000	116,900	137,000	140,800	158,945	153,000
Equipment	12,600	14,100	800	1,500	25,321	22,200
Total Expenditures	$825,500	$ 933,900	$ 997,600	$1,066,000	$1,229,486	$1,425,100
Activity Measurements						
New licenses issued	1,787	1,958	1,887	2,082	2,127	2,800
Licenses renewed	10,277	10,528	10,880	11,470	11,800	12,694
License examinations	3,337	3,544	3,411	3,941	3,929	4,007
Complaints received	5,222	4,053	4,226	5,678	7,509	10,333
Complaints closed	6,078	4,453	4,177	4,504	5,936	8,266
Unresolved complaints at years end	unknown	866	1,067	1,895	3,243	4,000
Total hearings and rehearings	630	760	798	742	755	875
Citations and protests issued	1,309	1,163	1,097	1,080	1,426	2,070

* For fiscal year 1978-79 the agency changed from a 90/10 agency to direct appropriation

** Included in "License Fees, Sales and Service" total

State	Most Types of Contracting Required to be Licensed*	Small Segment of the Contracting Industry Required to be Licensed**	No Licensing Requirement
Alabama	X		
Alaska	X		
ARIZONA	X		
Arkansas	X		
California	X		
Colorado		X	
Connecticut		X	
Delaware		X	
Florida	X		
Georgia		X	
Hawaii	X		
Idaho		X	
Illinois			X
Indiana			X
Iowa			X
Kansas			X
Kentucky			X
Louisiana	X		
Maine		X	
Maryland		X	
Massachusetts		X	
Michigan	X		
Minnesota		X	
Mississippi	X		
Missouri			X
Montana		X	
Nebraska		X	
Nevada	X		
New Hampshire		X	
New Jersey		X	
New Mexico	X		
New York			X
North Carolina	X		
North Dakota	X		
Ohio			X
Oklahoma			X
Oregon	X		
Pennsylvania			X
Rhode Island		X	
South Carolina	X		
South Dakota		X	
Tennessee	X		
Texas			X
Utah	X		
Vermont		X	
Virginia	X		
Washington	X		
West Virginia			X
Wisconsin			X
Wyoming		X	
District of Columbia		X	

* See Appendix I for more detailed information.
** See Appendix II for more detailed information.

SUNSET FACTORS

SUNSET FACTOR: THE OBJECTIVE AND PURPOSE IN ESTABLISHING THE REGISTRAR OF CONTRACTORS AND THE REGULATION OF CONTRACTORS

The Registrar of Contractors was established in 1931 (ARS 32-1101 through ARS 32-1168) with no explicit legislative statement of objective or purpose. Various court cases have stated that the purpose of the Registrar of Contractors is to protect the public against unscrupulous and unqualified persons purporting to have capacity, knowledge or qualification of a contractor.

The agency has stated its organizational goals and objectives to be:

"1. To promote and maintain high quality construction throughout the state.

2. To provide redress for individual cases of substandard performance."

SUNSET FACTOR: THE DEGREE TO WHICH THE AGENCY HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

The Registrar has not fully responded to the public need in that the licensing of contractors currently provides the public with little assurance that contractors are competent or scrupulous. In addition, the present bonding system for contractors does not provide consumers with sufficient protection. (page 33) Further, a less time consuming and more efficient method of resolving consumer complaints needs to be developed. (page 43)

SUNSET FACTOR: THE EXTENT TO WHICH THE AGENCY HAS OPERATED WITHIN THE PUBLIC INTEREST

The activities of the Registrar of Contractors appear to be in the public interest. The Registrar's licensing of contractors to ensure minimum competency and the processing of consumer complaints are in the public interest.

SUNSET FACTOR: THE EXTENT TO WHICH RULES AND REGULATIONS PROMULGATED BY THE AGENCY ARE CONSISTENT WITH THE LEGISLATIVE MANDATE

In accordance with ARS 41-1002.01 the Arizona Attorney General reviews all rules and regulations proposed by the Registrar of Contractors as to form and to assure that the rule is within the power of the agency to adopt and within the legislative standards enacted to date.

After reviewing the rules and regulations pertaining to contractors that have been promulgated by the Registrar of Contractors, it appears that these rules and regulations are consistent with ARS 32-1101 through 32-1168.

SUNSET FACTOR: THE EXTENT TO WHICH THE AGENCY HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND REGULATIONS AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC

Public hearings are held for all proposed rules and regulations prior to their adoption. Notices of hearings are posted in the Registrar of Contractor's Office and are mailed to all groups and individuals who have requested to be placed on a mailing list. The public is invited to attend all rule hearings and is given the opportunity to comment on all proposed rules and regulations.

The Registrar also prepares a weekly bulletin which contains such information as pending license applications, name changes, suspensions and revocations. For a small fee, these bulletins are sent to individuals or groups who have requested copies.

SUNSET FACTOR: THE EXTENT TO WHICH THE AGENCY HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

During fiscal year 1978-79 the Registrar received over 7,500 complaints filed against contractors in Arizona. The methods used to resolve these complaints are ineffective and inefficient. (page 43)

The consumers, for the most part, are aware of the complaint section of the Registrar as illustrated by the fact that a survey of persons who had filed complaints with the Registrar revealed that only 13.2 percent reported any difficulty in learning where to file a complaint against a contractor. However, of those persons who responded to the survey, 38.6 percent felt that the Registrar does not effectively protect the public against incompetent or unethical contractors.

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE UNDER THE ENABLING LEGISLATION

Arizona Revised Statutes 32-1164 states that statute violations are Class 2 misdemeanors. This section, however, does not specify the prosecuting agency for such violations. Per ARS 32-1166 the Registrar may, either through the Attorney General or through the applicable county attorney, appeal to the Superior Court for an injunction against any individual who violates any provisions of the statutes.

SUNSET FACTOR: THE EXTENT TO WHICH AGENCIES HAVE ADDRESSED DEFICIENCIES IN THEIR ENABLING STATUTES WHICH PREVENT THEM FROM FULFILLING THEIR STATUTORY MANDATE

The Registrar of Contractors has been active in submitting and supporting legislation that addressed deficiencies in the agency's enabling statutes.

The Registrar sponsored legislation that became law (ARS 32-1124.01 and 32-1152.01) in 1977 that included alternatives to the cash deposit such as certificates of deposit and the provision for hearings on protested licenses. The Registrar sponsored legislation that became law (ARS 32-1125.01 and 32-1166) in 1979 that included an inactive status for licensees and up to $1,000 in civil penalties for unlicensed contractors.

SUNSET FACTOR: THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE AGENCY TO ADEQUATELY COMPLY WITH THE FACTORS LISTED IN THIS SUBSECTION

Adoption of the recommended changes contained in this report would require the following statute modifications:

1. ARS 32-1122 B.3 should be deleted from the statutes. This section requires the applicant to submit a financial statement to the Registrar when applying for a contracting license. (page 23)
2. ARS 32-1122 D.2 should be deleted from the statutes. This section requires the applicant to submit two letters of recommendation when applying for a contracting license. (page 23)
3. ARS 32-1122 A.3 should be deleted from the statutes. This section requires the Registrar to establish written examinations for each class of contracting. (page 32)
4. ARS 32-1122 F.2 should be modified to delete the reference to the examination testing the applicant's qualification in the particular trade. (page 32)

5. ARS 32-1122 B.4 should be modified to delete the reference to the bond required of contractors. (page 42)
6. ARS 32-1152 should be deleted from the statutes. This section pertains to the bonding requirements. (page 42)
7. ARS 32-1152.01 should be deleted from the statutes. This section pertains to alternatives to the cash deposit form of bond compliance. (page 42)

FINDING I

THE REGISTRAR OF CONTRACTORS' METHOD OF SCREENING APPLICANTS PRIOR TO LICENSING IS INEFFECTIVE.

The Registrar of Contractors' license application form and other prelicensing information requirements have the effect of providing the Registrar with information that is not used and merely serves to frustrate applicants in their attempt to be licensed. As a result, the mass of information requested of applicants provides an ineffective and inefficient method of screening prospective contractors. Specifically, our review revealed that:

1. The Registrar's license application form is unnecessarily cumbersome and should be shortened and simplified.
2. Financial statements which are prepared by applicants and submitted to the Registrar prior to licensure are inadequate, often inaccurate, of little value in predicting an applicant's success and have never been used by the Registrar.
3 Letters of recommendation for prospective licensees receive only a cursory review by the Registrar and appear to serve no useful purpose.
4. The Registrar's current method of evaluating and verifying a license applicant's past experience is ineffective as a means of determining the competency of prospective contractors.

The Greatest Challenge Encountered By An Applicant For Licensure As A Contractor In The Licensing Process Is The Successful Completion Of The Registrar's License Application Form

The first step to obtaining a contractor's license in Arizona is the completion and submission of a license application form which consists of 19 pages of instructions and forms. The completed application contains at least two letters of recommendation, a financial statement, experience verification forms, signed instruction sheet for examination, bonding information from surety (if applicable), signed "contemplated volume of work" form, signed and notarized statement of truthfulness of application, experience background form, general information on applicant, background questions, and a signed declaration of classification desired. The application packet contains six pages of instructions.

Due to the size of the application form and the diverse informational requirements, only 1/3 of the license applicants correctly complete the application form the first time.

An analysis by the Office of the Auditor General of completed application forms received by mail* during the first quarter of fiscal year 1978-79 revealed that of the 228 applications submitted for the first time, 151 or 66.2 percent were rejected because they were incomplete or filled out incorrectly. This is particularly notable in view of the fact that this first time success rate of 33.8 percent is significantly lower than the first time passing rates on the trade and Construction Business Management examinations (64.7 percent and 89.4 percent respectively), which are administered by the Registrar. (page 31) Thus it appears that the successful completion of the Registrar's license application form is the greatest challenge faced by prospective licensees. The extent to which the frustration encountered by license applicants in attempting to complete license applications results in their abandoning the idea of being licensed with resultant increased unlicensed activity cannot be determined.

* Information on application rejection is maintained only on those mailed into the agency.

A review of the current 19 page application form and instruction sheets revealed that if implemented, the recommendations on pages 23, 32 and 42 would reduce the current 19 page application form to five or six pages.

Financial Statements Submitted By Applicants To The Registrar As Part Of The Application Process Are Not Evaluated By The Registrar Nor Do They Provide An Effective Means Of Determining The Applicant's Future Success Or Failure In The Contracting Business

Arizona Revised Statutes (ARS) Section 32-1122 requires all applicants to submit financial statements when applying for a contractor's license. However, the Registrar does not evaluate the financial statements for propriety, mathematical correctness, or against any financial standards. Additionally, there is no indication that the financial information submitted provides any indication of an applicant's future success or failure as a contractor.

Evaluation Of Statements

The Registrar's evaluation of the financial statements submitted by license applicants is limited to verifying that the name of the bank or financial institution is shown, the statement is dated, and the signature and title of the individual attesting to the validity of the statement is on the form.

An analysis by the Office of the Auditor General of 120 financial statements that were submitted by contractors whose licenses were revoked in fiscal year 1977-78, revealed that 38 or 31.7 percent contained flagrant errors. For example:

1. Over 75 percent of one applicant's net worth, as shown on the balance sheet submitted with the application, was attributable to a non-existent asset.
2. Sole proprietorship applicants are required to include all assets and liabilities both business and personal when preparing financial statements. A sole proprietorship applicant's only entry on the statement submitted to the Registrar was $1,000 in cash. No other assets, no liabilities and no net worth were shown.
3. An applicant reported assets totalling $1,025,000 and no liabilities. The applicant's license was revoked by the Registrar ten months after the date on the financial statement and two complaints against the contractor were left unresolved, one of which was for failure to pay $561.10.
4. Personal assets of $7,000 accounted for the total assets listed by an applicant. Liabilities totaled $26,930 and net worth was not shown. Thus, from the information given, the applicant's net worth was a minus $19,930.
5. The financial statement submitted by an applicant listed total assets of $8,496 and total liabilities of $21,736, indicating a net worth of minus $13,240. The applicant however, reported his net worth as $8,496, the asset total only. This statement, like the others, was not questioned by the Registrar's staff.

According to Registrar personnel, since no criteria have been established by which to evaluate financial statements, licenses are never rejected because of the financial information shown. The Registrar's staff also contend that the proper evaluation of financial statements requires a skill not possessed by the current staff.

Statements Are Not Adequate Predictors Of Success

It appears that even if the Registrar had closely examined the financial information submitted by those contractors whose licenses were revoked during fiscal year 1977-78, the vast majority would have been issued licenses anyway. A review of the balance sheets submitted by these licensees revealed that their average net worth was high enough to meet any reasonable criteria. For example, the average net worth of the contractors whose licenses were revoked were:

General Engineering (A & A subclasses)	$ 57,155.80
General Building (B & B-2's)	103,455.26
Specialty (C's)	27,810.36

However, by the time these contractors' licenses were revoked in fiscal year 1977-78, the balance sheets that were submitted with the original applications were out dated and no longer useful. For example, the average age of the balance sheets for these contractors was slightly over 4 1/2 years at the time of license revocation.

It appears that in order to properly evaluate prospective and current contractors with regard to financial condition contractors would have to submit "certified" financial statements* on an annual basis. Such a procedure seems impractical in that it would place a financial burden on contractors, particularly small contractors and would create an enormous workload problem for the Registrar of Contractors considering that there are approximately 12,000 licensed contractors. In our opinion the submission of financial statements by prospective licensees should be discontinued as a prerequisite to licensure. It is ineffective as currently administered and it is impractical to administer effectively.

* Certified financial statements are statements containing an opinion by a Certified Public Accountant or Public Accountant.

Letters of Recommendation, Which
Are Required Of All License Applicants,
Are Ineffective As A Means of Evaluating
An Applicant's Character And Their Only
Discernable Impact Is To Increase The
License Application Rejection Rate

Arizona Revised Statutes Section 32-1122 requires that each applicant:

> "...submit letters from two reputable citizens of the county in which he resides, who are not members of his immediate family, that he is of good character and reputation and with a recommendation that the license be granted."

To comply with the statute, the Registrar has included the following requirements under paragraph three of the "instruction for filing application" sheet:

> "3. TWO LETTERS OF RECOMMENDATION - These letters are Character Recommendations, not proof of experience. Each letter must be addressed to the REGISTRAR OF CONTRACTORS, 1818 WEST ADAMS, PHOENIX, AZ. 85007 and INCLUDED with the application for contractor's license. Letters must bear date written within the last 90 days and show address of writer, if not on a letterhead.
>
> Letters of recommendation must be from reputable citizens of the county in which he or she resides, and who are not members of his or her immediate family. The writer of each letter must recommend the PERSON and, based on his or her character and status in the community, also recommend that Person for the classification number and title of license for which he or she is applying. Individual Owner and qualifying employee, if any, each require two character letters.
>
> If the APPLICANT is a corporation, partnership or joint venture, there must be TWO LETTERS OF RECOMMENDATION with EACH APPLICATION covering EACH of the following: the PRESIDENT of a corporation; each INDIVIDUAL PARTNER of a partnership; and the QUALIFYING PARTY on any application where the qualifying party is not the President of a corporation or a partner of a partnership or owner of a sole proprietorship."

The letters of recommendation received by the Registrar of Contractors with applications are checked to determine:

1. That they are addressed to Registrar of Contractors,
2. The date of letter,
3. The address of writer,
4. If the applicant is recommended, and
5. If the applicant is recommended for a specific license classification number and title.

However, letters of recommendation are not checked to determine if the individual recommending the applicant does in fact exist or that any of the information contained in letters of recommendation is accurate. The limited review that is performed for letters of recommendation is for form not substance. Thus, those letters of recommendation that are rejected are not rejected for substantive reasons such as a fictitious reference but for minor reasons such as the letter not being dated. In our opinion, these rejections unnecessarily add to the already high license application rejection rate. In addition, even if the Registrar verified information in letters of recommendation, it is questionable whether two references from friends provide an adequate profile of an applicant's character. According to Registrar of Contractor personnel, the requirement for letters of recommendation are of no value in the licensing process. It should be noted that only two other states (Hawaii and Nevada) require this type of general letter of recommendation.*

* See Appendix I & II for a summary of requirements by the various states.

The Method Used By The Registrar Of Contractors To Evaluate And Verify An Applicant's Prior Technical Experience Is Ineffective As A Means Of Determining The Competency Of Prospective Contractors

As a part of the application process for a contractor's license, the applicant must complete an experience record detailing his or her experience within the scope of the type of contractor license being sought. Generally, four years of experience during the past ten years is required of an applicant. In addition to the experience record, the applicant is required to furnish forms verifying the experience shown on the experience record. These experience verification forms must be attested to by third parties such as former employees, customers, and contractors, dated within 90 days of application, and are not transferable to any other license application.

The Registrar occasionally checks the information on the experience verification form by attempting to contact the third party attesting to the experience. However, if the third party cannot be contacted or does not respond to the Registrar no further action is taken.

Our review of the Registrar's method of verifying an applicant's experience revealed that: a) the experience record form does not provide sufficient information to evaluate the applicant's experience, b) many of the third parties attesting to the applicant's experience have a vested interest in the applicant being licensed, and c) the Registrar is unnecessarily requiring persons to complete duplicative forms when there is a change in a person's license status.

Inadequate Experience Records

The experience record currently in use by the Registrar does not distinguish between part-time work and full-time or between constant employment and sporadic work during the dates shown on the record. As a result, part-time or sporadic employment can be and is counted as full-time or continuous employment for purposes of meeting the minimum experience requirements. The following case illustrates how this may occur.

In 1977, a formerly licensed contractor applied for a new license. His previous license had been revoked by the Registrar in 1973. The experience record submitted with the application spanned ten years, however, it was difficult to determine how much time was actually devoted to the jobs listed. For example, several of the listed jobs overlapped and some minor jobs spanned long periods of time. One remodeling job covered five years while another job, involving the construction of a house and shed, also covered the same five years. According to Registrar personnel, it was not possible to determine if the applicant had met the four-year experience requirement based upon the information submitted on the experience record.

It should be noted that a more detailed experience record form is currently being used by the Utah Department of Contractors.* In addition to requiring the name and address of former employers or customers and the type of work done, the Utah experience record form requires the applicant to indicate a) the level of responsibility at which the applicant worked, b) whether the work was steady and continuous, and c) the actual amount of time worked during the period indicated. In our opinion such a form would be an improvement over the form currently being used by the Registrar and would avoid situations such as the one shown above.

* See Appendix III for a copy of the Utah experience record.

