



STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
of
**THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION**

SEPTEMBER 1979

THE STATE BOARD OF TECHNICAL REGISTRATION
HAS BEEN REMISS IN ITS DUTY TO PROTECT THE
SAFETY, HEALTH AND WELFARE OF THE PUBLIC.

A REPORT TO THE
ARIZONA STATE LEGISLATURE

OFFICE OF THE AUDITOR GENERAL

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THE ARIZONA STATE BOARD OF TECHNICAL REGISTRATION

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ARIZONA STATE LEGISLATURE

REPORT 79-9



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AUDITOR GENERAL

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OFFICE OF THE
AUDITOR GENERAL

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September 10, 1979

The Honorable Bruce Babbitt, Governor
Members of the Arizona Legislature
Members of the State Board of Technical Registration

Transmitted herewith is a report of the Auditor General, A Performance Audit of the State Board of Technical Registration. 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 from the members of the State Board of Technical Registration 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,

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	1
INTRODUCTION AND BACKGROUND	4
SUNSET FACTORS	9
FINDINGS	
FINDING I	14
The State Board of Technical Registration has been remiss in its duty to protect the safety, health and welfare of the public.	
CONCLUSION	39
RECOMMENDATION	39
FINDING II	41
The absence of written policies and adequate records of proceedings precludes a determination that the Board of Technical Registration has exercised its discretionary authority in the public interest.	
CONCLUSION	55
RECOMMENDATION	56
FINDING III	57
Changes needed to improve the efficiency and effectiveness of the State Board of Technical Registration.	
CONCLUSION	65
RECOMMENDATION	65
FINDING IV	67
The State Board of Technical Registration has been substandard in its encouragement and use of public input in its operations. Information regarding meeting notices, proposed rules and regulations, and Board action has not been adequately provided to licensees of the Board or the consumers of the licensees' services.	
CONCLUSION	77
RECOMMENDATION	78

	<u>Page</u>
OTHER PERTINENT INFORMATION	79
WRITTEN RESPONSE TO THE AUDITOR GENERAL'S REPORT	83
APPENDICES	
APPENDIX I - Legislative Council memorandums	
APPENDIX II - Summary of complaints received by the Board from April 1964 through June 1979	
APPENDIX III - Summary of Board discussions regarding investigations and fund balance	
APPENDIX IV - Trend line analysis of the number of annual license renewals	
APPENDIX V - Trend line analysis of Board of Technical Registration expenditures	
APPENDIX VI - Summary of the results of an Auditor General survey of licensees of the State Board of Technical Registration	
APPENDIX VII - State Board of Accountancy's disciplinary procedures	
APPENDIX VIII - Summary of evaluative criteria adopted by the Board since March 1, 1979	
APPENDIX IX - Summary of licensure examinations administered by the State Board of Technical Registration	
APPENDIX X - Attorney General memorandum regarding public notice	
APPENDIX XI - An evaluation of examinations administered by the architects section of the Architects, Professional Engineers, Designers and Land Surveyors Examining Board (State of Wisconsin)	
APPENDIX XII - Technical Registration Act (ARS 32-101 through 32-146)	
APPENDIX XIII - State Board of Technical Registration Rules and Regulations (R4-30-01 through R4-30-76)	

SUMMARY

The Arizona State Board of Technical Registration was established in 1921. The initial legislation provided for the regulation of the practice of architecture, assaying, engineering and land surveying. Geology was added in 1956 and landscape architecture was added in 1968.

The Board is responsible for the administration and enforcement of Arizona laws relating to the practice of the six professions. These duties include the evaluation of applicants for licensure, the issuance of licenses to those individuals who have fulfilled the licensure requirement, the annual renewal of licenses and the investigation of complaints and violations of the Technical Registration Act.

The State Board of Technical Registration consists of nine members; three architects, five engineers, and one other member who must be either an assayer, a geologist, a landscape architect or a land surveyor. Each Board member is appointed by the Governor to serve a three-year term.

The activities of the Board and its administrative office are funded through fees charged for application, examination and license renewal, ten percent of which is deposited in the State General Fund.

Our review revealed that the State Board of Technical Registration has failed to investigate numerous allegations of illegal or incompetent work performed by persons licensed by the Board. As a consequence of the Board's nonfeasance, some public agencies and a number of licensees have ceased filing complaints with the Board, and the Board has not fulfilled its responsibility to protect the public against incompetent or unscrupulous licensees. (page 14)

In addition, our review disclosed that the Board has not 1) established sufficient standards to ensure that all applicants for licensure are evaluated equitably, and 2) sufficiently documented its proceedings and decision-making process. This absence of standards and documentation precludes a thorough, independent, qualitative evaluation of the manner in which the Board has exercised its discretionary authority. However, our review of the limited records that are available indicates that the Board may have exercised its discretionary authority in an arbitrary and capricious manner and that the absence of formal policies causes confusion for applicants with resultant unnecessary expenditures of time and money. (page 41)

Our review also disclosed that several changes are needed to improve the efficiency and effectiveness of the Board. The implementation of these changes could result in a savings of \$61,741 and 668 staff days over a four-year period. (page 57)

Further, our review revealed that the State Board of Technical Registration has been substandard in its encouragement of public input from the consumers of licensees' services and in notifying license holders of Board meetings, proposed rules and regulations, and Board actions. The Board needs to expand its efforts to encourage participation by potential and actual consumers and to notify all licensees of Board meetings, activities and actions. (page 67)

Finally, a Legislative Council opinion pointed out that a Board interpretation of Arizona Revised Statutes section 32-125 may well violate federal and state laws relating to restraint of trade. (page 79)

It is recommended that:

1. The State Board of Technical Registration establish an aggressive peer review program that would work in conjunction with the various building safety departments throughout the state.
2. The Board increase its license renewal fee to fund additional complaint investigations work.
3. The Board inform the public and its licensees of its oversight responsibilities and the results of its disciplinary actions.
4. The Board make a concerted effort to continue to develop formal evaluative criteria regarding 1) the determination of the adequacy of an applicant's experience, and 2) the requirement for examination. Once developed, these criteria should be incorporated into the Board's Rules and Regulations.
5. The Board improve the documentation of its decision-making process to allow for a thorough, independent, qualitative evaluation of the process.
6. Arizona Revised Statutes section 32-127 and the Board's Rule R4-30-29 be amended to allow for the implementation of a triennial renewal system.
7. The Board's Rule R4-30-17 be amended to delete the mandatory requirement for personal audiences; and, the Board implement an application review process similar to the one used by the Kansas Board.
8. The Board adopt a policy requiring non-governmental recipients of the annual roster to pay a nominal fee to cover publication and distribution costs.
9. The Board of Technical Registration adopt methods to encourage public input and participation in the promulgation of rules and regulations, the development of legislative proposals and other decision making processes of the Board.
10. Arizona Revised Statutes sections 32-102 and 32-103 be amended to provide for public membership on the State Board of Technical Registration.

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 State Board of Technical Registration in accordance with ARS 41-2351 through 41-2374.

The State Board of Technical Registration (Board) was established in 1921 to regulate the practice of architecture, assaying, engineering and land surveying. Geology was added in 1956 and landscape architecture was added in 1968. The nine member Board is composed of three architects, five professional engineers and one other member who must be an assayer, landscape architect, geologist or surveyor. Each member is appointed by the Governor for a three-year term.

The Board is responsible for the administration and enforcement of Arizona laws concerning the practice of the aforementioned professions. Board duties include:

1. Administration of initial licensure examinations.
2. Issuance of licenses to individuals meeting the Board's education, testing and experience requirements.
3. Annual renewal of licenses.
4. Resolution of complaints and violations of the Technical Registration Act.

The Board and its office are funded through fees charged for application, examination and license renewal. Ten percent of the fees received are deposited in the State General Fund while the remaining 90 percent are used for Board operations within the limits of an annual budget approved by the Legislature.

The Board employs a full-time staff of four and rents office space in the Occupational Licensing Building. The employees include an executive director, an administrative secretary I, one secretary II and one typist III. Employee and rental expenses are included in the following budget information for fiscal years 1974-75 through 1978-79, as shown on Table 1. Also shown is a summary of the Board's activity levels for the same fiscal years.