Biased Verifications

An analysis of 88 randomly selected experience verification forms by the Office of the Auditor General revealed that 35 percent of the experience verifications were attested to by third parties that had a vested interest in the applicant being licensed. These vested interest third parties included employees, suppliers, subcontractors and insurance agents of the applicants.

For example, one applicant submitted three experience verification forms that were accepted by the Registrar as sufficient support for the four year minimum experience requirement. The first verification attested to "...carpentry, remodeling, and repair work...off and on during the year 1976." This attestation was signed by an occupant of the house where the work took place. The second attestation was worded exactly the same as the first and was signed by the owner of the same house. The third attestation was submitted by the applicant's father and was a general reference to his son's construction ability.

Based on this information, the Registrar issued the applicant a license in 1977. It should be noted that the above contractor is now scheduled for two disciplinary hearings because he has been charged with abandonment of contract, failure to complete a contract and poor workmanship.

The Utah Department of Contractors uses a procedure which eliminates to a large extent the problem of receiving experience verifications from biased individuals. The Utah Department of Contractors requires applicants to submit five stamped envelopes addressed to the third parties attesting to the applicant's experience record. The Department then contacts these third parties directly and confirms the experience attestation. In our opinion, the Registrar should adopt a similar procedure in Arizona.

Completing Additional Forms

Currently, when a qualifying party* elects to obtain a separate license or when a licensee changes its business structure from a sole proprietorship to a corporation, the Registrar requires these persons to submit new experience verification forms. However, the same information may already be on file at the Registrar's on Proof of Experience information sheets previously submitted.

According to the Registrar, "Since they (the Proof of Experience information sheets) are certified to be true under penalty of perjury they are not transferable to other applications."

An opinion from the Arizona Legislative Council on this subject stated in part:**

> "However, we fail to see a reason why a verification of an individual's experience cannot be used in a subsequent application for the same classification. The requirement in section 32-1122, subsection F, paragraph 1, Arizona Revised Statutes of four years' practical or management trade experience for that classification would already have been certified as true in the previous verification form." (Emphasis added)

It appears that an unnecessary burden for licensees would be eliminated if the Registrar allowed previously qualified individuals to transfer experience verification statement information from one license to another related license. Such a policy would be consistent with the Registrar's current policy of accepting examination scores for the same individual for similar license classifications for up to five years without requiring retesting.

CONCLUSION

The method used by the Registrar of Contractors in screening applicants prior to licensing is ineffective.

* The qualifying party is the individual who qualifies the company for the license by taking the exam and submitting the required proof of experience.

** See Appendix IV for a complete text of the Legislative Council Opinion.

RECOMMENDATION

It is recommended that:

- The information required of applicants by the Registrar should be limited to that actually needed to evaluate the competency of the prospective contractor.
- Financial statements and letters of recommendation should not be required as a condition of licensure as they serve no useful purpose.
- The experience record be revised to allow the Registrar to more accurately evaluate the applicant's prior experience.
- Experience verification forms be discontinued and a method of direct confirmation with an applicant's prior employers, customers or associates should be adopted by the Registrar.
- Licensees be allowed to transfer experience verification statement information from one license to another related license.

FINDING II

A PROSPECTIVE CONTRACTOR'S KNOWLEDGE OR COMPETENCY IS NOT EFFECTIVELY EVALUATED BY THE REGISTRAR OF CONTRACTOR'S EXAMINATION PROCESS.

In order to be licensed as a contractor in Arizona an individual normally must pass two examinations which are administered by the Registrar of Contractors. Our review of the examination procedures of the Registrar of Contractors revealed that the testing of prospective participants in the contracting industry by the Registrar does not provide an effective method of screening applicants as a means to protect the consuming public against incompetent contractors. Our review determined that:

1. The Registrar is not in compliance with Arizona statutes that require the Registrar to establish written examinations for all classes of contracting, and
2. The written examinations that have been established by the Registrar do not constitute a valid means of testing the qualifications or knowledge of the applicant.

Non-Compliance With Arizona Revised Statutes Section 32-1122

Arizona Revised Statutes (ARS) section 32-1122 states, in part:

> "A. A contractor's license shall be issued only by act of the Registrar of Contractors. The Registrar shall:
>
> 1. Classify and qualify applicants for a license.
>
> 2. Conduct such investigations as he deems necessary.
>
> 3. Establish written examinations applicable to each class of contracting.
>
> . . .
>
> F. Prior to issuance of a license, the qualifying party, in addition to meeting the requirements provided in subsection C of this section, shall:

"2. Successfully show, by written examination, qualification in the kind of work for which the applicant proposes to contract, his general knowledge of the building, safety, health and lien laws of the state, administrative principles of the contracting business and of the rules and regulations promulgated by the Registrar of Contractors pursuant to this chapter, in addition to such other matters as may be deemed appropriate by the Registrar to determine that the qualifying party meets the requirements of this chapter."

As of June 30, 1979, the Registrar of Contractors had not established written "trade" examinations for 20 classes of contracting. These classes of contracting are:

A-1	Airport Runways	C-33	Terrazzo
A-7	Piers and Foundations	C-43	Service Station Equipment
C-3	Awnings, Canopies, Carports & Patio Covers	C-47	Tanks & Tank Renovating
		C-50	Venetian Blinds, Window Shades
C-12	Elevators	C-52	Water Proofing
C-18	Furnaces and Burners	C-55	Weather Stripping
C-19	Sidings (other than wood)	C-56	Welding
C-22	House Moving	C-57	Wrecking
C-23	Institutional Equipment	C-59	Gunite
C-24	Ornamental Metals	C-64	Wood Floor Laying & Finishing
C-30	Marble		

In addition, contracting classes AE, BE, C-5, C-29 and E contain approximately 500 subclasses of contracting. The Registrar has established only 11 examinations for these approximately 500 subclasses of contracting. These subclasses include fallout shelters, erection of steel buildings, tree trimming and removal for utility lines only, parking lot and highway striping only, and folding doors and partitions.

According to the Arizona Legislative Council the failure of the Registrar to establish written examinations for the above classes of contractors is in violation of ARS 32-1122. In a March 27, 1979 opinion the Legislative Council stated, in part*:

> "...To the extent that any applicant for a contractor's license is not given a written examination on 'qualification in the kind of work for which the applicant proposes to contract,' the registrar of contractors is in violation of the provisions of section 32-1122, subsection F, paragraph 2, Arizona Revised Statutes."

Officials at the Registrar of Contractors concede that certain classes of contractors are not given the "trade" portion of the written examination. According to these officials trade examinations have not been established in all cases because a) the nature of the work to be performed, in some cases, does not warrant testing, and b) it would take approximately ten staff years to prepare examinations for all of the contracting classes not currently tested.

Those Written Examinations That Have Been Established By The Registrar Are Not A Valid Means Of Testing The Qualifications Or Knowledge Of The Applicants

According to a May 31, 1978 report prepared for the California Department of Consumer Affairs entitled "The Problem of Occupational Regulation in Perspective," the purpose of occupational licensing examinations was stated as follows:

* Appendix V contains a full text of the March 27, 1979 Legislative Council Opinion.

> "The examination of applicants is a means by which the State is able to measure the fitness of an applicant to pursue a given occupation in a manner consistent with the demands of the public welfare. In theory, the need for examinations is to protect the public from the dangers posed by the unskilled and ignorant,...."

The report goes on to comment on the need for testing the competency of applicants.

> "As to the need for testing competency, it has been observed that tests of the knowledge or practical skills of an occupation are only justifiable as 'necessary' if the incompetent practice of the occupation would cause irreparable harm to the public's health and safety. Medicine, for instance may be such a field. And yet many others may not be."

In order to be licensed as a contractor in Arizona an individual is usually required to pass two examinations, the Construction Business Management Examination (CBME) which is designed to test the applicant's knowledge of contracting laws, rules and regulations and general business practices and a "trade" examination which is designed to test the applicant's qualifications and technical knowledge.

Our review of the examination procedures of the Registrar of Contractors revealed that passage of the trade examination does not ensure an individual's competency or technical proficiency in that a) the cumulative pass rate is nearly 93 percent for the various trade examinations and in excess of 97 percent for the CBME, and b) there appears to be no correlation between the ease with which an applicant passes the trade examination and subsequent success or failure in the contracting business.

High Pass Rates

Very few license applicants fail to pass the examination for a contractor's license. The high pass rates on the Registrar of Contractor's examination are due primarily to the fact that an applicant that fails the examination is allowed a) two additional tries to pass the same examination and b) to review his or her previous examination prior to retaking the examination.

On the average, there are approximately 102 questions on the trade examinations of which 37 percent are true/false and the others primarily multiple choice.* The CBME contains 166 true/false and multiple choice questions. The age of the trade examinations ranges from five months to 118 months while the average age for all trade examinations is approximately 38 months.

Examinations are given weekly in Phoenix and Tucson by the Registrar. The examinations are given very infrequently in other locations within the state. Applicants prepare for the CBME by studying a "Statutes and Rules and Regulations" pamphlet prepared by the Registrar and a 23 page booklet entitled "Business Management for Contractors." The applicant is generally notified of test results within seven days after taking the examinations. If the applicant has failed either or both of the examinations for the first or second time a retake in 30 days is automatically scheduled, however, upon the request of an applicant the retake will be scheduled sooner. An applicant who has failed an examination may make an appointment with the Registrar to review the examination any time between the notification of failure date and the scheduled retake date. At the time of the review the missed questions are clearly identified on the examination. When the applicant retakes the examination the exact same examination is given.

Table 3 summarizes the pass/fail percentages on examinations administered by the agency during fiscal year 1977-78.

* Based on a random selection of 17 examinations.

TABLE 3

SUMMARY OF PASS/FAIL PERCENTAGES ON EXAMINATIONS ADMINISTERED BY THE REGISTRAR OF CONTRACTORS DURING FISCAL YEAR 77-78

Type of Examination	Number of Examinees	1st Attempt		2nd Attempt*			3rd Attempt*		
		Pass	Fail	Pass	Fail	Drop Out	Pass	Fail	Drop Out
Trade	1562	64.7%	35.3%	84.4%	14.5%	1.1%	92.8%	4.0%	3.2%
CBME	1466	89.4%	10.6%	95.8%	3.5%	.7%	97.2%	1.2%	1.6%

* Cumulative

Table 3 illustrates that the cumulative pass rate during fiscal year 1977-78 was nearly 93 percent for the trade examinations and in excess of 97 percent for the CBME. It should be noted that the above cumulative percentages are not exact and that the pass rates are conservatively estimated.

On the subject of tighter licensing requirements, a May 1978 Review of the California Contractors State Licensing Board stated:

> "Tougher written examinations would favor the well-educated, not necessarily the most skilled."

As shown in the following section, the ease with which an applicant passes the examination is no indication of future success or failure. Therefore, if examinations were to be made more difficult or different examinations given for retakes, the result would invariably be an increase in the failure rate. The additional failures would come from those who currently have difficulty with the examination (passing on third attempt), however, members of this group are no more likely to fail as contractors than those passing on the first attempt.

No Apparent Correlation Between The Ease With Which An Applicant Passes The Examination And Subsequent Success/Failure In The Construction Industry

Applicants that pass trade examinations on the first attempt are no more likely to succeed or fail in the contracting business or have their licenses revoked than those applicants that pass the examination on the second or third attempt. Therefore, it does not appear that the trade examination is a valid predictor of an applicant's subsequent success or failure in the contracting industry.

During the period January 1, 1978 to June 30, 1978, the Registrar revoked 59 contractor licenses. An analysis of the contractors who had their licenses revoked during this period revealed that 70.3 percent had passed the trade examination on their first attempt, 21.6 percent on their second attempt and 8.1 percent on their third attempt. Of particular interest is the striking similarity between these percentages and the percentage of all licensed applicants that passed trade examinations on their first, second or third attempts during fiscal year 1977-78. Table 4 summarizes the percentage of contractors that had their licenses revoked during the period January 1, 1978, to June 30, 1978, that passed trade examinations on their first, second or third attempt and the percentage of all license applicants that passed trade examinations during fiscal year 1977-78 on their first, second or third attempt.

TABLE 4

SUMMARY OF THE PERCENTAGE OF CONTRACTORS THAT HAD THEIR LICENSES REVOKED DURING THE PERIOD JANUARY 1, 1978, TO JUNE 30, 1978, THAT PASSED EXAMINATIONS ON THEIR FIRST, SECOND OR THIRD ATTEMPT; AND THE PERCENTAGE OF ALL LICENSE APPLICANTS THAT PASSED EXAMINATIONS DURING FISCAL YEAR 1977-78 ON THEIR FIRST, SECOND OR THIRD ATTEMPT

Number of Attempts Required to Pass Examinations	Percentage of Contractors That Had Their Licenses Revoked During the Period January 1, 1978 to June 30, 1978		Percentage of All License Applicants That Passed Examinations During Fiscal Year 1977-78	
	Trade	CBME	Trade	CBME
First Attempt	70.3%	81.6%	69.7%	91.9%
Second Attempt	21.6	15.8	20.7	6.7
Third Attempt	8.1	2.6	9.6	1.4
Total	100.0%	100.0%	100.0%	100.0%

As shown in Table 4 there does not appear to be any correlation between the ease with which applicants pass trade examinations and subsequent success or failure in the contracting industry. If there were such a correlation the percentage of contractors that passed trade examinations on the third attempt would represent a higher relative percentage of those contractors that had their licenses revoked. For example, if 9.6 percent of all licensed contractors required three attempts to pass trade examinations but that some group represented a disproportionately large percentage (such as 30 percent) of the contractors that had their licenses revoked, it could be argued that an applicant's performance on the trade examination was a valid predictor of that applicant's future success in the contracting business. However, because such a disproportionate representation does not exist, it appears that an applicant that passes the examination on the first attempt has the same chance of having his or her license revoked as an applicant that passes on the third attempt.

There is however, a slight correlation between the difficulty applicants experience with the CBME and subsequent success or failure in the contracting industry. As shown in Table 4 the difference in the number passing the CBME on the first attempt that subsequently had their licenses revoked is over ten percent lower than that of all license applicants. Therefore, those contractors who subsequently failed as a contractor demonstrated a weakness in business management subjects.

The Credit Services Division of Dun and Bradstreet, Inc. after analyzing numerous contractor failures nationwide made the following observations and suggestions regarding the failures:

> "In most instances, no single cause for a construction failure is readily apparent; more often there is a combination of factors. Ten apparent causes of failure include: 1) overextension, 2) unsophisticated accounting procedures 3) lack of managerial know-how 4) inadequate profit margins 5) inexperience 6) speculating in outside ventures 7) intrinsic hazards 8) inadequate investigation of resources of the client 9) personal traits 10) personal weaknesses
>
> The following suggestions may have merit as preventative measures against future contractor failures: promoting methods of educating younger and smaller contractors in the basic principles of business management such as cost analysis, budgeting, estimating weekly cash flow and organization of a simple system for financial record keeping - especially subsidiary records such as job schedules, job costs and costs involving overhead, administration and salaries."

CONCLUSION

The examinations administered by the Registrar of Contractors do not effectively evaluate an applicant's knowledge and competency in the areas of technical skills and business management.

RECOMMENDATION

It is recommended that ARS 32-1122 be amended to eliminate the trade examination as a licensing requirement and that reliance be placed on a revised method of experience verification (as recommended in the Licensing Section of this report) to evaluate an applicant's technical ability. The Registrar should develop a more thorough method of educating applicants in business management skills that may or may not require the use of examinations.

FINDING III

THE REGISTRAR OF CONTRACTORS' BONDING REQUIREMENTS PROVIDE LITTLE IN THE WAY OF PROTECTION TO THE CONSUMER.

In Arizona, Contractor bonds are required by the Registrar of Contractors as a means to idemnify consumers against contractor insolvency. Our review revealed that the current contractor bonding system does not effectively protect consumers in that:

1. The bonding system protects those who are familiar with the legal processes involved, and generally not the consumer; and
2. Revenues generated by the bonding system, to a large extent, are not available to reimburse those who suffer financial losses in dealing with contractors.

Further, an alternative form of consumer protection, the recovery fund, would provide substantially more protection to consumers.

The Current Bonding System Provides Some Protection To Those Who Are Familiar With The Legal Processes Involved. For Those Unfamiliar With The Process, Normally The General Public, The Current System Provides Very Little In The Way Of Protection

Prior to the issuance of a contracting license in Arizona an applicant must provide a bond for the protection of those he or she deals with in case of insolvency. The amount of the bond depends on the type of license applied for and the anticipated volume of work. Bonds vary from $1,000 to $15,000.

Compliance with the bonding requirement can be accomplished in one of three ways: a) through a surety, b) by depositing the required bond amount in cash with the State Treasurer, and c) by assigning a certificate of deposit in the required amount to the Registrar of Contractors.

The bond must be maintained by the contractor and the amount required is subject to change as anticipated business volume changes.

Our review of the current bonding system revealed that it generally benefits those who bypass the Registrar of Contractor's complaint process and seek relief directly from the judicial system. Those persons who bypass the Registrar are normally sophisticates who are familiar with the processes involved. Those persons are generally not consumers.

For example, an analysis of cash bond payments made during fiscal year 1977-78, revealed that the consuming public's share of bond distributions was exceptionally small when compared to the share received by other groups. Table 5 shows the recovery percentages of the various groups from the cash bond fund during fiscal year 1977-78.

TABLE 5

SUMMARY OF CASH BOND PAYMENTS MADE
TO CONSUMERS AND OTHER GROUPS DURING
FISCAL YEAR 1977-78

Group	Percentage of Cash Bond Payments Received
Consumers	18.7%
Suppliers and contractors	58.0
Unions, Employees & Trustees	23.3
Total	100.0%

As shown in Table 5, consumers received only 18.7 percent of the cash bond payments paid out.

It should be noted that the process for the recovery of damages is similar between the cash bond fund and surety bonds. Therefore it seems logical to assume that the cash bond recovery percentages shown in Table 5 approximate that for surety bonds as well.

Two primary reasons for the low percentage of bond distributions to consumers are:

1. The consumer, according to Registrar personnel, is generally the last to know that the contractor is in trouble. Those who have daily business dealings with the contractor, such as suppliers and other contractors, are in a better position to evaluate the impending insolvency and are the first to take action against the bond.
2. The consumer, unlike those who deal in the bonding process on a daily basis, will, in most cases, file a complaint with the Registrar. Unfortunately, by the time the complaint-filing consumer learns that monetary satisfaction will not be obtained through the complaint process, it is generally too late to file suit against the bond. For example, 60 percent of the consumers shown in Table 5 filed complaints with the Registrar prior to proceeding against the bond. However, only 10 percent of those who recovered the vast majority of the available bond funds filed complaints with the Registrar.