TABLE 1

REVENUE, EXPENDITURES AND
ACTIVITY LEVELS FOR THE STATE
BOARD OF TECHNICAL REGISTRATION DURING
FISCAL YEAR 1974-75 THROUGH 1978-79

<u>Description</u>	<u>Fiscal Year</u>				
	<u>1974-75</u>	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>
Balance Forward	\$137,948	\$151,470	\$137,086	\$120,649	\$ 94,747*
<u>REVENUE:</u>					
Renewals and penalties	96,884	69,803**	71,149	75,891	80,480
Application fees	25,520	23,005	25,725	26,505	34,559
Examination fees	21,425	21,780	22,295	24,915	29,295
Miscellaneous fees	171	89	123	350	-0-***
(10% - General Fund)	(14,400)	(11,468)	(11,929)	(12,739)	(14,433)
	<u>267,548</u>	<u>254,679</u>	<u>244,449</u>	<u>235,571</u>	<u>224,648</u>
<u>EXPENDITURES:</u>					
Personal services	48,517	49,594	54,932	61,200	57,324
Employee related	5,887	6,997	7,504	9,900	10,738
Professional services	27,247	22,992	22,956	24,100	26,963
Travel - State	3,117	3,852	3,704	4,100	2,679
Out of State	1,417	2,593	1,761	3,900	3,846
Other operating	29,661	30,763	32,361	35,100	42,093
Equipment	115	644	282	1,500	2,105
Expenditures	115,961	117,435	123,500	139,800	145,748
Refunds	117	158	300	383	-0-
Total Expenditures	<u>116,078</u>	<u>117,593</u>	<u>123,800</u>	<u>140,183</u>	<u>145,748</u>
Balance Forward	<u>\$151,470</u>	<u>\$137,086</u>	<u>\$120,649</u>	<u>\$ 95,388</u>	<u>\$ 78,900</u>
<u>ACTIVITY MEASUREMENT</u>					
FTE Positions	4	4	4	4	4
Renewals	6,543	6,763	7,097	7,698	8,740
Applications - professional	627	591	661	650	806
- in training	323	231	178	293	447
Registrations - professional	512	502	525	560	612
- in training	165	209	198	153	192
Examinations - Architects	1,245	758	723	627	905
- Engineers & others	1,271	1,337	1,313	1,708	1,465
Formal hearings	3	1	1	0	0

* Includes adjustments to correct prior errors.

** During fiscal year 1975-76, renewal fees were decreased from \$15 to \$10.

*** Miscellaneous fees are included with application fees.

Regulation Of The Technical

Professions

The first legislation regulating the practice of architecture in the United States was established in Illinois in 1897. Wyoming was the first state to adopt legislation regulating the practice of engineering and land surveying in 1907. In 1921, the Arizona Legislature passed the state's first Technical Registration Act which created the State Board of Registration, the forerunner of the present Arizona State Board of Technical Registration. By the late 1930's, 86 percent of the states had enacted laws regulating the profession of architecture, while 88 percent of the states had enacted laws regulating the practice of engineering and land surveying.

As shown in Table 2, all 50 states regulate the practice of architecture, engineering and land surveying; 35 states regulate the practice of landscape architecture; seven states regulate the practice of geology; and finally, from the available information, Arizona is the only state that regulates the practice of assaying.