Further, an Auditor General survey of persons who had filed complaints with the Registrar against contractors who went out of business and left complaints unresolved revealed that 66.7 percent subsequently filed actions against the bond. However, only five percent of those filing actions received any money from the bond.

Of the remaining 33.3 percent of complainants that did not file against the bond, 75 percent stated that it was because the bond was already exhausted or that too many creditors had already filed actions against the bond.

The following cases, which were taken from fiscal year 1977-78 complaint records and Auditor General surveys of complainants, illustrate the problems with the current bonding system.

Case 1

On April 16, 1978, the Registrar of Contractors revoked the license of a painting and wall covering contractor. From July 28, 1977 to September 1, 1978, 43 complaints were filed against the contractor, 42 of which went unresolved. Of these 42 complainants, 40 were consumers, one was a supplier and one was an employee.

The contractor had obtained a $1,000 surety bond for the protection of those with whom he dealt. The bond was paid in May 1978 to a supplier, who had not filed a complaint with the Registrar. In a survey of those filing complaints against this contractor, it was determined that the average loss suffered by these complainants was slightly over $2,000. Thus, the aggregate loss suffered by these complainants, was over $86,000 from a contractor who was required to provide only a $1,000 bond for the public's protection.

Case 2

On March 22, 1978, the license of a swimming pool contractor was revoked leaving 24 unresolved complaints. Of these 24 complainants, 18 were consumers, four were sub-contractors and two were suppliers. None of these 24 complainants received any money from the $10,000 cash bond posted by the contractor because seven other claimants had exhausted the bond.

Based on an Auditor General survey of complainants, the average unrecovered loss was $1,638, or over $39,000 for these 24 complainants.

Case 3

A roofing contractor whose license was revoked by the Registrar left 15 unresolved complaints. An Auditor General survey of these unresolved complaints revealed that the average individual loss was $1,176 or an aggregate loss of $17,640. The contractor was required to post only a $1,000 bond.

The above cases represent only a small segment of the unresolved complaints filed against contractors who are no longer in business. For example, an estimated 400 complaints were closed by the Registrar during fiscal year 1977-78 because the contractor's license had been revoked. Approximately 260 of these complaints were filed by consumers who suffered an average loss of $1,500 or an aggregate loss of $390,000.

An Auditor General survey of complainants who had suffered financial losses because contractors had gone out of business without sufficient bonding revealed widespread consumer dissatisfaction with the current system. The following complainant quotations illustrate that dissatisfaction:

> "State does not require the contractor to have enough in bond money.
>
> If bankrupt contractor has more than 1 claim as this one did, then all citizens lose and bear the brunt of False Misrepresentation. 'Bonded with State'"
>
> "I thought that any complaints or charges against the company were supposed to be made through the Registrar of Contractors."
>
> "I filed a complaint with the Registrar but it was my understanding I would have to file another form for the money."
>
> When I called the department, I was told they were licensed and bonded. No one ever informed us that the bond was only $1000 for all liability while the job was $5000. This is fraud on your part. Because you inferred they were covered by not telling us that the law only requires a $1,000 bond. You should be in jail."
>
> "...we were aware that all the state requires is a license bond for minimal amounts. The general public thinks that 'Licensed & Bonded' gives protection for performance in the amount of the contract. In a sense the state is a party to false advertising."
>
> "I found his bond had already been attached, it was very inadequate only $1,000 - then he filed bankruptcy and was informed there was nothing more I could do to recover my money."
>
> "I was 4th in line for his bond. First 3 came to roughly $10,000. Bond was $1,000 - a joke!"
>
> "...did not realize that the dollar amount of the bond was so minimal that it could hardly cover a single complaint."
>
> "Representative of Registrar of Contractors inspected house and agreed verbally with my complaints but gave me no hope of obtaining restitution."

With regard to the inadequacy of bond amounts cited above it should be noted that the bond amount a contractor is required to post is dependent upon license classification and anticipated annual volume of business. The contractor is allowed to estimate gross volume of work on Registrar license applications. However, the Registrar does not verify the accuracy of these estimates. The following case illustrates that some contractors understate anticipated gross volume of business and as a result do not post sufficient bonds.

In May of 1976 a General Building Heavy Construction license was issued to a Phoenix home builder. The contractor estimated its annual gross volume of work for fiscal years 1975-76, 1976-77 and 1977-78 to be $150,000. As a result, the contractor was required to post a $3,000 bond. However, a review of subsequent complaints filed against this contractor revealed that the contractor's annual gross volume of work for fiscal years 1975-76 through 1977-78 was at a minimum as follows:

Fiscal year 1975-76	$189,595
Fiscal year 1976-77	554,142
Fiscal year 1977-78	456,362

Based on the above gross volumes of work, the contractor's bond should have been three times the $3,000 actually posted. The contractor went out of business and his license was revoked in 1978 leaving at least nine unresolved complaints.

The Revenues Generated By The Bonding System To A Large Extent Are Not Available To Reimburse Those Who Suffer Financial Losses In Dealing With Contractors

Arizona contractors pay annually, premiums of approximately $2,200,000 to sureties to fulfill these bonding requirements.* However, of that $2,200,000 received by sureties only an estimated $688,600 is paid out annually to those who have obtained judgments against contractors.** Thus, sureties receive approximately $1,500,000 more from contractors than they pay out annually.

In addition, contractors have the option of posting cash bonds with the State Treasurer as a means of fulfilling their bonding requirements. The State Treasurer invests these cash bonds in order to earn interest income. However, any interest income earned from these cash bonds belongs to the State General Fund and is not available for distribution to claimants against contractors. During fiscal year 1978-79, the cash bonds deposited with the State Treasurer earned approximately $235,000 in interest.

As a result, during fiscal year 1978-79, approximately $2,435,000 was either paid by contractors to sureties or earned as interest on cash bonds deposited with the State Treasurer, but only $756,800 was paid to claimants against contractors' bonds as shown below.

* Based on responses obtained in a survey of 500 contractors.

** Based on a survey of bonding companies, it was determined that losses averaged 31.3% of premium dollars.

Bond Premiums Paid By Contractors To Sureties		$2,200,000	
Interest Earned On Cash Bonds Deposited With The State Treasurer		235,000	
		$2,435,000	100%
Bond Distributions Paid To Claimants Against Contractors:			
Surety Judgments	$688,600		
Cash Bond Fund Judgments (Fiscal Year 1977-78)	68,200	756,800	31
Bond Premiums or Cash Bond Interest Earnings Retained By Sureties Or The General Fund		$1,678,200	69%

As shown above, only 31 percent of the annual bond premiums paid to sureties and interest earned on cash bonds are distributed to claimants against contractors. It should be noted that those claimants are the ones the bonding system is designed to protect against financial loss.

The Recovery Fund Method Of
Consumer Protection Has Been
Found To Provide Substantially
More Protection To Consumers

An alternative form of consumer protection has been developed and is currently in use by the Hawaiian Contractors Board. The method adopted in Hawaii for consumer protection is a Recovery Fund to which all licensed contractors contribute. The full text of the applicable Hawaiian statutes is located at Appendix VI; however, the pertinent features of the Recovery Fund are as follows:

1. For an original license each contractor pays $150 into the fund.
2. Each contractor pays $50 into the fund upon renewal each biennial renewal period.
3. The fund's liability does not exceed $10,000 for damages sustained by any consumer.
4. The fund's liability does not exceed $20,000 for any licensed contractor.
5. Consumers are limited to "owners or lessees of private residences, including condominium or cooperative units, who have contracted with a duly licensed contractor for the construction of improvements or alterations to their own private residences."
6. Upon payment from the fund the contractor's license is automatically terminated until the amount of payment is repaid in full.
7. Contractors may still be required to post bonds at the discretion of the board based on the experience and financial condition of the licensee or applicant.

When Hawaii first established its Recovery Fund in 1973, it was not limited to consumers. As a result, heavy financial pressures were placed on the resources of the fund. Hawaii amended the statutes that established the Recovery Fund in 1976 to limit access to the Recovery Fund to consumers. Thus, persons such as suppliers, unions and other contractors may not file claims against the Recovery Fund. According to the Executive Secretary of the Hawaii Contractor's Board, the Recovery Fund is operating very well.

An Auditor General survey of 500 licensed contractors revealed that 52.7 percent preferred the Recovery Fund method of consumer protection to the current bonding system.

CONCLUSION

The current contractor bonding system does not effectively protect consumers in that:

- The bonding system protects those who are familiar with the legal processes involved, generally not the consumer, and
- Revenues generated by the bonding system, to a large extent, are not available to reimburse consumers who suffer financial losses in dealing with contractors.

An alternative form of consumer protection, the Recovery Fund, would provide substantially more protection to consumers.

RECOMMENDATION

The Registrar of Contractors should adopt the recovery fund method of consumer protection similar to that now in use by the Hawaii Contractor's Board. The adoption of the recovery fund would necessitate amending ARS 32-1152 and 32-1152.01 which pertain to the current bonding requirements.

FINDING IV

IMPROVEMENTS ARE NEEDED IN THE PROCEDURES EMPLOYED BY THE REGISTRAR OF CONTRACTORS TO RESOLVE COMPLAINTS AGAINST CONTRACTORS AND PUNISH LICENSEES FOUND GUILTY OF OFFENSES.

Arizona statutes require the Registrar to resolve complaints filed by consumers against licensed contractors and to impose discipline against contractors when appropriate. Our review of the Registrar's complaint review process revealed that the time required to resolve complaints is excessive and the Registrar is not in compliance with statutory requirements regarding complete and accurate records of all license revocations and suspensions.

The Time Required To Resolve Complaints Is Excessive

Arizona Revised Statutes 32-1155 through 32-1159 prescribe the procedures to be followed in resolving complaints and state in part:

> "32-1155. Filing of complaint; service of notice; failure to answer.
>
> A. Upon the filing of a verified complaint with the Registrar charging a licensee with the commission, within two years prior to the date of filing the complaint, of an act which is cause for suspension or revocation of a license, the Registrar after investigation may issue a citation or upon written request of the complainant shall issue a citation directing the licensee, within ten days after service of the citation upon him, to appear by filing with the Registrar his verified answer to the complaint showing cause, if any, why his license should not be suspended or revoked.
>
> . . .
>
> 32-1156. Notice of hearing.
>
> A. Upon the filing of an answer by a licensee served with a complaint under section 32-1155, the Registrar shall fix a time and place for a hearing and shall give the licensee and the complainant not less than five days notice thereof....
>
> B. With the notice to complainant there shall be attached or enclosed a copy of the answer....

"32-1157. Hearing.

A. Upon the hearing, the Registrar shall hear all relevant and competent evidence offered by the complainant and the licensee, and may continue the hearing from time to time when he deems it necessary and proper.

B. After the hearing is concluded and the matter submitted, the Registrar shall, within fifteen days, give his decision in writing, either suspending or revoking the license or dismissing the complaint, with a brief statement of his reasons therefor....

C. A decision by the Registrar suspending or revoking a license shall not take effect until twenty days after service of notice thereof.

32-1158. Rehearing.

A. Within twenty days after service of notice of the decision of the Registrar suspending or revoking a license or the dismissal of a citation and complaint, the licensee or complainant may apply for a rehearing by filing with the Registrar his petition in writing therefor. Within five days after filing such petition, the Registrar shall have notice thereof served upon the complainant by mailing a copy of the petition to him in the manner prescribed in section 32-1156 for notice of hearing. The filing of a petition for rehearing shall be a condition precedent to any right of appeal as prescribed pursuant to section 32-1159.

B. The filing of a petition for rehearing shall suspend the operation of the Registrar's action in suspending or revoking the license and permits licensee to continue to do business as a contractor pending denial or granting of the petition, and if the petition is granted, shall suspend operation of such action pending the decision of the Registrar upon the rehearing.

C. In his order granting or denying a rehearing, the Registrar shall include a statement of the particular grounds and reasons for his action....

Within ten days after submission of the matter upon rehearing, the Registrar shall render his decision in writing and give notice thereof in the same manner as if a decision rendered upon an original hearing.

"D. If an order denying a rehearing or a decision given upon a rehearing results in immediate suspension or revocation of a license, then operation of such order or decision shall be suspended until ten days after service of notice thereof.

32-1159. Appeal.

An action to review a final administrative decision of the Registrar of Contractors shall be pursuant to Title 12, Chapter 7, Article 6, except that the Registrar of Contractors shall have thirty days to prepare and file with the court a transcript of the proceedings before the registrar."

The time required to resolve complaints as prescribed above is excessive. An analysis of 324 complaints that were closed during the period July 1, 1978 to December 31, 1978 revealed the time required for each step in the complaint process. Table 6 summarizes the results of this analysis.

TABLE 6

SUMMARY OF TIME REQUIRED FOR EACH
STEP IN THE COMPLAINT PROCESS AS
PRESCRIBED IN ARS 32-1155 THROUGH 32-1159

Steps in the Complaint Process	Percentage of Complaints Analyzed	Average Elapsed Time in Days to Complete Step	Cumulative Elapsed Time in Days
Complaint Rejected*	15.4%	40	
Complaint Accepted But Resolved Between Complainant And Contractor Prior To The Registrar Issuing A Citation	57.1	70	70
Citation Issued But Resolved Between Complainant And Contractor Prior To The Hearing Being Held	14.8	124	194
Resolved At Hearing	9.3	52	246
Resolved At Rehearing	2.3	60	306
Appealed To And Resolved At Superior Court	.2	320	626
Other**	.9		
	100.0%		

* Rejected for lack of jurisdiction, complaint exceeded industry standards or complainant refused help from contractor.

** Case files destroyed in fire at the Registrar's on January 14, 1979, case reopened or complainant taking civil action.

As shown in Table 6, most complaints are resolved between the complainant and the contractor prior to a citation being issued by the Registrar. However, even those complaint settlements take an average of 70 days. Those complaints that go beyond the citation stage require significantly more time to resolve. For example, complaints resolved after a citation has been issued but prior to the hearing date require 194 days for resolution and complaints resolved at a hearing require 246 days for resolution.

It should be noted that those complaints that are resolved prior to a hearing are usually resolved as a result of contractor action. That is, a contractor takes appropriate action regarding a complaint-then the complaint process stops. However, under current procedures, contractors have little incentive to take appropriate action expeditiously. For example, a contractor can wait until the day before a complaint is scheduled for hearing to take appropriate action and still avoid a hearing. As a result, contractors actually have an incentive to delay taking action as long as possible under the current system. The following statement by a home builder's association to its members attests to that fact:

> "If you receive a complaint on a block fence not being complete, request a hearing. Hopefully, you will be able to complete the block fence before the hearing date comes up." (Emphasis added)

This lack of contractor incentive to resolve complaints expeditiously is a primary cause for the current lengthy complaint process. One by-product of such a lengthy complaint process is that it jeopardizes other consumers. This occurs because a contractor continues to be licensed until the Registrar suspends or revokes the contractor's license. Thus, while one complaint against a particular contractor is being processed additional complaints may be filed by other consumers against the same contractor. However, if the Registrar revokes the contractors license based upon the initial complaint, any subsequent complaints filed against that contractor by other consumers are dismissed. The Registrar no longer has jurisdiction over the contractor after the Registrar has revoked the contractor's license. The following cases illustrate how a lengthy complaint process works to the disadvantage of consumers.

Case 1

On July 28, 1977, a complaint was filed against a painting & wall covering contractor. This complaint resulted in the revocation of the contractor's license on April 16, 1978, nine months later. During the nine-month period from the filing of the complaint to the revocation, 44 other complaints were filed.

Case 2

A roofing contractor's license was revoked on February 12, 1978 because of a complaint filed September 29, 1977. During the five and one-half months between the filing of the complaint and revocation, 15 additional complaints were filed with the Registrar.

Case 3

On March 22, 1978, a swimming pool contractor's license was revoked due to a complaint filed October 28, 1977. At the time of license revocation, 28 complaints had been filed with the Registrar against this contractor.

An Auditor General survey of individuals and firms that had filed complaints with the Registrar that were closed from January 1, 1979 to June 30, 1979, disclosed that:

- 39.6 percent felt that the delay in processing the complaint resulted in a hardship (financial or otherwise).
- 32.9 percent felt that the Registrar was not useful in resolving their complaint.
- 38.6 percent felt that the Registrar of Contractors is not useful in protecting the public from incompetent or unethical contractors.

In addition, those persons that responded to the survey frequently expressed anger and frustration at the length of the complaint process and the apparent inability of the Registrar to effectively regulate contractors such as:

"The contractor knows he can go all the way up to the hearing without performing at the expense of the home buyer since most individuals won't pursue the matter that far due to time, dollars, frustration and although not mandatory, cost of lawyer fees for being represented at the hearing. Even if (the) case is ruled against the contractor, he performs without penalty. There is no incentive for the contractor to perform until after (the) hearing."

"My husband was...overseas and I had to handle this myself - became physically ill and mentally upset due to long drawn out procedures..

. . .

My contractor ignored me and also the Registrar, for awhile he was unobtainable and got away with it."

"Completely reorganize or eliminate department. Existing situation is completely useless and I'm sure a waste of tax-payers money."

"Inspector called on contractor REPEATEDLY, contractor tended to ignore whomever he pleased."

"The builders don't seem upset in the least when you go (to) the Registrar of Contractors. Perhaps they don't have enough power over the builders."

"The Registrar showed complete indifference to my problem - the complaint sat for over 6 months without anything happening - I called many times and was told 'This all takes time'."

"As far as I'm concerned you should change the name to Registrar FOR Contractors - I was told that they would not inspect my roof...I was also told that I could request a hearing which might be scheduled in four to six months. After the hearing I would have to file another suit in order to get my money or get the roof fixed. The estimated cost of going this far would have been prohibitive."

"Shouldn't let so much time elapse between time of complaint and completing it (the work). This case took over a year."

"Considering the service rendered (lack thereof) to me, the Registrar of Contractors may just as well not exist."

"I obtained <u>no</u> satisfaction or encouragement from the Registrar of Contractors and believe it to be an impotent powerless part of our bureaucracy."

One means of shortening the complaint process would be to provide the Registrar with the authority to fine contractors if valid consumer complaints are not resolved by the contractor within a specified time. Such a process could be implemented as follows:

- When a complaint is filed with the Registrar, the contractor is given a specified time to take appropriate action.
- If the contractor takes appropriate action within the allotted time, the complaint is dismissed.
- If the contractor does not take appropriate action, the normal complaint process is initiated.
- The Registrar would impose a fine on the contractor for all valid complaints not resolved within the allotted time.

The advantages of the above procedure over the current one is that it a) provides the contractor with an incentive to take appropriate action within a reasonable time, and b) would reduce the number of complaints requiring Registrar action.

The concept of giving contractors a specific amount of time to resolve valid complaints or face disciplinary action regardless of whether or not the complaint was eventually resolved was discussed by the Office of the Auditor General with a representative of the Central Arizona Homebuilders Association, a large Phoenix homebuilder, and Registrar of Contractor personnel. All parties agreed to the concept, however, some expressed concern regarding the establishment of a fair amount of time to resolve the complaint.

In addition, an Auditor General survey of 500 contractors revealed widespread support for the concept of establishing rules for the timely settlement of complaints and fining contractors who violate established time limits. The specific questions asked of contractors and their responses are as follows:

Do you feel that the Registrar of Contractors should promulgate rules for the timely settlement of complaints?

Yes	86.6%
No	13.4%

Would you favor the Registrar of Contractors having the power to levy fines/penalties against those who exceeded a specified time period in resolving a complaint (assuming the complaint was valid)?

Yes	70.0%
No	30.0%

It should be noted that complaints are currently being received by the Registrar in excess of 600 a month. The number of complaints received during fiscal years 1976-77 through 1978-79 and the projected fiscal year 1979-80 volume is shown below:

Fiscal Year	Number of Complaints	Percent Increase Over Fiscal Year 1976-77 Base Year
1976-77	4204	
1977-78	5725	36%
1978-79	7509	79
1979-80	9453 (Estimated	125

Due to the lack of personnel to handle the increasing number of complaints received and the current procedures used to resolve complaints, the backlog has been steadily increasing. As of May 1, 1979, there were 3055 unresolved complaints filed with the Registrar. The increase in unresolved complaints is shown below.

Date	Number of Unresolved Complaints	Percent Increase Over 1977 Base Year
May 1, 1977	858	
May 1, 1978	1463	70%
May 1, 1979	3055	256

In our opinion, it is essential that some method be established to shorten the Registrar's complaint process. This need will become even more severe as the number of complaints filed with the Registrar and unresolved complaints increases.

The Registrar Is Not In Compliance With Statutory Requirements Regarding Complete And Accurate Records Of All License Revocations And Suspensions

Arizona Revised Statutes 32-1104 requires the Registrar to maintain complete and accurate records of all contractor license revocations and suspensions and states in part:

> "Powers and duties.
>
> A. The Registrar, in addition to other duties and rights provided for in this chapter, shall:
>
> . . .
>
> 2. Maintain a complete indexed record of all applications and licenses issued, renewed, terminated, cancelled, revoked or suspended under this chapter.
>
> 3. Furnish a certified copy of any license issued or an affidavit that no license exists, or the cancellation or suspension thereof, upon receipt of a fee of three dollars, and such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein."

Our review of the Registrar's records revealed that complete and accurate records are not being maintained in that adequate follow-up is not made of Registrar suspensions and revocations that are appealed to the Superior Court. As a result, some contractor license suspensions and revocations that should be reflected on contractor records are not.

For example, as of April 1979, the Registrar considered 22 suspensions and revocations as being appealed to the Superior Court when in fact the Court had already rendered a final decision. The importance of this omission is that an appealed suspension or revocation is not reflected on a contractor's license until the decision is upheld by the Court. Thus, in those cases where the Registrar's decision was sustained by the Court, the Registrar's records would be incomplete.

An analysis of the 22 appealed decisions that were actually closed as of April 1979 revealed that the Registrar's decision was upheld in eight cases. The following two cases are examples.

Case 1

The Registrar's decision and order suspending the contractor for 30 days was appealed to Maricopa County Superior Court. Because the licensee failed to properly pursue the appeal it was placed on the inactive calendar and subsequently dismissed without prejudice for lack of prosecution on December 24, 1971. The dismissal in effect upheld the Registrar's order of a 30-day suspension. Because the Registrar regarded the appeal as open, the contractor's record was never changed to reflect the suspension and there is no indication that the contractor ever performed the 30-day suspension. The licensee is still an active contractor.

Case 2

A contractor whose license had been revoked by the Registrar obtained a stay order from the Superior Court dated April 7, 1973. The granting of the stay order was contingent upon the posting of a $500 bond by the contractor. The $500 bond was never posted by the contractor and the stay never went into effect. As a result, the Registrar's order became effective in April 1973 revoking the contractor's license. The revocation does not appear on the contractor's record at the Registrar. The contractor allowed his license to lapse on June 30, 1973. In 1977, the contractor reapplied for a license. The new license was issued by the Registrar on April 18, 1977. At present, the contractor is scheduled for two hearings where he has been charged with failure to complete, abandonment of contract and poor workmanship.

Two possible consequences of the Registrar not following up on appealed disciplinary actions are a) when the imposition of discipline is delayed for an unreasonable time, the Registrar may be precluded from subsequently imposing any penalty, and b) consumers may have a negligence claim against the Registrar if they suffered harm because they relied on faulty contractor information provided by the Registrar. The Legislative Council, in opinions dated May 2, 1979* and May 3, 1979*, stated:

> "The equitable defense of laches may be available to a contractor against enforcement of a decision and order of the Registrar if a lengthy period of time elapses after appeal and before implementation of the license suspension or revocation."

> "Arizona case law is unclear as to whether a person may have a negligence claim against the Registrar of Contractors for failure to include the existence of a prior license suspension or revocation on the records of a current licensee. However, an argument can be made to the effect that a misrepresentation of fact occasioned by a failure to comply with a specific statutorily imposed recordkeeping duty would be an action which narrows the Registrar's general duty to the public into a special duty to an individual, thus satisfying the duty requirement for a negligence claim in Arizona...The other elements of negligence would still need to be shown, including evidence that the misrepresentation of fact by the Registrar was the proximate cause of the plaintiff's injuries."

In our opinion the Registrar should adopt procedures to ensure that contractor records reflect the disposition of appealed disciplinary decisions.

* Appendices VII and VIII contain a full text of these opinions.

CONCLUSION

Improvements are needed in complaint procedures in that:

- The time to resolve complaints is excessive, and
- The Registrar is not in compliance with statutory requirements regarding complete and accurate records of all license revocations and suspensions.

RECOMMENDATIONS

It is recommended that:

- The Registrar be given the authority to fine contractors who exceed a specified period of time to resolve valid complaints, and
- The Registrar should adopt procedures to ensure that contractor records accurately reflect court decisions that uphold disciplinary decisions.

FINDNG V

THE REGISTRAR'S ANNUAL LICENSE RENEWAL PROCESS IS NOT IN COMPLIANCE WITH STATUTORY REQUIREMENTS REGARDING TIMELY DEPOSITS OF MONIES RECEIVED. IN ADDITION INTERNAL CONTROLS OVER THE LICENSE RENEWAL PROCESS ARE NOT ADEQUATE TO ALLOW FOR A DETERMINATION THAT STATUTORILY PRESCRIBED LATE FILING PENALTIES ARE BEING PROPERLY IMPOSED.

Contractors are required to renew their licenses with the Registrar of Contractors annually before June 30, to avoid paying a late filing penalty.* Our review of the Registrar's annual license renewal process revealed that it is not in compliance with statutory requirements regarding timely deposits of monies received and the internal controls over the process are not adequate to allow for a determination that statutorily prescribed late filing penalties are being properly imposed.

Arizona Revised Statutes (ARS) section 35-146 requires all state budget units, including the Registrar, to promptly remit monies received to the State Treasurer and states:

> "35-146. Deposit of receipts by budget units
>
> All monies received by any officer or employee of any budget unit shall be promptly remitted to the account of the state treasurer and no monies shall be held, used or deposited in any personal or special bank account temporarily or otherwise by any agent or employee except as expressly provided by this chapter."

* The fiscal year 1978-79 renewal deadline was delayed 31 days by a court order to allow additional time for contractors to comply with a change in the Registrar's Rules and Regulations which increased the bond amount for a particular class of contractor. Although a relatively few contractors were affected by the rule change, the 31 day postponement in the renewal deadline applied to all licensees.

Our review identified several instances of the Registrar not depositing checks received from contractors with the State Treasurer until weeks or months had passed. For example, one check was apparently received by the Registrar on June 6, 1978 but not remitted to the State Treasurer until August 25, 1978, 80 days later.

The State of Arizona Accounting Manual prepared by the Department of Finance states, in part (section IV-8):

> "Checks should be restrictively endorsed immediately upon receipt. When receipt of monies is incidental to an agency's operations, a formal method of recording such receipts is not necessary, but sufficient documentation should be retained in the agency's files to allow an audit trail." (Emphasis added)

The Registrar does not, however, have sufficient documentation in its files to allow for an audit trail for monies received. Thus it cannot be determined how pervasive or severe are remittance delays such as the one cited above.

At present, there is no control established or audit trail developed for monies received from contractors until their renewal applications are accepted by the Registrar, even though these monies may have been initially received by the Registrar weeks earlier. Renewal fees should be deposited immediately with the State Treasurer. Such deposits should be recorded in a Suspense Account upon receipt by the Registrar and transfered from the Suspense Account to the General Fund upon acceptance of the license renewal application by the Registrar.

Additionally, ARS 32-1125 and 32-1126 provide for an annual renewal of contractor licenses and for a penalty to be imposed upon those contractors that file their license renewals late. The statutes state:

"32-1125. Renewal of licenses

A. Licenses issued under this chapter shall be suspended on June 30 each year by operation of law. An application for renewal of any current contracting license addressed to the registrar, with a valid bond or cash deposit on file with the registrar, accompanied by the required fee and received by the registrar or deposited in the United States mail postage prepaid on or before July 1, shall authorize the licensee to operate as a contractor until actual issuance of the renewal license for the ensuing fiscal year.

B. A license which has been suspended by operation of law for failure to renew may be reactivated and renewed within one year of its suspension by filing the required application and payment of a fee in double the amount provided for renewal in this chapter. When a license has been suspended for one or more fiscal years for failure to renew, a new application for license must be made and a new license issued in accordance with this chapter". (Emphasis added)

32-1126(A)

. . .

3. Annual renewal fee for general engineering contracting, general building heavy construction contracting and the branches or any divisions thereof of general engineering contracting and general building contracting, not more than one hundred ten dollars.

4. Annual renewal fee for the branch or any division thereof of specialty contracting, not more than eighty-five dollars.

. . .

C. The penalty for failure to apply for renewal of a license within the time prescribed by this chapter shall be doubled the annual renewal fee prescribed in this section." (Emphasis added)

Additionally, the Registrar's Rules and Regulations pertaining to renewals state, in part:

"R4-9-16 LICENSE RENEWAL

A. It is the sole duty and responsibility of the licensee to timely renew his license on fully and accurately completed forms as prescribed by the Registrar. Incompleted and inaccurately completed renewal forms shall be rejected. Neither the need for additional time to accurately complete renewal forms as prescribed by the Registrar nor failure to receive renewal forms in the mail will be a justifiable excuse for the late renewal of a license without payment of the double fee."

The internal controls over the Registrar's license renewal process are so inadequate and the documentation of the system so insufficient that it cannot be determined if the late filing penalties prescribed in ARS 32-1125 and 32-1126 are in fact being imposed. For example, on August 25, 1978 (25 days after the license renewal deadline), $1,790 in license renewal fees were sent by the Registrar to the State Treasurer. None of the 19 contractors that paid these renewal fees were assessed late filing penalties. However, it cannot be determined from the available documentation in the Registrar's Office whether late filing penalties should have been assessed.

The Registrar's current procedure for reviewing contractors licenses provides for the contractors to submit a two-part license renewal form along with the license renewal fee to the Registrar. The Registrar date-stamps the renewal application and it is reviewed for propriety. If the renewal is in order a two-part prenumbered receipt is prepared and the renewal fee sent to the State Treasurer. If, however, the license renewal application is rejected by the Registrar, the application and the renewal fee are both returned to the contractor.

The above procedures lack adequate controls and sufficient documentation in that the only means of establishing date control over license renewal applications is the Registrar's date stamp. However, this date stamp is routinely back-dated by Registrar personnel when stamping license renewal applications. Such a practice completely destroys the integrity of the date stamp as a control mechanism. The practice of back-dating the date stamp is particularly prevalent when the volume of license renewals is highest at June 30, and when problems arise with renewal applications, as demonstrated in the following cases:

CASE 1

A contractor submitted a license renewal application on June 28, 1978. The Registrar rejected the application on July 21, 1978, because the contractor's bond was insufficient. The contractor resubmitted the application on August 15, 1978. The Registrar date-stamped the application as having been accepted on July 31, 1978,* and no late filing penalty was imposed.

CASE 2

A contractor submitted a license renewal application on July 27, 1978, and the Registrar rejected the application on August 7, 1978. The contractor resubmitted the application on August 21, 1978. The Registrar date-stamped the application as having been accepted on July 31, 1978,* and no late filing penalty was imposed.

CASE 3

A contractor submitted a license renewal application on July 3, 1978. The Registrar rejected the application on July 25, 1978. The application was resubmitted on July 31, 1978 but was again rejected on August 8, 1978. The contractor again resubmitted the application some time after August 29, 1978. The Registrar date-stamped the application as having been accepted on July 31, 1978,* and no late filing fee was imposed.

As shown in the above cases, the date stamp as it is currently used by the Registrar does not provide a valid indication as to when late filing fees should be imposed. For example, 19 problem license renewals were all dated July 31, 1978, but the license fees were not deposited with the State Treasurer until August 25, 1978. In addition, literally hundreds of license renewal fees were deposited with the State Treasurer between July 31, 1978 and August 25, 1978. However, because of insufficient documentation it cannot be accurately determined how many of these applications were actually filed late but did not have a late filing fee imposed.

* See footnote on page 56 regarding extensions in filing deadline.

The use of a receipts log, filled out immediately upon receipt of a license renewal application, would provide increased internal control and an audit trail to document the processing of license fees from initial receipt to final disposition. In addition, the practice of back-dating the date stamp should be discontinued if it is to have any integrity as an internal control mechanism.

It should be noted that the failure to properly impose statutorily prescribed late filing fees can result in significant monetary losses to the State in view of the following:

- Approximately 12,000 contractors annually renew their licenses with the Registrar.
- License renewal fees are either $85 or $110.
- The late filing fee is double the annual renewal fee.

CONCLUSION

The Registrar's annual license renewal process is not in compliance with statutory requirements regarding timely deposits of monies received. In addition, internal controls over the license renewal process are not adequate to allow for a determination that statutorily prescribed late filing penalties are being properly imposed.

RECOMMENDATION

It is recommended that:

- License renewal fees be deposited immediately with the State Treasurer.
- The Registrar adopt the use of a receipts log to document the processing of license fees from initial receipt to final disposition.
- The practice of back-dating the date stamp be discontinued.

CHANGES ARE NEEDED TO IMPROVE THE EFFICIENCY OF THE ANNUAL LICENSE RENEWAL OF CONTRACTORS.

Our review of the Registrar of Contractor's annual renewal process has shown that the efficiency could be improved with the following changes:

1. Implement a more streamlined system of license renewal; and
2. Implement a staggered renewal system to spread the renewal workload more evenly throughout the year.

The Need To Streamline The Current System Of Renewing Contractor Licenses

The annual license renewal of the approximately 12,000 contractors currently licensed by the Registrar involves the following steps (not necessarily in sequential order):

1. The licensee's master file is retrieved from the file room upon receipt of the renewal form (generally the clerk will retrieve ten to 12 files at a time).
2. The two-part renewal form is date-stamped indicating the date received (see Finding V for exceptions).
3. Determine that form has been signed in three places as required.
4. Compare signature of qualifying party (Q.P.) on renewal form to that contained on initial application to determine that the Q.P. did in fact sign the renewal as required.
5. Determine that the form has been properly notarized.
6. Note any changes made by licensee such as address corrections or officer additions or deletions (if corporation).
7. Compare the gross volume of work reported on the renewal form for the ensuing year against the bond schedule to determine if the current bond is appropriate for the expected level of activity.
8. Verify that the proper amount has been remitted for the renewal and that the check has been signed.
9. Complete two-part prenumbered receipt if renewal is accepted.
10. Attach renewal form to licensee's master file.
11. Stamp outside cover of licensee's file with year to indicate renewal.
12. Refile licensee's file in file room.

The second copy of the renewal form is sent to the data processing section of the Department of Administration (D.O.A.) where the computer file is updated to reflect the license renewal of the contractor and also to print the contractor's renewal receipt and "pocket card."

The need for streamlining the renewal process is evidenced by the discrepancy between Registrar staff estimates of the time a renewal should take and the amount of time renewals actually take. The average of the estimates given by Registrar staff is 3.2 minutes per renewal, however, the average time over the past three renewals based on part-time staff hired for renewals is 13.4 minutes per renewal. If the time it takes to process a renewal could be reduced to that estimate provided by Registrar personnel an annual savings of approximately $8,000 could be realized.

One aspect of the renewal process that would result in an efficiency savings if deleted would be the removal and refiling of the contractor master file. All of the renewal steps listed above, except for the comparison of the qualifying party's signature (#4), could be verified from the microfiche provided by D.O.A. The data processing section of D.O.A. prepares the microfiche on a weekly basis so that the Registrar may have an easily retrievable source of information on all contractors.

During the licensing renewals for fiscal year 1978-79, Registrar staff stated that approximately six cases of signature problems were detected, however, a specific case could not be recalled. Registrar staff contend that the signature verification is done to "keep the agency out of litigation." The Registrar's liability appears to be non-existent in this matter, however, and the need to verify each signature does not seem warranted.

Additionally, after the renewal process, the files of those contractors who did not renew their license could be removed from the active license section and all other files stamped to reflect the renewal. The renewal forms could be filed alphabetically in a separate file thus eliminating the need to individually file in the contractors master file.

A Staggered Renewal System Would Spread The Workload More Evenly Throughout The Year

Each year the Registrar staff processes an increasing number of renewals. Renewals for fiscal year 1980-81 are expected to number approximately 12,700. The renewal process creates a backlog of work during May, June and July each year and has caused the Registrar to hire additional part-time clerical help annually during this renewal period.

One means of reducing the year-end strain on the staff would be to implement a staggered renewal system. The renewals could be staggered on a monthly or quarterly basis. The effect of staggering the renewals would be to even out the workload throughout the year.