TABLE 2

A COMPARISON OF STATE
REGULATION OF TECHNICAL PROFESSIONS

<u>State</u>	<u>Architects</u>	<u>Engineers</u>	<u>Land Surveyors</u>	<u>Landscape Architects</u>	<u>Geologists</u>	<u>Assayers</u>
Alabama	X	X	X	X		
Alaska	X	X	X			
ARIZONA	X	X	X	X	X	X
Arkansas	X	X	X	X		
California	X	X	X	X	X	
Colorado	X	X	X			
Connecticut	X	X	X	X		
Delaware	X	X	X	X	X	
Florida	X	X	X	X		
Georgia	X	X	X	X	X	
Hawaii	X	X	X	X		
Idaho	X	X	X	X	X	
Illinois	X	X	X			
Indiana	X	X	X			
Iowa	X	X	X	X		
Kansas	X	X	X	X		
Kentucky	X	X	X	X		
Louisiana	X	X	X	X		
Maine	X	X	X	X	X	
Maryland	X	X	X	X		
Massachusetts	X	X	X	X		
Michigan	X	X	X	X		
Minnesota	X	X	X	X		
Mississippi	X	X	X	X		
Missouri	X	X	X			
Montana	X	X	X	X		
Nebraska	X	X	X	X		
Nevada	X	X	X	X		
New Hampshire	X	X	X			
New Jersey	X	X	X			
New Mexico	X	X	X			
New York	X	X	X	X		
North Carolina	X	X	X	X		
North Dakota	X	X	X			
Ohio	X	X	X	X		
Oklahoma	X	X	X			
Oregon	X	X	X	X	X	
Pennsylvania	X	X	X	X		
Rhode Island	X	X	X	X		
South Carolina	X	X	X	X		
South Dakota	X	X	X			
Tennessee	X	X	X	X		
Texas	X	X	X	X		
Utah	X	X	X	X		
Vermont	X	X	X			
Virginia	X	X	X			
Washington	X	X	X	X		
West Virginia	X	X	X	X		
Wisconsin	X	X	X			
Wyoming	X	X	X			

As of January 1, 1979, engineers accounted for almost two-thirds of the 8024 persons licensed by the Board, while architects accounted for almost one-fourth of the licensees. The other four professions comprise the remainder of the Board's licensees. Table 3 summarizes the numbers, type and residence of those persons licensed by the Board as of January 1, 1979.

TABLE 3

SUMMARY OF THE NUMBER, TYPE
AND RESIDENCE OF THOSE PERSONS
LICENSED BY THE BOARD AS
OF JANUARY 1, 1979

Type of License	Residence of Licensees		Total
	In-State	Out-of-State	
Architects	799	1075	1874
Assayers	29	2	31
Geologists	93	70	163
Landscape Architects	82	54	136
Land Surveyors	258	256	514
Engineers:			
Aeronautical	6	2	
Agricultural	19	4	
Chemical	29	41	
Civil	1200	1389	
Electrical	433	368	
Engineering Science	5	3	
Geological	13	16	
Geophysical	9	3	
Highway	57	8	
Industrial	26	8	
Mechanical	499	458	
Metallurgical	43	12	
Mining	111	89	
Nuclear	6	3	
Petroleum	3	5	
Sanitary	22	28	
Structural	125	249	
Combined Licenses	12	2	
Total Engineers	<u>2618</u>	<u>2688</u>	<u>5306</u>
Total Licenses	<u>3879</u>	<u>4145</u>	<u>8024</u>

As Table 3 illustrates, more than 51 percent of those persons licensed with the Board reside outside of the State of Arizona. As of January 1, 1979, there were 799 architects, 29 assayers, 2618 engineers, 93 geologists, 258 land surveyors and 82 landscape architects licensed and residing in Arizona.

The majority of the licensure examinations administered by the Board* are developed and updated by three national councils:

1. The National Council of Architectural Registration Boards (NCARB),
2. The National Council of Engineering Examiners (NCEE), and
3. The Council of Landscape Architecture Registration Boards (CLARB).

The State Board of Technical Registration is an active member of all three councils.

The Office of the Auditor General expresses its gratitude to the members of the State Board of Technical Registration and the Board's administrative staff for their cooperation, assistance and consideration during the course of our audit.

* Appendix IX contains a summary of the Board's examinations.

SUNSET FACTORS

In accordance with ARS 41-2351 through 41-2374, nine factors were considered to determine, in part, whether the State Board of Technical Registration should be continued or terminated.

These factors are:

1. Objective and purpose in establishing the Board,
2. The degree to which the Board has been able to respond to the needs of the public and the efficiency with which it has operated,
3. The extent to which the Board has operated within the public interest,
4. The extent to which rules and regulations promulgated by the Board are consistent with the legislative mandate,
5. The extent to which the Board 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,
6. The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction,
7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation,
8. The extent to which the Board has addressed deficiencies in its enabling statutes which prevent it from fulfilling its statutory mandate, and
9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in this subsection.