CONCLUSION

Efficiency of the renewal process could be improved if unneeded steps in the process were eliminated. Further, the implementation of a staggered renewal system would even out the renewal workload.

RECOMMENDATION

Renewal procedures should be modified to eliminate unneeded steps and ARS 32-1125 should be amended to allow for the renewal of contractor licenses on a staggered basis.

OTHER PERTINENT INFORMATION

The following information is pertinent to the operations of the Registrar of Contractors and the regulation of the contracting industry in Arizona.

Unrelated Trade Requirements - General Building Contractors

At the present time a general building contractor cannot contract to do a job that involves less than three unrelated trades. This prohibition is contained in the Arizona Revised Statutes (ARS) and also in the Rules and Regulations promulgated by the Registrar of Contractors.

Arizona Revised Statutes 32-1102 regarding the classification of contractors states in part:

> "For the purpose of classification, the contracting business shall include:
>
> 1. General building contracting. A general building contractor is a contractor whose principal contracting business is in connection with any structure built, being built, or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind requiring in its construction the use of more than two unrelated construction trades or crafts...." (Emphasis added)

Rule 4-9-01 pertaining to definitions in the Registrars Rules and Regulations states in part:

> "F. General Building Contractors: This includes both Class B and B-2 contractors and requires the use of more than two unrelated trades or crafts in the pursuit of any single contract." (Emphasis added)

Jonathan Rose, an A.S.U. law professor and an authority on antitrust as it applies to occupational licensing, stated in a report to the Attorney General's Office:*

> "The purpose and effect of this provision clearly seems to be to insure that general contractors do not compete with specialty contractors on certain types of jobs. Moreover, this effect is aggravated by the particular interpretation that the Registrar has adopted as a matter of policy. In several situations that appear to involve more than two unrelated trades, the Registrar has taken the position that they basically involve only one trade and that the other work is incidental and supplemental thereto....
>
> As a result of this interpretation, the Registrar has concluded that general contractors may not bid under their general contracting license on such work. Another problem that occurs as a result of the Registrar's interpretation of the 'more than two trades' language is that the interpretation is vague and not the subject of any regulation, but is only a policy of the Registrar pertinent to application of the statute. As a result, the Registrar's authority in this area is potentially subject to abuse, for decisions may be manipulated on an ad hoc basis for any one of a number of reasons.
>
> ...
>
> Moreover, in light of the manner in which the statute is written and interpreted by the Registrar, a person holding a general contractor's license could build a swimming pool as part of a project to construct a house although he might not be qualified to be licensed as a swimming pool contractor. Thus the statute leads to perverse and irrational as well as anti-competitive results: a general contractor may be barred from doing work that he is competent to perform, but permitted to do work that he is not qualified to do....
>
> My personal feeling is that the statute should be construed in order to permit the maximum amount of competition. This is particularly true in this case where there appears to be no health or welfare justification for this statutory limitation of "more than two trades." If the general contractor is permitted to do the work when it is part of a larger project, it is unclear what health or safety considerations justify restricting him from doing smaller projects. As mentioned, the only purpose of the statute seems to be to protect specialty contractors on certain types of jobs."

* The complete text of Professor Rose's report as it pertains to the Registrar of Contractors is contained in Appendix IX.

The Attorney General addressed the question of the "more than two unrelated construction trades or crafts" restriction in opinion number 78-62 dated March 24, 1978. The "validity" of a ban on single-trade work by general contractors was brought out in a footnote which states, in part:

> "4. The purpose of the contractor licensing laws is to protect the public from unqualified or unscrupulous contractors. Northen v. Elledge, 72 Ariz. 166, 232 P.2d 111 (1951); Vivian v. Heritage Shutters, Inc., 23 Ariz. App. 544, 534 P.2d 758 (1975). A law, regulation, or 'interpretation' which did not advance this purpose, but only served to protect specialty contractors from fully qualified competition, would raise serious constitutional questions.
>
> > Any limitation on the opportunity for employment impedes the achievement of economic security, which is essential for the pursuit of life, liberty and happiness; courts sustain such limitations only after careful scrutiny.
>
> Arizona State Liquor Bd. V. Ali, 27 Ariz. App. 16, 18, 550 P.2d 663,665 (1976)"

Further in a July 21, 1973 Arizona Supreme Court ruling the Court held, in part:

> "In the interpretation of statute the Court should give it a sensible construction which will accomplish the legislative intent and purpose and, if possible, avoid an absurd conclusion or result. Mendelsohn v. Superior Court, 76 Ariz. 163, 261 P.2d 983 (1953). We believe that the position contended for by the petitioner and Registrar would lead to an absurd result without, in any way, accomplishing the statutory purpose...It is certainly an odd result to provide that the contractor is qualified and skilled to build the total building and all its parts, but he is not licensed to build the part of that same whole when it is separated into phases or parts.
>
> (7) While courts give great weight to the opinions of those charged with the duty of administering the regulation of a pursuit involving technical expertise, we are not persuaded to follow the opinion of the Registrar in this case because it results in an absurdity which is not necessary under the purpose of the act nor required by a reasonable and fair construction of the wording of the statute."

Licensing Exemption

In a survey of contractor licensing states conducted by the Auditor General it was noted that only three states, including Arizona, did not allow on exemption from the licensing requirement. As shown in the table below 17 of the 20 states that license most contracting classifications provide for a licensing exemption.

TABLE 7

CONTRACT OR LICENSING STATES
AND THE APPLICABLE EXEMPTION
FROM LICENSING

State	License not Required if Contract Under
Alabama	20,000
Alaska	10,000
ARIZONA	NONE
Arkansas	20,000
California	200
Florida	500
Hawaii	100
Louisiana	30,000
Michigan	200
Mississippi	25,000
Nevada	NONE
New Mexico	7,200/yr.
North Carolina	30,000
North Dakota	500
Oregon	500
South Carolina	30,000
Tennessee	10,000
Utah	NONE
Virginia	30,000
Washington	250

The effect of a small licensing exemption ($200 to $500 contracts, for example) would be twofold: a) it would allow a "handyman" type class of contractors to operate without incurring the expense of licensure and b) it would reduce the number of unlicensed complaints that are currently filed with the Registrar.

Numerous Contractor Classifications

The current system of classifying contractors involves the grouping of contractors into three major categories: General Engineering Contractors, General Building Contractors and Specialty Contractors. Contractors are further divided into additional specific classifications. For example there are 14 specific classifications and one "wild card" (unclassified classification) under the General Engineering category, two specific and one "wild card" classification under General Building and 56 specific and three "wild card" classifications under the Specialty category.

The five "wild card" classes substantially increase the number of contractor titles and license categories as attested to by the former Registrar in a quarterly report dated January 29, 1979 which stated, in part:

> "At the present time we have about five hundred different unclassified classification titles."

Professor Rose addressed the effects of the numerous classifications in the report previously cited (page 66) and stated:

> "The second anti-competitive effect regarding classification results from the numerous classifications that have been created within the general engineering contractor and specialty contractor classifications, particularly the latter...What these classifications do is to define with greater particularity the license that is required to do particular work. For example, it is not sufficient merely to be a specialty contractor. One must possess a separate license to do work in any one of the listed areas.

"The anti-competitive effects of these provisions seem clear. First, the multiple bonding, examination and experience requirements seriously aggravate the barriers to entry created generally by licensing that are discussed above. Second, this classification system serves to fragment the market into a series of separate domains insulated from competition that might otherwise occur. For whatever the reason, apparently it is not common for a specialty contractor, for example, to hold a substantial number of separate licenses although they may hold more than one. The anti-competitive effects are aggravated by the fact that often classifications seem to be overlapping. For example there are separate licenses for floor covering (C-8), installation of carpets (C-13), composition floor (C-28), marble (C-30), masonry (C-31), terrazzo (C-33), ceramic, metal and plastic tile (C-48), and wood floor laying and finishing (C-64) as well as several carpentry and remodeling categories (C-7, C-61, C-68). Similarly, there are separate licenses for air conditioning (C-39), commercial, industrial refrigeration (C-49) and evaporative cooling (C-58). Basically work in any one of these areas requires a separate license, which means of course satisfaction of separate requirements. It is not known to what extent a specialty contractor might hold multiple licenses in these broad areas. Moreover additional regulations define the scope of the work that may be done under a particular classification. R4-9-03. While the scope regulations are too lengthy to quote, it is important to point out that they define the permitted work in substantial detail and would seem to have a substantial restrictive effect in compart-mentalizing the work into narrow areas. There is no doubt that this legally administered and enforced market allocation scheme is highly anti-competitive and undesirable. Just as the provisions discussed earlier insure that specialty contractors are not subject to undue competition from general contractors, this aspect of the classification system insures that various specialty contractors are not subject to competition from each other."

According to Professor Rose:

"...the present classification system should be repealed. In its place a new system that...consolidates the numerous present classifications into much fewer, broader areas. In addition, the scope regulations should be rewritten to permit reasonable overlap."

BRUCE BABBITT
GOVERNOR

AARON KIZER
REGISTRAR

Registrar of Contractors

1818 WEST ADAMS
PHOENIX, ARIZONA 85007
(602) 255-1525

TUCSON OFFICE
415 WEST CONGRESS 85701
(602) 882-5378

October 3, 1979

Douglas R. Norton, Auditor General
112 N. Central Avenue, Suite 600
Phoenix, AZ 85004

RE: Auditor General's Sunset Review of
the Registrar of Contractors

Dear Mr. Norton:

Having reviewed the draft report of your audit of this agency, I will respond to each finding in order.

FINDING I

It is readily apparent that the agency's licensing procedures are overly bureaucratic. The license application form is presently being reprinted to eliminate as much of the red tape as possible within the bounds of the present statutory limits. The result will be clearer questions so that the applicant will better understand what type of information we are looking for, which in the past has contributed significantly to the high rejection rate.

Legislation is being drafted to eliminate balance sheets and letters of recommendation. We are also studying the possible use of a method of direct confirmation with an applicant's prior employers, customers or associates in lieu of the current experience verification forms. The recommendation that licensees be allowed to transfer experience verification statement information from one license to another in the same classification is now being done on a trial basis.

FINDING II

Although I can see that the present examination system may not be doing the job it is intended to do as successfully as possible, I am not convinced that it should be totally eliminated at this time. It would appear that the Utah system of experience verification could be phased in while at the same time keeping the examinations as a back-up system until the new method is tried and tested. The agency intends to introduce legislation which would give the Registrar discretion as to whether to test on a particular classification. This would achieve two goals. One, it would

eliminate any question as to the legality of the present practice in which only certain categories are examined. Two, it would allow us to drop the examination requirement if the experience with the Utah verification system proved to be satisfactory in assuring the qualifications of the applicants prior to licensing.

This year, the Legislature authorized the agency to hire an Assistant Licensing Examiner. One of the duties that has been given to that employee is to develop a business management course which will be offered on a voluntary basis to all applicants. The intent is to provide the potential contractor with a two or three hour classroom type lecture on various phases of managing a construction firm since it is clear that the majority of contractors who go 'belly-up' do so due to poor management practices rather than to lack of skill or volume of work. Eventually, it is hoped that the agency can develop more of a management support service for contractors who are in business. This would have the advantage of helping contractors where they need it most and also protecting the public in that fewer of the contractors they deal with would be going out of business due to poor management practices.

FINDING III

For at least three years now, it has been obvious to me that the present bonding system is a farce. Having been involved in numerous suits against contractors' cash bonds while with the Attorney General's office, it is further apparent that the smaller contractors are the ones giving the biggest problem. Raising the bonding limits is not a good solution because it would make it much more difficult for the little person to become or remain a contractor. Secondly, the bonding limits cannot feasibly be raised high enough to provide meaningful protection due to the tremendous increase in cost to the contractor, which would of course be passed to the consumer.

The recommendation for the agency to go to a Recovery Fund is an excellent one and will be our number one legislative goal in the next session. Some tough questions which will need to be addressed in the Recovery Fund system are 1) whether recovery should be limited only to homeowners, or should suppliers, laborers and other contractors be allowed to recover also, and 2) how much should an individual be allowed to recover against a contractor and how much in toto should be recoverable against any one contractor?

Another major advantage of going to the Recovery Fund is that it would greatly reduce the amount of paper work involved in securing a license and also in renewing the license. If the system is adopted, it is probable that the agency would actually be able to reduce some clerical positions while providing better performance and protection to the contractors and the public.

I am all for it.

FINDING IV

The excessive delay involved in resolving a complaint is largely attributable to the agency's present inability to get complaints to hearing faster. Your analysis indicates that the majority of complaints are voluntarily resolved prior to hearing. In order to insure that there is voluntary compliance, it is necessary that the agency be able to use the possibility of a rapid hearing as an incentive to resolve matters for which the contractor is clearly liable, rather than allowing some contractors to sit on a complaint for seven months until the week before the hearing.

Recently, through the approval of the JLBC, a major step towards reducing the time required to get a hearing has been taken. Private attorneys have started holding hearings on an "as needed" basis. This idea was advocated by your office and I am sorry to see that it was not included in the draft report. The Registrar's requested budget for 1980-81 includes a proposal to continue the outside hearing officer program. Presently it can take anywhere from six to eight months to receive a hearing before the Registrar of Contractors. Under this new program, by the end of this year that time will be reduced to four to five months. By next June we should be close to the optimum time of three months.

There was another item developed by your auditor which unfortunately was not included in the report. That is the need to place the compliance department on a data processing/computer system in order to monitor the large number of complaints and also to track individuals who get into trouble on a license and attempt to jump to another one. Putting the compliance department on a computer system through the Department of Administration is the first priority in next year's budget.

Legislation will also be sought which will give the agency the authority to fine contractors who exceed excessive specified period of time in order to resolve valid complaints and also the authority to issue cease and desist orders to both licensed and unlicensed contractors found in violation of the law. It should be pointed out that similar bills have been introduced in the past without success. The Division of Mobile and Manufactured Housing Standards already has this authority and it is greatly needed for this office as well.

The Registrar is now working closer with the Attorney General's office to insure that our records accurately reflect court decisions that uphold disciplinary actions and that the disciplinary sanctions are imposed upon affirmation by the courts.

FINDING V

The present practices involving the processing of monies by this agency leave me very queasy. The practice of back-dating the date stamp has already been discontinued and I will be working with the staff to insure that the other recommendations under Finding V are implemented. In addition, changing the bonding structure to the Recovery Fund will eliminate much of the problems involved in the processing of the applications

and monies received, as will changing to a staggered renewal period which will be discussed under Finding VI.

FINDING VI

Over the next few months, the agency will work towards streamlining the renewal process. Authority to establish a staggered renewal system will also be sought. It is possible that implementing these changes will result in a reduction of the clerical staff, allowing a concentration of personnel in direct service areas.

OTHER PERTINENT INFORMATION

Many of the procedures, interpretations and license classifications employed by the Registrar of Contractors make sense only when viewed as a means of dividing the economic pie for contractors in order to restrict competition along certain lines. Some of these practices include the unrelated trade requirements for general building contractors and the numerous contractor classifications. Moreover, the fact that until recently the agency supported itself through the sales of licenses helps to account for the proliferation of classifications and also the extension of licensing requirements into areas which involve minimal health and safety aspects and little dollar value.

In the past, the agency has sought legislation which would allow a small amount of contracting without a license. We intend to introduce this legislation again in January exempting from licensing requirements any contracting under $200 for a single project.

Additional areas will be looked into in which the agency can free up competition in order to allow the marketplace, rather than State government, to decide how many contractors can survive in a given classification.

It is obvious that the people have not received the service from the Registrar of Contractors to which they are entitled. Much of that problem is attributable to the fantastic growth in construction throughout the State during this decade. The procedures utilized worked well ten or fifteen years ago but have begun to break down under the greatly increased workload. In general, the employees of this office are hardworking and conscientious, striving to do the best they can under difficult situations and often without adequate tools.

The draft report fails to adequately indicate the tremendous amount of good that the agency does. Thousands of consumer complaints are resolved each year without having to go to hearing, at little or no cost to the public or contractor and in a much shorter period than it would take to go into civil court. The report implicitly recognizes this by recommending an overhaul of the agency rather than its elimination.

In closing, I would like to state that the Auditor General's review has been very beneficial as a management tool. Its indepth study

has highlighted several areas that need immediate action. I enjoyed working with your staff and have developed a great deal of respect for Steve Schmidt, who I know worked extremely hard putting this report together.

Sincerely,

Aaron Kizer

AARON KIZER
STATE REGISTRAR OF CONTRACTORS

/hmb

P.S. Wouldn't you know that I'd turn out to be the 13th Registrar.

OFFICE OF THE AUDITOR GENERAL

A PERFORMANCE AUDIT OF THE ARIZONA REGISTRAR OF CONTRACTORS

A REPORT TO THE

ARIZONA STATE LEGISLATURE

REPORT 79-14

APPENDIX I

SELECTED LICENSING REQUIREMENTS FOR THOSE STATES LICENSING THE MAJORITY OF CONTRACTORS

SELECTED LICENSING REQUIREMENTS FOR THOSE STATES
LICENSING THE MAJORITY OF CONTRACTORS

State	Application Requirements: General Reference Letters	Specific Reference Letters	Statement of Prior Experience	Experience Verification	Financial Statements: By Applicant	Financial Statements: By Accountant	Credit Report	License not Required if Contract Under	Bond Required
Alabama		X	X			X		20,000	None
Alaska								10,000	2,000 & 5,000
ARIZONA	X		X	X	X			None	1,000 to 15,000
Arkansas		X	X			X		20,000	None
California			X	X	X			200	2,500
Florida			X		X		X	500	None
Hawaii	X		X	X		X	X	100	a
Louisiana		X	X			X		30,000	None
Michigan			b		X		X	200	None
Mississippi		X	X					25,000	None
Nevada	X		X			X		None	1,000 to 50,000
New Mexico		X			c		X	7,200/yr.	c
North Carolina		X	X	X				30,000	None
North Dakota			X					500	1,000 & 2,000
Oregon								500	3,000
South Carolina		X	X		d			30,000	None
Tennessee		X	X			X		10,000	None
Utah			X	X	X		X	None	e
Virginia		X	X		X		f	30,000	None
Washington								250	2,000 & 4,000

NOTES:
a. The requirement of a bond is optional based on experience or financial condition. The recovery fund is the primary form of consumer protection (page 41)
b. May be required.
c. The requirement is either a bond from $1,000 to $5,000 or a financial statement.
d. Required if job exceeds $75,000.
e. Required only if homeowner requests.
f. Credit references from suppliers required.

APPENDIX II

STATES REQUIRING LICENSURE FOR ONLY A SEGMENT OF THE CONTRACTING INDUSTRY

STATES REQUIRING LICENSURE FOR ONLY A SEGMENT OF THE CONTRACTING INDUSTRY

State	Segment Regulated
Colorado	Electricians and electrical contractors only.
Connecticut	Electricians and electrical contractors only.
Delaware	Electrical and plumbing contractors only.
District of Columbia	Electricians and electrical contractors only.
Georgia	Electrical, plumbing and warm air heating contractors only.
Idaho	Public works and electrical contractors only.
Maine	Electricians and electrical contractors only.
Maryland	Home improvement contractors only.
Massachusetts	Electricians only.
Minnesota	Electricians and electrical contractors only.
Montana	Public works, electrical and plumbing contractors only.
Nebraska	Electricians only.
New Hampshire	Electricans only.
New Jersey	Electrical contractors only.
Rhode Island	Electricians and electrical contractors only.
South Dakota	Electriicians and electrical contractors only.
Vermont	Electricians and electrical contractors only.
Wyoming	Electricians and electrical contractors only.

APPENDIX III

List experience as a JOURNEYMAN, FOREMAN, SUPERVISING EMPLOYEE, CONTRACTOR, OR SELF-EMPLOYED. You must show a minimum of at least four (4) full years of experience of the past ten (10) years.

Experience acquired while an apprentice counts as 1/2 years credit for each full year of full time apprenticeship up to a maximum of two (2) years credit.

Full time attendance of technical or trade school counts as 1/3 year for each full year of schooling up to a maximum of two (2) years.

No more than two (2) years credit gained from either apprenticeship or schooling or a combination of the two can be applied towards the 4 year minimum requirement.

APPLICANTS FOR A-1' B-1 or C-1 LICENSE CLASSIFICATIONS MUST DEMONSTRATE A MINIMUM OF TWO (2) YEARS SUPERVISORY AND/OR MANAGERIAL EXPERIENCE WITHIN THAT CLASSIFICATION.

Credits are allowed for construction experience, in excess of the minimum requirements, in the classification of the building and construction industry for which an examination is taken. It is, therefore, advantageous to list all such experience in detail. Credit cannot be given for exp ience not listed below and which cannot be supported by experience certificates.

I CERTIFY THAT MY EXPERIENCE IN THE CONSTRUCTION BUSINESS IS AS SET FORTH BELOW.

....
Signature of qualifying person

EMPLOYED BY OR WORKED FOR (If you have been self-employed we must have the names and present mailing addresses of customers for whom you have done this type of work.)	AS:	DESCRIBE WORK DONE	FROM: / TO:
NAME .... ADDRESS .... Zip Code	Journeyman ☐ Foreman ☐ Sup. Emp. ☐ Contractor ☐ Self-Empl. ☐		Mo.......... Yr.......... Mo.......... Yr.......... Steady? Yes ☐ No ☐ Total time actually worked: .... Yrs. .... Mos.
NAME .... ADDRESS .... Zip Code	Journeyman ☐ Foreman ☐ Sup. Emp. ☐ Contractor ☐ Self-Empl. ☐		Mo.......... Yr.......... Mo.......... Yr.......... Steady? Yes ☐ No ☐ Total time actually worked: .... Yrs. .... Mos.
NAME .... ADDRESS .... Zip Code	Journeyman ☐ Foreman ☐ Sup. Emp. ☐ Contractor ☐ Self-Empl. ☐		Mo.......... Yr.......... Mo.......... Yr.......... Steady? Yes ☐ No ☐ Total time actually worked: .... Yrs. .... Mos.
NAME .... ADDRESS .... Zip Code	Journeyman ☐ Foreman ☐ Sup. Emp. ☐ Contractor ☐ Self-Empl. ☐		Mo.......... Yr.......... Mo.......... Yr.......... Steady? Yes ☐ No ☐ Total time actually worked: .... Yrs. .... Mos.
NAME .... ADDRESS .... Zip Code	Journeyman ☐ Foreman ☐ Sup. Emp. ☐ Contractor ☐ Self-Empl. ☐		Mo.......... Yr.......... Mo.......... Yr.......... Steady? Yes ☐ No ☐ Total time actually worked: .... Yrs. .... Mos.
NAME .... ADDRESS .... Zip Code	Journeyman ☐ Foreman ☐ Sup. Emp. ☐ Contractor ☐ Self-Empl. ☐		Mo.......... Yr.......... Mo.......... Yr.......... Steady? Yes ☐ No ☐ Total time actually worked: .... Yrs. .... Mos.
NAME .... ADDRESS .... Zip Code	Journeyman ☐ Foreman ☐ Sup. Emp. ☐ Contractor ☐ Self Empl. ☐		Mo.......... Yr.......... Mo.......... Yr.......... Steady? Yes ☐ No ☐ Total time actually worked: .... Yrs. .... Mos.
NAME .... ADDRESS .... Zip Code	Journeyman ☐ Foreman ☐ Sup. Emp. ☐ Contractor ☐ Self-Empl. ☐		Mo.......... Yr.......... Mo.......... Yr.......... Steady? Yes ☐ No ☐ Total time actually worked: .... Yrs. .... Mos.

IT IS REQUIRED THAT YOU SUBMIT WITH THIS APPLICATION FIVE STAMPED, ADDRESSED LEGAL SIZED ENVELOPES MADE OUT TO YOUR REFERENCES

APPENDIX IV

LEGISLATIVE COUNCIL OPINION
MARCH 23, 1979

ARIZONA LEGISLATIVE COUNCIL

MEMO

March 23, 1979

TO: Douglas R. Norton, Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-79-9)

This is in response to a request submitted on your behalf in a memo dated March 8, 1979 by Gerald A. Silva.

FACT SITUATION

The Registrar of Contractors is authorized to issue licenses to qualified contractors. A contractor may be a person, firm, partnership, corporation, association or another organization or any combination of these entities. A change in the business organization of a licensee (i.e., sole proprietorship to corporation, addition or deletion of a partner) currently entails the dissolution of the current license and requires a complete new license application.

QUESTIONS PRESENTED:

1. What are the legal implications of changing the business organization of a licensee?

2. Are the current requirements necessary or could changes be effected so that minor revisions in the file would accommodate the change in status?

(a) Could Verification of Qualifying Party's Experience forms follow the qualifying party?

(b) Could bonds be transferred to the new entity without relieving the potential liability of the former organization?

1. There are certain general factors implicit in any change of business organization including the differences in formalities of organization, capital and credit requirements, management and control, profits and losses, extent of liability, transferability of interest, continuity of existence and tax considerations.

Specifically, with respect to the change in business organization of an entity licensed by the Registrar of Contractors, certain statutes and regulations are controlling. Section 32-1124, Arizona Revised Statutes, provides that licenses are nontransferable. The registrar has defined "licensee" by regulation (A.C.R.R. R4-9-01) to mean:

> /T/he business entity (sole proprietor, partnership, corporation, joint venture, or other) to which the license is issued and not the individuals comprising the ownership or management, except for a sole proprietorship qualifying for himself. The license is held by the licensee and not the qualifying party.

The registrar has also provided by regulation (A.C.R.R. R4-9-10) that:

> Any change in the legal entity of a licensee to include any change in the ownership of a sole proprietorship or change of a partner in a partnership or creation of a new corporate entity requires a new application and license.

The registrar has the authority to revoke or suspend a license for a violation of these regulations (section 32-1154, Arizona Revised Statutes). Once a business entity changes its structure it may not continue to act under the license previously issued to it.

2. Substantive policy reasons support such statutes and regulations. The primary purpose of state regulation of construction contractors through licensing is to protect the public from unscrupulous and unqualified persons acting as contractors. Kavetan v. Lincense No. 37589, Class C-61, 116 Ariz. 99, 567 P.2d 1228 (1977). A change in organization of an entity may result in the addition of persons who are not qualified to hold a license from the Registrar of Contractors. To protect the public, a review of the character and reputation of each person comprising the entity seems both appropriate and necessary. Without a new application process, a qualified holder of a license could be used as a "front" for undesirable or unqualified individuals.

It must be remembered that under current Arizona law relating to the licensing of contractors it is the entity which holds the license. While it is true that a qualifying party may be the same individual in, for example, a partnership or a corporation, the owners or officers of the entity may be different. The policy of protecting the public would mandate that the new entity be investigated just as thoroughly as the former entity.

Generally, there are sound reasons for requiring new forms for Verification of Qualifying Party's Experience. The registrar issues licenses for a variety of classifications, some of which do not require the same work experience. Information that a person certifies as true in an application for a particular classification may not be applicable to another classification. However, we fail to see a reason why a verification of an individual's experience cannot be used in a subsequent application for the same classification. The requirement in section 32-1122, subsection F, paragraph 1, Arizona Revised Statutes of four years' practical or management trade experience for that classification would already have been certified as true in the previous verification form.

In regard to the question on transferral of bonds to a new business entity, it is always within the power of the parties to a suretyship contract to modify it by mutual agreement (74 American Jurisprudence 2d., "suretyship", section 48). Therefore, it is possible as in any other contract for the parties to modify their bonding agreement so that it remains in effect despite a change in the organization of the business entity.

In the absence of an agreement, however, Arizona case law is unclear as to whether a change in the organization of a business entity will result in

discharging the obligation of the bonding company. Generally, courts have taken the position that liability is not terminated when a business entity undergoes a change of name or location; or in the type of business conducted; or from a sole proprietorship to a corporation; or by the transfer of its assets to another corporation or by its reincorporation; or by the takeover of a corporation by its creditors; or by a corporation's dissolution or cessation of business (69 American Law Reports 3d 567, 571). However, a significant number of cases have found a release of a guarantor's or surety's liability to an obligee in situations involving the addition or loss of partners or firm members and where a sole proprietorship is changed to a partnership. Id.

In one case the Arizona Supreme Court indicated in dictum that a surety for a partner is released from liability if there is a change in the members of the partnership. Bianco v. Firemen's Fund Indemnity, 72 Ariz. 181, 184, 232 P.2d 386 (1951). Similarly, the court has held that any material change in an obligation not assented to by a surety as one of the parties to a contract will discharge the surety from liability. The court noted that this rule is applicable to a change in principals. Western Surety Co. v. Horrall, 111 Ariz. 486, 487, 533 P.2d 543 (1975). However, this case did not consider the specific issue of a change in organization of a business entity. There are no cases in Arizona concerning a change in business organization of the type described in the request, and therefore we are unable to determine whether such a change would be the "material change" contemplated by the Horrall court.

CONCLUSIONS

1. Under Arizona law, a change in the business organization of a licensee requires a new application for a license to the Registrar of Contractors.

2. The policy of protecting the public requires continuation of current procedures.

(a) The form for Verification of Qualifying Party's Experience should not follow the qualifying party if the new application is for a different license classification. If the application is for the same license classification there would appear to be no policy reason why it should not be accepted.

(b) By agreement between the contracting parties, bonds could be transferred. Absent on agreement, Arizona law is unclear as to whether the obligation of the surety would be retained or discharged.

cc: Gerald A. Silva,
Performance Audit Manager

APPENDIX V

LEGISLATIVE COUNCIL OPINION
MARCH 27, 1979

ARIZONA LEGISLATIVE COUNCIL

APPENDIX V

MEMO

March 27, 1979

TO: Douglas R. Norton, Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-79-8)

QUESTION PRESENTED:

The registrar of contractors does not currently require a trade examination for approximately twenty-one contractor's license classifications. All licensees must take the construction business management examination. Is the nontesting /of applicants seeking one/ of the twenty-one license classifications for the trade portion of the examination in violation of section 32-1122, subsection F, paragraph 2, Arizona Revised Statutes?

ANSWER: YES.

Section 32-1122, subsection F, paragraph 2, Arizona Revised Statutes, provides that, prior to the issuance of a contractor's license, the applicant or party qualifying for the applicant must successfully demonstrate, by written examination:

1. Qualification in the kind of work for which the applicant proposes to contract.

2. General knowledge of the building, safety, health and lien laws of this state.

3. Administrative principles of the contracting business and of the rules and regulations promulgated by the registrar of contractors.

4. Such other matters as the registrar may deem appropriate to determine that the qualifying party meets the contracting requirements.

The terms "trade examination" and "construction business management examination" are not used or defined either in Arizona Revised Statutes or in the rules and regulations adopted by the registrar of contractors (A.C.R.R. R4-9-01 et seq.). Apparently "trade examination" covers that part of section 32-1122, subsection F, paragraph 2, Arizona Revised Statutes, which requires examination on "qualification in the kind of work for which the applicant proposes to contract". The construction business management test would then include "knowledge of the building, safety, health and lien laws of the state, administrative principles of the contracting business and of the rules and regulations promulgated by the registrar of contractors".

The classification of contractors into types is accomplished partially by section 32-1102, Arizona Revised Statutes, and partially through the rule making powers of the registrar of contractors in section 32-1105, Arizona Revised Statutes. Neither section allows a limitation on written examination of contractors according to classification.

The office of the registrar of contractors confirmed that certain classes of contractors are not given the "trade" portion of the written examination due to the nature of the work to be performed by them. An example may be those contractors who only do stripe painting of parking lots.

Conclusion

To the extent that any applicant for a contractor's license is not given a written examination on "qualification in the kind of work for which the applicant proposes to contract", the registrar of contractors is in violation of the provisions of section 32-1122, subsection F, paragraph 2, Arizona Revised Statutes.

APPENDIX VI

HAWAIIAN STATUTES PERTAINING TO RECOVERY FUND

444-26. **Contractors recovery fund; use of fund; person injured; fees.** The contractors license board is authorized and directed to establish and maintain a contractors recovery fund from which any person injured by an act, representation, transaction, or conduct of a duly licensed contractor, which is in violation of the provisions of this chapter or the regulations promulgated pursuant thereto, may recover by order of the circuit court or district court of the county where the violation occurred, an amount of not more than $10,000 for damages sustained by the act, representation, transaction or conduct. Recovery from the fund shall be limited to the actual damages suffered by the claimant, including court costs and fees as set by law, and reasonable attorney fees as determined by the court; provided that recovery from the fund shall not be awarded to persons injured by an act, representation, transaction, or conduct of a contractor whose license was in an inactive status at the time of the injury.

For purposes of this chapter, "person injured" means and is limited to owners or lessees of private residences, including condominium or cooperative units, who have contracted with a duly licensed contractor for the construction of improvements or alterations to their own private residences.

Every contractor, when renewing his license in 1974, shall pay in addition to this license renewal fee, a fee of $50 for deposit in the contractors recovery fund. On or after May 1, 1974, when any person makes application for a contractors license he shall pay, in addition to his original license fee, a fee of $150 for deposit in the contractors recovery fund. In the event that the contractors license board does not issue the license, this fee shall be returned to the applicant.

444-27. **Additional payments to fund.** If, on December 31 of any year, the balance remaining in the contractors recovery fund is less than $150,000, every contractor, when renewing his license during the following biennial renewal period, shall pay, in addition to his license renewal fee, a fee not to exceed $150 for deposit in the contractors recovery fund.

444-28. **Statute of limitations; recovery from fund.** (a) No action for a judgment which may subsequently result in an order for collection from the contractors recovery fund shall be commenced later than six years from the accrual of the cause of action thereon. When any injured person commences action for a judgment which may result in collection from the contractors recovery fund, the injured person shall notify the contractors license board in writing to this effect at the time of the commencement of such action. The contractors license board shall have the right to intervene in and defend any such action. Nothing in this section shall supersede the statute of limitations as contained in section 657-8.

(b) When any injured person recovers a valid judgment in any circuit court or district court of the county where the violation occurred against any licensed contractor for such act, representation, transaction, or conduct which is in violation of the provisions of this chapter or the regulations promulgated pursuant thereto, which occurred on or after June 1, 1974, the injured person may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the contractors license board, may apply to the court for an order directing payment out of the contractors recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section. Before proceeding against the contractors recovery fund, the injured person must first proceed against any existing bond covering the licensed contractor.

(c) The court shall proceed upon such application in a summary manner, and, upon the hearing thereof, the injured person shall be required to show:

(1) He is not a spouse of debtor, or the personal representative of such spouse.

(2) He has complied with all the requirements of this section.

(3) He has obtained a judgment as set out in subsection (b) of this section, stating the amount thereof and the amount owing thereon at the date of the application.

(4) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.

(5) That by such search he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(d) The court shall make an order directed to the contractors license board requiring payment from the contractors recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing of the truth of all matters required to be shown by the injured person by subsection (c) of this section and that the injured person has fully pursued and exhausted all remedies available to him for recovering the amount awarded by the judgment of the court.

(e) Should the contractors license board pay from the contractors recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed contractor, the license of the contractor shall be automatically terminated upon the issuance of a court order authorizing payment from the contractors recovery fund. No contractor shall be eligible to receive a new license until he has repaid in full, plus interest at the rate of six per cent a year, the amount paid from the contractors recovery fund on his account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(f) If, at any time, the money deposited in the contractors recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the contractors license board, shall when sufficient money has been deposited in the contractors recovery fund, satisfy such unpaid claims or portion thereof, in the order that such claims or portions thereof were originally filed.

(g) With respect to the repair or alteration of an existing residential building or structure or any appurtenances thereto, including but not limited to swimming pools, retaining walls, garages or sprinkling systems, initial construction of such appurtenances, and landscaping of private residences, including condominium or cooperative units, pursuant to a contract between the owner and a licensed contractor for which the owner has paid the contractor in full, should, because of the contractor's default, a mechanic's or materialman's lien be enforced against the property pursuant to section 507-47, the court hearing the action shall award such an owner or his assigns a valid judgment against the contractor in an amount equal to the amount of the lien together with reasonable attorney's fees as determined by the court. The judgment shall include an order directing payment out of the contractors recovery fund. Notwithstanding any other provisions of this section to the contrary, the owner or his assigns need not meet any other requirement to secure payment from the contractors recovery fund, except that notice of the lien enforcement hearing shall be given to the contractors license board so it may appear pursuant to section 444-31.

444-29. **Management of fund.** The sums received by the contractors license board for deposit in the contractors recovery fund shall be held by the contractors license board in trust for carrying out the purposes of the contractors recovery fund. The contractors license board, as trustee of the recovery fund, shall be authorized to retain private legal counsel to represent the board in any action which may result in collection from the contractors recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees' retirement system, and the interest from these investments shall be deposited to the credit of the contractors education fund, and which shall be available to the contractors license board for educational purposes, which is hereby created.

444-34. **Maximum liability.** Notwithstanding any other provision, the liability of the contractors recovery fund shall not exceed $20,000 for any licensed contractor.