SUNSET FACTOR: OBJECTIVE AND PURPOSE
IN ESTABLISHING THE BOARD

A 1970 amendment to the Technical Registration Act included the following:

"The purpose of this chapter is to provide for the safety, health and welfare of the public through the promulgation and enforcement of standards of qualification for those individuals licensed and seeking licenses pursuant to this chapter."

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

The State Board of Technical Registration has been remiss in its duty to protect the public through the promulgation and enforcement of standards of professional practice. (page 14)

Our review of the State Board of Technical Registration has revealed that several changes are needed to improve the efficiency of the Board's operations. (page 57)

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

Because of inadequate records and a lack of formal written guidelines, we were unable to evaluate the manner in which the Board has exercised its discretionary power in two of its primary functions--the conduct of disciplinary proceedings (page 18) and the review of applicants' qualifications for licensure. (page 41)

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

After reviewing the rules and regulations promulgated by the State Board of Technical Registration, we have determined that these rules and regulations, except as noted below, are consistent with ARS 32-101 et seq.

ARS 32-124 specifies that "The Board shall publish in its rules a schedule of fees...for services rendered as required which shall not exceed one hundred dollars." Our review shows that the fees, as presented in Article 3 of the Board's Rules and Regulations, exceed the statutory limitation of one hundred dollars. (page 63)

SUNSET FACTOR: THE EXTENT TO WHICH THE
BOARD 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

The meetings of the State Board of Technical Registration are open to the public. Notices of meetings are posted in the Occupational Licensing Building. The Board also indicated that they notify professional societies of scheduled hearings regarding proposed rules and regulations changes. Our review, however, revealed that the Board has not consistently notified these professional societies of the hearings. (page 72)

In addition, our review showed that the Board has been substandard in its encouragement and use of public input in its operations. (page 67)

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

Because of the nonfeasance of prior boards, a number of licensees and some public agencies no longer file complaints with the Board. In addition, it appears that some consumers are not filing complaints with the Board. (page 32)

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

According to the Board's current Assistant Attorney General, the Technical Registration Act provides sufficient grounds for the Board to initiate disciplinary proceedings. Specifically, ARS 32-128(A) states:

"The board may take disciplinary action against the holder of a certificate under this chapter, charged with the commission of any of the following acts...."

"2. Gross negligence, incompetence, bribery, or other misconduct in the practice of his profession."

In addition, ARS 32-106.01 allows the Board to petition the superior court for an injunction to enjoin the practice of any of the regulated professions by an unregistered person.

SUNSET FACTOR: THE EXTENT TO WHICH THE
BOARD HAS ADDRESSED DEFICIENCIES IN
ITS ENABLING STATUTES WHICH PREVENT
IT FROM FULFILLING ITS STATUTORY
MANDATE

The State Board of Technical Registration worked for the passage of the amendment that provided the Board with injunctive powers to stop unlicensed activities. However, the Board has not actively supported any legislation since 1974. (page 72)

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

For a discussion of this issue see pages 40, 65 and 66.

FINDING I

THE STATE BOARD OF TECHNICAL REGISTRATION HAS BEEN REMISS IN ITS DUTY TO PROTECT THE SAFETY, HEALTH AND WELFARE OF THE PUBLIC.

The State Board of Technical Registration (Board) has failed to investigate numerous allegations of illegal or incompetent work performed by persons licensed by the Board. As a consequence of the Board's nonfeasance, some public agencies and a number of licensees have ceased filing complaints with the Board, and the Board is not fulfilling its responsibility to protect the public against incompetent or unscrupulous licensees.

Board's Oversight Responsibility

A 1970 amendment to the Technical Registration Act contains a specific statement of legislative intent regarding the Board's responsibility to maintain professional standards. Arizona Revised Statutes section 32-101, subsection A reads:

"The purpose of this chapter is to provide for the safety, health and welfare of the public through the promulgation and enforcement of standards of qualifications for those individuals licensed and seeking licenses pursuant to this chapter."

Additionally, in 1958 the Arizona Supreme Court issued a joint decision on three related cases that challenged different sections of the Technical Registration Act. In the Case of State Board of Technical Registration v. McDaniel, the court outlined the Board's responsibility for the investigation of complaints by stating:

"Indeed the Board would be remiss in its duty if it did not investigate complaints made to it to see if such acts constituted professional misconduct sufficient upon which to predicate formal charges."*

- * The 1958 Supreme Court ruling provided the Board with a clear definition of its responsibility to investigate complaints against registrants. A review of Board records indicates that the Board has known of the 1958 ruling. For example, at the Board's June 1974 meeting, a Board member referred specifically to the 1958 ruling by stating:

"...(In) a Supreme Court decision of ten to 15 years ago...the court specifically stated we would be neglectful in our duties if we did not actively engage in enforcing our statutes."

Further, the Board has identified as one of its goals the protection of the safety, health and welfare of the public "...by enforcing the regulations governing professional performances through investigation and resolution of violations."*

Our review of the Board has revealed that in spite of specific legislative intent, legal precedent and its own statement of goals the Board has failed to adequately pursue numerous allegations of illegal or incompetent work performed by its licensees.

Board's Disciplinary Activity

From April 1964 to June 1979, Board records indicate that the Board has received and accepted 96 complaints.** Table 4 summarizes these complaints.

TABLE 4

SUMMARY OF COMPLAINTS RECEIVED AND ACCEPTED
BY THE STATE BOARD OF TECHNICAL REGISTRATION
FROM APRIL 1964 TO JUNE 1979

<u>Basis of Complaint</u>	<u>Complaint Filed Against</u>		
	<u>Licensee</u>	<u>Non-Licensee</u>	<u>Total</u>
Unlicensed practice		41	41
Aiding and abetting unlicensed practice	16		16
Illegal use of title		12	12
Working outside discipline	8		8
Negligence, incompetence, misconduct	7		7
Unethical conduct***	4		4
Incomplete/faulty design	2		2
Fee dispute	2		2
Soliciting bids	1		1
Failure to complete project		1	1
Contract default	1		1
Plagiarism	<u>1</u>	<u>—</u>	<u>1</u>
Total Complaints	<u>42</u>	<u>54</u>	<u>96</u>
Percentage of Complaints	<u>44%</u>	<u>56%</u>	<u>100%</u>

* Source: Statement of goals as presented in the Board's budget requests prepared in August 1974, 1976 and 1978.

** Appendix II contains a synopsis of these 96 complaints.

*** Type of misconduct not specified in complaint file.

As shown in Table 4, a majority (56%) of the 96 complaints received and accepted by the Board were against non-licensees. Further analysis of these 96 complaints revealed that a vast majority of the complaints received and accepted by the Board (69%) are filed by licensees and not by the public, as shown in Table 5.

TABLE 5
SOURCE OF COMPLAINT RECEIVED AND
ACCEPTED BY THE BOARD FROM
APRIL 1964 TO JUNE 1979

<u>Complaints Filed By</u>	<u>Number of Complaints Filed</u>	<u>Percentage</u>
Licensees	66	69%
Public	24	25
Not indicated	<u>6</u>	<u>6</u>
	<u>96</u>	<u>100%</u>

Of the above 96 complaints, only 15 resulted in any disciplinary actions. Table 6 summarizes the 15 formal hearings and subsequent disciplinary actions that resulted from the 96 complaints received by the Board during the 15 year period from April 1964 through June 1979.