444-35. **Disciplinary action against licensee.** Nothing contained herein shall limit the authority of the contractors license board to take disciplinary action against any licensee for a violation of any of the provisions of chapter 444, or of the rules and regulations of the contractors license board; nor shall the repayment in full of all obligations to the contractors recovery fund by any licensed contractor nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of chapter 444 or the rules and regulations.

APPENDIX VII

LEGISLATIVE COUNCIL OPINION
MAY 3, 1979

MEMO

May 3, 1979

TO: Douglas R. Norton, Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-79-31)

This is in response to a request submitted on your behalf on April 27, 1979 by Steve Schmidt.

FACT SITUATION:

The Registrar of Contractors is authorized to suspend or revoke the license of a contractor pursuant to the provisions of section 32-1154, Arizona Revised Statutes. Appeal may be made from a license suspension or revocation in accordance with title 12, chapter 7, article 6, Arizona Revised Statutes (See Arizona Revised Statutes, section 32-1159). When the appeal is finally dismissed or decided in favor of the suspension or revocation, the penalty prescribed by the decision and order can be implemented by the Registrar. Several appeals, regarded as open by the Registrar, have been dismissed for some time (one for 7½ years) without implementation of the decision and the Registrar has continued to renew the license of certain of these contractors.

QUESTIONS PRESENTED:

1. Does the Registrar of Contractors have a limited amount of time to impose the penalty (if any) required by the decision and order after an appeal has been dismissed (or otherwise closed in his favor)?

2. Are there any legal defenses to imposition of the penalty after a period of time has elapsed or the contractor's license has been renewed despite the determination?

ANSWERS:

1. There is no statutory or regulatory requirement that the Registrar of Contractors impose the penalty required by the decision and order within a certain period of time after an appeal has been dismissed or otherwise decided in favor of the Registrar. Additionally, no cases have been found which establish such a requirement.

However, discussion with the staff of the office of the Registrar indicates that the fact situation which is the basis of this request may be due to a problem in communications. According to the Registrar's (office)

staff, they do not currently have any "open" appeals that have been dismissed for some time. They stated that when they receive notice of dismissal or other decision in their favor, implementation of the decision and order is immediate. The problem may be caused by a lack of notification to the Registrar by the superior court. This difficulty may be compounded by the length of time involved in the appeals process.

You may wish to recommend that a section be added to Arizona Revised Statutes requiring notice to the Registrar and requiring the Registrar's implementation of the license suspension or revocation within a certain time period after notice.

2. If the Registrar fails, for any reason, to implement the decision and order for suspension or revocation of a contractor's license after a favorable determination on appeal and subsequently renews the contractor's license, the equitable defense of laches may be available to the contractor if the Registrar seeks to implement the order after a lengthy period of time. The defense of laches involves an unexcused delay in asserting rights during a period of time in which adverse rights may have been acquired under circumstances that make it inequitable to displace those adverse rights for the benefit of those bound by the delay. City of Tucson v. Mills, 114 Ariz. 107 559 P.2d. 663 (1976). In this case the renewal of the license by the Registrar may cause detrimental reliance on the part of the contractor.

The elements of laches are lack of diligence on the part of one and injury to the other party due to the lack of diligence. Longshaw v. Corbitt, 4 Ariz. App. 408, 420 P.2d. 980 (1966). However, whether laches will be available as defense to the Registrar's action would be determined by the facts and circumstances of the case and the lapse of time alone is not controlling. Tovrea v. Umphress, 27 Ariz. App. 513, 556 P.2d. 814 (1976).

CONCLUSION:

1. No time limit is imposed on the Registrar of Contractors in which to implement a decision and order after an appeal has been dismissed or otherwise closed in the Registrar's favor by the superior court.

2. The equitable defense of laches may be available to a contractor against enforcement of a decision and order of the Registrar if a lengthy period of time elapses after appeal and before implementation of the license suspension or revocation.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX VIII

LEGISLATIVE COUNCIL OPINION
MAY 2, 1979

ARIZONA LEGISLATIVE COUNCIL

APPENDIX VIII

MEMO

May 2, 1979

TO: Douglas R. Norton, Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Information (O-79-30)

This is in response to a request submitted on your behalf by Steve Schmidt on April 27, 1979.

QUESTION PRESENTED

May a person have a negligence claim against the Registrar of Contractors for a failure to include the existence of a prior license suspension or revocation on the records of a current licensee?

The Arizona Supreme Court abolished the doctrine of governmental tort immunity in Stone v. Arizona Highway Commission, 93 Ariz. 384, 381 P.2d. 107 (1963). However, as the court noted in DeHoney v. Hernandez, _____ Ariz. _____, _____ P.2d _____, No. 14124-PR, filed April 20, 1979, (Ariz. Sup. Ct.), the issues of liability and immunity are separate and distinct:

> (b)y removing the defense of sovereign immunity we did not create a cause of action where none previously existed. In order to establish the liability of governmental entities or their agents in an action based on negligence, it is still necessary to demonstrate: (1) that the defendant owed a duty to the plaintiff; (2) a breach of that duty; and (3) an injury proximately caused by that breach.

The initial issue concerning the question presented is whether the Registrar of Contractors owes a duty to the prospective plaintiff. Arizona Revised Statutes section 32-1104 prescribes the Registrar's powers and duties and provides, in relevant part:

> A. The registrar, in addition to other duties and rights provided for in this chapter, shall:
>
> . . . . .
>
> 2. Maintain a complete indexed record of all applications and licenses issued, renewed, terminated, cancelled, revoked or suspended under this chapter.
>
> 3. Furnish a certified copy of any license issued or an affidavit that no license exists, or the cancellation or suspension thereof, upon receipt of a

> fee of three dollars, and such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein. He shall also furnish copies of license bonds or cash deposit certificates upon receipt of a fee of three dollars each.

Thus, the Registrar has a mandatory* duty to maintain complete license records and to furnish information concerning those records. Under Arizona case law, for a valid negligence cause of action this duty must be a duty owed to a particular individual rather than to the general public. DeHoney, supra, Bagley v. Arizona, _____ Ariz. _____, _____ P.2d _____, No. 13603, filed April 5, 1979, (Ariz. Sup. Ct.), Massengill v. Yuma County, 104 Ariz. 518, 456 P.2d 376 (1969). In DeHoney, supra, at p. 9, the court reaffirmed the general rule as first stated in Massengill, supra, at p. 521, pertaining to governmental agencies and officers:

> . . . if the duty which the official authority imposes on an officer is a duty to the public, a failure to perform it, or an inadequate or erroneous performance, must be a public, not an individual injury, and must be redressed, if at all, in some form of public prosecution.

In other words, if a court finds that the Registrar's duty to maintain complete license records is a duty to the general public, no individual cause of action for negligence may be asserted.

There are some situations, however, where governmental agencies or their officers, by their conduct, can narrow the duty owed to the public into a special duty owed to a particular individual, for the breach of which they could be liable in damages (see DeHoney, supra, at p. 10, Massengill, supra, at p. 523). While we are unable to predict how a court would characterize the duty of the Registrar as presented in this request particularly in the absence of a specific statement of facts, a reasonable argument can be made that if the Registrar makes a specific representation (i.e., that a currently licensed contractor has no prior license suspensions or revocations) upon which a person could justifiably rely to his detriment, then the Registrar's general duty to the public would be narrowed into a special duty to an individual who could successfully bring an action for damages.

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*Arizona Revised Statutes section 41-621, subsection G, provides that:

> (a) state officer, agent or employee, except as otherwise provided by statute is not personally liable for an injury or damage resulting from his act or omission in a public official capacity where the act or omission was the result of the exercise of the discretion vested in him if the exercise of the discretion was done in good faith without wanton disregard of his statutory duties. (Emphasis added)

CONCLUSION

Arizona case law is unclear as to whether a person may have a negligence claim against the Registrar of Contractors for failure to include the existence of a prior license suspension or revocation on the records of a current licensee. However, an argument can be made to the effect that a misrepresentation of fact occasioned by a failure to comply with a specific statutorily imposed recordkeeping duty would be an action which narrows the Registrar's general duty to the public into a special duty to an individual, thus satisfying the duty requirement for a negligence claim in Arizona. This does not mean, however, that a plaintiff would automatically prevail in the negligence action. The other elements of negligence would still need to be shown, including evidence that the misrepresentation of fact by the Registrar was the proximate cause of the plaintiff's injuries.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX IX

PROFESSOR JONATHAN ROSE'S REPORT

OCCUPATIONAL LICENSING AND RELATED ENTRY CONTROLS IN MISCELLANEOUS PUBLIC WELFARE AREAS

C. Registrar of Contractors

1. Regulatory Authority

The regulation of contractors is somewhat different than the typical occupational licensing board since all functions and duties regarding the regulation of contractors are vested in one person, the Registrar of Contractors. A.R.S. § 32-1103. The Registrar's powers and duties are set out in A.R.S. § 32-1104.

Some of the problems that are inherent in the typical occupational licensing board seem somewhat different in the context of the Registrar of Contractors. Most importantly, the potential for bias that so commonly exists seems diminished in some respects, but aggravated in other ways. The problem of self-interest seems somewhat mitigated in the context of the Registrar of Contractors since, unlike the typical occupational licensing board, the statute does not require that the person who does the regulating be a practicing member of the trade. Thus, the Registrar devotes all his time to those functions and does not contemporaneously practice as a contractor. As a result, he has no direct pecuniary self-interest in those matters which he is regulating. On the other hand it is quite likely that as a matter of political reality, although the statute sets out no requirements for the Registrar, the industry plays a heavy role in determining whom the Governor appoints to this position. It is highly unlikely that the Governor would appoint anyone who does not have the endorsement or the favor of the "industry," although I am not completely sure in this situation how the industry is defined since there are so many components involved and the various components may possess differing degrees of political power. Thus, serious problems of bias and potential for anti-competitive effects remain although the problems caused by pecuniary self-interest are not present. Moreover, those problems that remain may be aggravated since the authority to regulate is vested in one person rather than a multiple membership board. For a variety of reasons, it is also likely that the industry will exert a substantial amount of influence on the performance of his statutory duties. As will be explained below, the enforcement of the particular statutes and the promulgation, interpretation and enforcement of the various regularities involve a substantial potential for anti-competitive effects

and other abuse. Thus, while these problems are somewhat different than they appear in the normal context, they are still sufficiently serious to warrant concern.

2. Licensing

Several aspects of the statutory provisions and regulations governing licensing may have serious anti-competitive effects. Anti-competitive problems arise due to three aspects of this regulatory scheme: qualifications for a license, definition of "contractor", and the licensing classification system.

a. Qualifications

The qualifications for a license are contained in A.R.S. § 32-1122. Some of the required qualifications seem unduly restrictive and not justified by the need to protect the public from incompetent or financially irresponsible contractors. An applicant must pass a written examination on the building, safety, health and lien laws of the state, administrative principles of contracting and the rules and regulations promulgated by the Registrar of Contractors. While an examination is justified, the scope and length (a full day), as explained to me, may be too extensive. Interestingly, an attorney and son of a former Registrar operates a school to prepare persons for the contractor's examination. The licensee must demonstrate certain prior experience. Specifically, to qualify a licensee must have had four years of practical or management trade experience within the last ten years, dealing specifically with the type of construction for which the applicant is applying for a license. A.R.S. § 32-1122 (F)(1). Technical training in some sort of an educational institution or program cannot be used to satisfy more than two of the required four years experience. In many instances the four-year requirement seems unduly excessive. Generally it would seem that the skills necessary for many of the particular types of licenses could be acquired in a lesser period of time. Moreover, while there are numerous classifications of licenses, many of which are very similar or even overlapping, the statute requires that there be separate experience for each particular license if a licensee chooses to apply for more than one of the various types of licenses. The experience requirements may amount to a de facto apprenticeship program. While such programs have certain benefits, they also may have significant anti-competitive effects, as has been noted in an earlier memorandum.

The Legislature was obviously sensitive to the problem that the four-year requirement might be excessive, for

it authorized the Registrar to reduce the number of years "when in his opinion it has been conclusively shown by custom and usage in the particular industry or craft involved that the four-year requirement is excessive." A.R.S. § 32-1122(F)(2). While the Registrar possesses this authority, there are no particular regulations setting out lesser requirements for particular licenses. Nor are there any regulations indicating how one makes the required showing for exercise of this authority. The "conclusively shown" language of the statute seems to create a heavy burden of proof in this matter. A more accurate judgment on the extent to which this authority has mitigated the otherwise harsh effect of the four-year requirement would require greater knowledge of the actual operations of the Registrar. It certainly would be relevant and important to determine whether he has used this authority liberally or sparingly. Since there are no regulations either for particular occupations or for defining general standards, a significant potential for abuse of the Registrar's authority to lessen the four-year requirement exists.

In addition, an individual must be a resident of a state for at least 90 days before applying for a license. A.R.S. § 32-1123(A). While this requirement may have some anti-competitive effect, the residency period seems sufficiently short so that any such effect would not be very serious. Interestingly, a license may be issued to specialty contractors without regard to resident qualifications if there are less than ten contractors operating in the state licensed in the particular specialty. A.R.S. § 32-1123(B). Such a provision is pro-competitive and renders any residency requirement rather dubious. Finally, no license may be issued to a minor or to any partnership in which one of the partners is a minor. A.R.S. § 32-1122(G). While in past such a provision may have had a significant anti-competitive effect, the recent lowering of the age of majority from 21 to 18 has substantially reduced the seriousness of any effect that results from this subsection.

b. Definition of "Contractor."

A second type of anti-competitive effects arises as a result of the broad definition of "contractor" contained in A.R.S. § 32-1101. A fundamental issue is whether contractors ought to be subject to any licensing requirements at all. It has been stated numerous times that the purpose of the licensing provisions is to protect the public against unscrupulous and unqualified persons acting as contractors. See, e.g., Sobel v. Jones 96 Ariz. 297, 394 P.2d 415 (1964). However, it is not clear whether

licensing is necessary or effective in achieving this purpose. Some studies have shown that the degree of fraud and poor quality workmanship is no greater in a state that does not license a particular trade as compared with one that does. See, Staff Report to the Federal Trade Commission, Economic Report, Regulation of the Television Repair Industry in Louisiana and California: A Case Study. To the extent that the financial responsibility of a contractor is concerned, it would seem that the requirement of a bond is a preferable manner for securing this objective. While the statute contains detailed bonding requirements, A.R.S. § 32-1152; R4-9-12, it is possible that the amount of bonding presently required is not adequate to protect all those persons who may be injured by an insolvent or unscrupulous contractor. If so, raising the bonding requirements might be appropriate. Although this would increase the barriers to entry as a result of the increased cost resulting from more substantial bonds, it would seem to be justified and a more appropriate and effective way of protecting the public than licensing. Therefore, the only remaining justification for licensing is that certain trades involve such a high degree of skill and such a high potential for serious injury to the public as a result of defective workmanship that satisfaction of certain requirements is necessary to protect the public. If such a justification is accepted, which is subject to dispute, it is important to discriminate between the possibility of serious injury and the possibility of any injury to the public, for if the latter standard is accepted, it would justify licensing the sale of all goods and services. While it is not politically feasible nor perhaps desirable to argue that all licensing controls on contractors should be abandoned, it is important to insure that those that do exist are no more extensive than necessary to satisfy the standard that has been suggested.

Viewed against such a standard, it seems that much of the existing licensing cannot be justified. The basic problem arises from the fact that the statutory definition is very broad:

> any person, etc. who undertakes to "construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or works in connection therewith . . . [and] include subcontractors and specialty contractors, floor covering contractors and landscape contractors other than gardeners." A.R.S. § 32-1121.

Under this broad definition licenses have been required for a very wide and diverse range of activities. While it would not be useful to name them all, a few examples would suffice to indicate the breadth of the application of this definition. In addition to well-known areas such as general building, residential and engineering contracting, carpenters, plumbers and electricians, licenses have been required for awnings and canopies, drywall, fencing, house-moving, ornamental metals, marble, painting, lawn sprinklers, tile, weather-stripping, welding, public address and intercommunications systems as well as many others. R4-9-02. Fortunately, the Registrar's efforts to require a license for trimming palm trees was thwarted by the Attorney General's office. Finally, as a result of recent amendments, the license must be in the name of the legal entity doing the work or holding itself out. A.R.S. § 32-1151. While the courts had previously found the statute satisfied if the managing person in a firm had a license even if the firm lacked one, this is no longer true as a result of the amendment. B & P Concrete Inc. v. Turnbow, 1CA-CIV 3039, Department C (January 27, 1977).

Another curious licensing requirement deals with joint ventures. If two or more persons wish to form a contracting joint venture, each participant must have a separate license and the joint venture is required to have an additional license for the particular work involved. A.R.S. § 32-1127(A) R4-9-14. At least two situations might present attractive possibilities for a joint venture. One is where the work is beyond the scope of a particular license; the other is where the amount of work involved is beyond the capacity of a particular licensee. In either case joining forces with additional persons might be the most efficient and practical solution. These provisions restrict the availability of such a solution by increasing its cost and feasibility by requiring that each person be separately licensed and that the joint venture be additionally licensed. These requirements may inhibit a joint venture from competing with others who are already licensed or have the capacity to do the work in question. For example, the additional fee for the joint venture license would impair the ability of such a licensee to bid competitively against a person already qualified or able to do a particular job. Moreover, the rationale for the joint venture license - separate individual license plus a joint venture license - is not completely clear.

The breadth of the definition is aggravated further by recent amendments to one of the licensing exemptions contained in A.R.S. § 32-1121. Before 1975,

persons who sold or installed finished products that were not fabricated into or did not become a permanent fixed part of the structure were not required to be licensed as contractors. At that time, the Registrar attempted to require a person selling and installing prefabricated shutters to be licensed. However, the Court of Appeals disagreed holding that the shutters were not fabricated into the house, but merely attached to the shutter frame and that the shutter frames did not become permanent and fixed part of the house, but were readily removable without damage in a manner allowing re-use of the shutters. State ex rel. Vivian v. Heritage Shutters, Inc., 23 Ariz. App. 544, 534 P.2d 758 (1975). Subsequently, the statute was amended to exempt installers of finished products and materials that are not either attached or do not become a fixed part of the structure. A.R.S. § 32-1121(A). Apparently it is the position of the Registrar that this amendment overruled the Heritage Shutters case. As a result the breadth of the contracting definition has been extended significantly and the exemption become rather meaningless as a practical matter. Recently this office took the position that it was not unreasonable for the Registrar to require that a person installing window shades for DES possess a contractor's license although the possibility of over-regulation by the Registrar was suggested. Memorandum of April 25, 1977, from Aaron Kizer to Alan Kamin. Moreover, the Registrar has requested certification of an amendment of R4-9-02 that would broaden the title of the C-50 classification to include draperies as well as venetian blinds and window shades. Aaron Kizer, Fred Stork and I have discussed this problem; and a reasonable and legally supportable solution will be proposed. While it is difficult to distinguish draperies from the present coverage, this expansionary process has to be stopped somewhere. It seems that, according to the Registrar, the only activity that is exempt under this subsection is when the only connection to the house is plugging into a wall socket. Thus, the narrowing of this exemption has a significant practical effect in enlarging the scope of the licensing requirement. As a result of the broad statutory definition, its interpretation by the Registrar and the narrowing of the exemption, virtually all activity having anything to do with building and structures, including landscaping, becomes subject to licensing.

Similarly, materialmen or manufacturers who furnish finished products are exempt from the licensing requirements if they do not install or attach such items. A.R.S. § 32-1121(4). There was an interesting amendment of this exemption in the 1977 legislative

session. Carpet retailers were added to the exemption with the proviso that if they enter a transaction involving installation or attachment of carpets, they "shall work only with licensed contractors in carrying out the terms of the sales contract or transaction." Laws 1977, Ch. 38, § 1. Actually, this is a middle-ground, for it is the Registrar's position that in all other cases persons who sell goods on an installed basis must have an appropriate license as they are within the definition of contracting and outside the exemption.

Another exemption that may have a possible anti-competitive effect involves architects. Architects are exempt from licensing under these provisions as long as they are engaged in their professional practice and provided they do not engage in the activity of a contractor. A.R.S. § 32-1121(7). An architect may be perfectly competent to serve as a general contractor and deal directly with subcontractors. This provision makes such a possibility expensive and difficult, perhaps even impossible.

Some of the other exemptions seem to undermine somewhat the rationale for licensing in the first instance. For example, public utilities engaging in construction or repair incidental to the discovery of petroleum or gas or engaging in drilling such wells are exempt if it is performed by an owner or a lessee. A.R.S. § 32-1121(3). Also construction and repair of irrigation or drainage ditches of regularly constituted districts or reclamation districts as well as similar activities involved in various kinds of agricultural operations are exempt. A.R.S. § 32-1121(10). Also, non-governmental educational institutions that build or repair structures on land or property owned, rented, or leased by the institution for its educational purposed are exempt. A.R.S. § 32-1121(12). Finally, owners of property who improve such property or who build or improve structures thereon and do the work themselves are exempt if the property is not intended for sale or rent, or if the structure is intended for commercial or industrial purposes and the total cost does not exceed $10,000. A.R.S. § 32-1121(5). This subsection provides that sale or rent of any such structure within one year after completion is prima facia evidence that it was undertaken for the purpose of sale, rent or commercial or industrial use. Except for this provision dealing with an owner developing his own property for commercial or industrial use, there is no exemption from the licensing requirement for small jobs. It might be worthwhile to consider whether jobs under a certain dollar amount ought to be exempt altogether from the licensing requirements. Other exemptions

include various governmental units and subdivisions, trustees, employees and surety companies who use duly licensed contractors for the performance of all work.

c. Classification System

A final type of anti-competitive problem results from the classification system. This problem actually has two dimensions. The first aspect results from the classification of the contracting business into three basic division: general building contracting, general engineering contracting and specialty contracting. A.R.S. § 32-1102. Specifically a problem arises from the fact that general building contracting is defined as requiring "the use of more than two unrelated construction trades or crafts." A.R.S. § 32-1102(1). For example, if a homeowner were to wish to have a sidewalk constructed, a general contractor would be ineligible to bid since the job would not involve more than two unrelated construction trades. However, it is clear that a general contractor who contracts to build a home is permitted to construct the sidewalk under his general contracting license. The purpose and effect of this provision clearly seems to be to insure that general contractors do not compete with specialty contractors on certain types of jobs. Moreover, this effect is aggravated by the particular interpretation that the Registrar has adopted as a matter of policy. In several situations that appear to involve more than two unrelated trades, the Registrar has taken the position that they basically involve only one trade and that the other work is incidental and supplemental thereto. For example, he has taken the position that construction of a patio wall, although it involves excavation, steel placement, concrete for footings, masonry units and wooden gates, involves only one real trade, masonry, and that all the other work is merely incidental or supplemental to a masonry license. Similarly, he has taken the position that placement of a concrete sidewalk, which involves a number of different ypies of work similar to that in the patio wall situation, basically involves only one trade, concrete, and that the other work is incidental or supplemental. As a result of this interpretation, the Registrar has concluded that general contractors may not bid under their general contracting license on such work. Another problem that occurs as a result of the Registrar's interpretation of the "more than two trades" language is that the interpretation is vague and not the subject of any regulation, but is only a policy of the Registrar pertinent to application of the statute. As a result, the Registrar's authority in this area is potentially

subject to abuse, for decisions may be manipulated on an ad hoc basis for any one of a number of reasons.

This particular problem is the subject of a major current dispute between the Registrar, the General Contractors Association, and perhaps labor unions and specialty contractors as well. As a result of this dispute, which has been brewing for some time and has a political past, this office has received an opinion request, R77-94, from the Registrar concerning the interpretation of the language "more than two unrelated construction trades or crafts in A.R.S. § 32-1102(1)." The general contractors are very desirous of bidding on the types of work which they have been barred from by the Registrar's interpretation. There is no doubt that the general contractor is legally authorized to do such work when it is part of a larger project. As a general matter, a person holding a general contracting license may perform all specialty work as long as more than two trades are involved, with the exception of four particular specialty areas. R4-9-11. Moreover, in light of the manner in which the statute is written and interpreted by the Registrar, a person holding a general contractor's license could build a swimming pool as part of a project to construct a house although he might not be qualified to be licensed as a swimming pool contractor. Thus the statute leads to perverse and irrational as well as anti-competitive results: a general contractor may be barred from doing work that he is competent to perform, but permitted to do work that he is not qualified to do.

There are a number of ways in which the opinion request could be handled; and Aaron Kizer, Fred Stork and I have discussed the matter. My personal feeling is that the statute should be construed in order to permit the maximum amount of competition. This is particularly true in this case where there appears to be no health or welfare justification for this statutory limitation of "more than two trades." If the general contractor is permitted to do the work when it is part of a larger project, it is unclear what health or safety considerations justify restricting him from doing smaller projects. As mentioned, the only purpose of the statute seems to be to protect specialty contractors on certain types of jobs.

One interesting possibility is to declare or suggest that statute limiting general contractors to work involving more than two trades is unconstitutional. Obviously, the Attorney General's office should be very cautious and reluctant to pursue such a course

in light of its duty to defend the constitutionality of Arizona statutes, the presumption of constitutionality and the fact no one has raised the issue. Nevertheless there is some interesting analagous case law. In Arnold Construction Co. v. Arizona Board of Regents, 109 Ariz. 494, 512 P.2d 1229 (1973), the second low bidder and the Registrar objected to the bid award to a general building contractor for a portion of the work on the ASU Physical Science Building. The problem arose since the Legislature only appropriated part of the money needed for the project and the Regents decided to begin the work. While the particular work involved was outside the scope of general contracting as defined in A.R.S. § 32-1102(1), there was no doubt that the low bidder was competent to do the work and would have been legally entitled to the work had the whole building been bid. Nevertheless, the second low bidder, who was not a general building contractor and held a general engineering license that specifically covered the particular work involved, and the Registrar, supported by this office, tried to prohibit the Regents from giving this work to the general contractor. The Court of Appeals rejected the positionof those parties and supported the Regents. The Court stated, "We believe the position contended for by the petitioner and the Registrar would lead to an absurd result without, in any way, accomplishing the statutory purpose . . . . It is certainly an odd result to provide that the contractor is skilled and qualified to build the total building and all its parts, but he is not licensed to build the part of the same whole when it is separated into phases or parts." 512 P.2d at 1232. It is no less odd nor absurd to reach a result when it is express in the statute. It is this oddity and absurdity that questions whether the "more than two trades" language serves any health or welfare objective.

As mentioned above, while a general contractor is normally free to do any of the specialty work that is part of a larger job for which he qualifies, there are four specified specialty areas that are off limits to a person holding a general contractor license. Unless he has the required specialty license, R4-9-11(D), or qualifies under R4-9-11(A)-(C), he may not work in the following areas: boilers, steamfitting and process piping, electrical, plumbing, and air conditioning. Qualification under R4-9-11 will generally be more attractive because the license fee is less and apparently there are no separate bonding requirements as would exist with a specialty license. Under R4-9-11, a general contractor may engage in work in these areas if he meets all the qualifications including passing the examinations and meeting experience requirements for the specialty licenses in such areas and if the

work is part of a general building contracting project. R4-9-11(B).

The reason for this regulation is not clear. While the four areas involve work that may require a high degree of skill or danger, there are other areas also involving danger and skill where the general contractor is not required to be separately qualified. Moreover, there is no reason to limit the general contractor who has qualified under this rule to doing the work only when it is part of a general building contracting project. The most likely explanation for the rule is that the persons (or unions) doing the work in these areas had sufficient influence over the Registrar to have a special rule promulgated protecting their work areas by requiring special and additional qualifications; and to insure that general contractors would not be permitted to compete with them by bidding on such work as a specialty contractor when it was not part of a general contracting project. As mentioned above, general contractors are otherwise free to do any specialty work, without regard to actual or special qualification, as long as more than two unrelated trades are involved. While general engineering contractors are not required to be specially qualified in these four areas, they may only do such work if it is part of a general engineering contracting project or if they have a specialty license. In light of the restrictive effect of this rule and the lack of any apparent justification, it would seem appropriate to consider whether this regulation, R4-9-11, should be repealed.

The second anti-competitive effect regarding classification results from the numerous classifications that have been created within the general engineering contractor and specialty contractor classifications, particularly the latter. See R4-9-02. In the general engineering contractor ("A") classification, there are 18 classifications. For example, there are classifications dealing with airport runways, excavating and grading, piers and foundations, excavating, grading and oil surfacing; steel and aluminum erection; etc. In the case of specialty contractors ("C"), there are 68 separate classifications. Examples include acoustical, carpentry, floor covering, concrete, roofing, insulation, weatherstripping, venetian blinds, lawn sprinklers, etc. In addition, there are five wild cards covering all three basic classifications permitting the Registrar to define on an ad hoc basis a licensing area that does not fall within one of the listed classifications. As a result of these wild cards there are probably at least 200 unclassified areas of licensing in addition to those that are listed. What these classifications do is to define with greater particularity

the license that is required to do particular work. For example, it is not sufficient merely to be a specialty contractor. One must possess a separate license to do work in any one of the listed areas. For example to engage in carpentry (C-7), concrete (C-9), and drywall (C-10), a person must possess a license in each of those areas. This means that a person must take separate examinations, meet separate experiential requirements and post separate bonds.

The anti-competitive effects of these provisions seem clear. First, the multiple bonding, examination and experience requirements seriously aggravate the barriers to entry created generally by licensing that are discussed above. Second, this classification system serves to fragment the market into a series of separate domains insulated from competition that might otherwise occur. For whatever the reason, apparently it is not common for a specialty contractor, for example, to hold a substantial number of separate licenses although they may hold more than one. The anti-competitive effects are aggravated by the fact that often classifications seem to be overlapping. For example there are separate licenses for floor covering (C-8), installation of carpets (C-13), composition floor (C-28), marble (C-30), masonry (C-31), terrazzo (C-33), ceramic, metal and plastic tile (C-48), and wood floor laying and finishing (C-64) as well as several carpentry and remodeling categories (C-7, C-61, C-68). Similarly, there are separate licenses for air conditioning (C-39), commercial, industrial refrigeration (C-49) and evaporative cooling (C-58). Basically work in any one of these areas requires a separate license, which means of course satisfaction of separate requirements. It is not known to what extent a specialty contractor might hold multiple licenses in these broad areas. Moreover additional regulations define the scope of the work that may be done under a particular classification. R4-9-03. While the scope regulations are too lengthy to quote, it is important to point out that they define the permitted work in substantial detail and would seem to have a substantial restrictive effect in compartmentalizing the work into narrow areas. There is no doubt that this legally administered and enforced market allocation scheme is highly anti-competitive and undesirable. Just as the provisions discussed earlier insure that specialty contractors are not subject to undue competition from general contractors, this aspect of the classification system insures that various specialty contractors are not subject to competition from each other.

The only mitigation of the classification system is that a specialty contractor in one area is permitted to work in other trades or crafts that are incidental

or supplemental to that in which he is licensed, A.R.S. § 32-1105(C). "Incidental and supplemental" is defined as trades and crafts directly related to and necessary for the completion of a project undertaken by the licensee in order to complete his contract. R4-9-01(A). Again, however, there is a problem of abuse of the Registrar's authority since the definition of "incidental and supplemental" is vague and would seem to give the Registrar great discretion. As a result its application would seem to be subject to manipulation and possibly the exception could swallow rule on occasion.

3. Regulation of the Trade

The statutory provisions and regulations governing actual contracting practices do not seem to present as substantial anti-competitive problems as the licensing scheme. A.R.S. § 32-1151 is the basic provision prohibiting contracting without a license. A.R.S. § 32-1152 and R4-9-12 set out the detailed rules governing the required bonds. R4-9-08 requires that all work be done in a workmanlike manner and sets out in some detail workmanship standards pursuant to the authority granted in A.R.S. § 32-1104 (A)(6). The only problem that could arise as a result of these standards is that in several instances they incorporate the codes of private national associations in particular areas. While many of the provisions of such codes may be inoffensive from an anti-trust standpoint, experience has shown that it is not uncommon for some of the provisions to have anti-competitive effects. A more accurate and complete analysis of this problem would require a careful examination of the particular codes that are incorporated by R4-9-08(C).

A.R.S. § 32-1154 sets out the grounds for suspension or revocation of a license. Most of the enumerated grounds present no particular anti-competitive problems. Others are subject to the common problem of being overbroad or subject to restrictive interpretation. Examples of the latter would include conviction of a felony; failure to pay money when due for materials or services when the contractor has the capacity to do so or has received sufficient funds on the project in which they were used; false, misleading or deceptive advertising which may mislead or injure the public; and knowingly contracting beyond the scope of a license. A.R.S. § 32-1154(9), (12), (17) and (18). In particular the provision dealing with failure to pay money could be used to unfairly pressure a contractor who honestly disputes his liability for goods and services and is withholding payment as a result. According to Aaron Kizer the courts have rejected the Registrar's position that the provision is inapplicable if there is a bona fide dispute over a debt. Also, this provision

presents another possibility for abuse of the Registrar's authority.

4. Remedies

The remedies contained in this regulatory scheme are fairly typical. In addition to the remedy of suspension and revocation discussed above, fines or imprisonment may be imposed for the commission of certain acts. A.R.S. § 32-1164; § 32-1165. In addition, the County Attorney or Attorney General may seek injunctive relief against any conduct violating any of the pertinent statutory provisions or regulations. A.R.S. § 32-1166.

5. Conclusion

As is evident from the discussion, the anti-competitive problems that arise from the regulatory scheme involving the Registrar of Contractors are somewhat different from the typical occupational licensing board. The most significant anti-competitive problems occur because licensing is required for activities where the health and welfare justification is lacking or minimal. Moreover, even in areas where licensing might be justified, it is more extensive than necessary. For example, much of the work involved in installing a lawn sprinkler system would not seem to justify licensing. Yet, because of the scope of regulation, all the work, not just the difficult aspects, requires a license. R4-9-03, C-44. As a result of these provisions, substantial barriers to entry into particular activities are created that have serious anti-competitive effects. Second, the classification system seriously aggravates the barriers to entry caused by over-regulation and creates a new series of anti-competitive effects as a result of the market allocation resulting from the particular classification system. As described, the classification system is set up to insure that general contractors do not invade the domain of specialty contractors in many instances and to create specialty areas protected against invasion by other specialty contractors.

These effects suggest the necessary reforms. First, licensing ought to be confined to activity truly necessary to protect the public with the qualifications no more restrictive than necessary. Second, the present classification system should be repealed. In its place a new system that permits general contractors to do any work for which they are qualified and consolidates the numerous present classifications into much fewer, broader areas. In addition, the scope regulations should be rewritten to permit reasonable overlap.

Total repeal is probably not feasible although it might be desirable. However, it might be noted that in absence

of a legal licensing scheme, the market itself will effect a desirable division of labor. Persons with experience and skills in particular areas are able to perform the work faster and with less risk of a mistake. Consequently, such persons are able to do such work at less cost. Moreover, others may refrain from doing such work because of the increased time and the greater risk of error; in addition, they obtain a greater profit by employing their resources where they are skilled and have experience. These considerations may also affect the cost of capital. Moreover, consumers are obviously motivated to employ those who are most qualified. While services are more like "experience goods" than "search goods," references from former customers may give great assistance in choosing qualified contractors. Even under the present system, informed consumers normally seek references from a contractor's former customers and bank. Such is the natural process of specialization. However, such a result is desirable and basically pro-competitive since it is dictated largely by efficiency considerations. While imperfections in the market may prevent optimal allocation of resources, the result will be substantially more desirable and less anti-competitive than that which results from the present legal licensing scheme.

There is no doubt that the effect of the present system is serious. Such a market allocation resulting from private activity would violate the anti-trust laws. The suggested reforms also might permit the Registrar to redirect some resources used now in licensing acitivity toward efforts to protect consumers. Such a result occurred when insurance regulation was reformed in New York. Moreover, under the present system, according to Aaron Kizer, the Registrar spends a substantial amount of time responding to complaints by particular contractors against their competitors. The present classification system invites this type of activity; and thus the Registrar's role as consumer protector is put in doubt. A final comment might be made regarding the several references to areas where a potential for abuse of the Registrar's authority exists. These problems could be very serious and difficult to monitor. Favoritism or bias could result in unfairness to particular persons. Moreover, as the history of this industry demonstrates, there is a substantial potential for undue influence, bribery and other criminal activity.

Much has been said recently regarding business opposing deregulation and successfully obtaining monopoly privileges from governmental agencies. It is possible that the present classification was sought and is favored by the particular labor unions affected as well as business. Labor unions might be able to obtain from the Registrar "jurisdictional" protection that reinforces, is more effective than or is

beyond that which they can obtain in the bargaining process. Of course anti-competitive effects that benefit unions are just as undesirable and injurious to the public as those that protect business.