TABLE 6

SUMMARY OF THE 15 DISCIPLINARY HEARINGS
 THAT HAVE BEEN HELD BY THE BOARD OF
 TECHNICAL REGISTRATION FROM APRIL 1964
 TO JUNE 1979

Hearing Date	Charges Against Licensee	Disciplinary Action Taken by the Board		Comment
		License Revoked	Licenses Suspended	
December 1967	Aiding and Abetting an Unlicensed Person	X		
September 1969	Practicing Outside of Discipline		X (1 month)	
September 1969	Aiding and Abetting an Unlicensed Person		X (1 month)	
December 1970	Aiding and Abetting an Unlicensed Person		X (6 months)	
February 1971	Aiding and Abetting an Unlicensed Person		X (3 months)	Board immediately reinstated license
February 1971	Aiding and Abetting an Unlicensed Person		X (6 months)	
February 1971	Aiding and Abetting an Unlicensed Person			X
February 1971	Aiding and Abetting an Unlicensed Person		X (90 days)	Not an active license when suspended
August 1972	Negligence, Misconduct or Incompetence		X (90 days)	Surveying error
January 1973	Negligence, Misconduct or Incompetence		X (120 days)	Surveying error
September 1974	Incompetent Design			
December 1974	Aiding and Abetting an Unlicensed Person		X (30 days)	
December 1974	Aiding and Abetting an Unlicensed Person		X (90 days)	
February 1976	Negligence, Misconduct or Incompetence			X
May 1977	Aiding and Abetting an Unlicensed Person		X (6 months)	It should be noted that the Board found the licensee not guilty in spite of an earlier Superior Court ruling against the licensee in a related Civil Case.

Inadequate Records

Our examination of the complaint records revealed that most of the files do not contain sufficient information to allow for a thorough analysis of the Board's disciplinary procedures.* Many of the files indicated that the complaint was closed without any indication of 1) formal Board action closing the file or 2) how the complaint was resolved. In most cases, however, we were able to determine the subject, source and nature of the complaint.

Further, our review of the records of the complaints that resulted in the 15 formal hearings showed that transcripts of the proceedings were included in only three of the files. Finally, most of the files for the formal hearings did not include sufficient information regarding why the Board 1) reached their decision or 2) imposed different disciplinary sanctions for similar violations.

Board's Failure to Investigate Complaints

The 96 complaints and their ultimate resolution represent the sum and substance of the Board's disciplinary actions during the 15 year period from April 1964 to June 1979. However, our review of the Board's investigation and resolution of allegations of illegal or incompetent work being performed by its licensees revealed that the Board's performance is more notable for its absence of appropriate action than for the actions that have been taken. The following cases are illustrative of the Board's consistent failure to pursue allegations of illegal or incompetent work by its licensees.

* See page 41 for further discussion of the Board's records.

Case 1

The City of Phoenix - During the late 1960's and early 1970's, the Plans Review Section of the City of Phoenix Building Safety Department experienced a workload problem. A backlog of reviews had resulted from a dramatic increase in the number of plans that required multiple reviews. These multiple reviews were required because design professionals (architects and engineers licensed by the Board) were submitting substandard work. City officials who were involved in the plan review process felt that many of the submitted design projects were grossly incompetent.

On several occasions building safety officials requested the Board to review design plans they felt were examples of incompetent work. According to one of the City officials, the Board refused to review the work because the City had not filed a sworn complaint against a specific licensee. The City refused to file a formal complaint with the Board because -

1. Such an action might jeopardize their ongoing, working relationship with the design professionals, and
2. City Building Safety officials felt that the Board should take an active disciplinary posture and initiate the necessary formal complaints.

The following sequence of events chronicles the Board's failure to investigate the City of Phoenix's allegation of incompetent design work.

December 11, 1970

Situation - At its December 11, 1970 meeting, the Executive Director of the Board reported that the City of Phoenix wanted the Board to appoint a committee to review design plans submitted to the City. During the meeting the Chairman of the Board commented, "The Board has had considerable discussion in the past of plans being prepared by incompetent people, but complaints were not acted on that were submitted by the City of Phoenix." It was the Chairman's opinion that a committee should be established to review the plans and select any that required further Board action.

Board Action - An ad-hoc committee was assigned to study the need for the requested review committee.

February 18, 1971

Situation - At the February 18, 1971 Board meeting, the ad-hoc committee presented its report to the Board, which stated, in part:

"On Wednesday, December 30, 1970, Committee on Plan Review met with City of Phoenix staff...for the purpose of discussing means of reviewing construction drawings for buildings submitted for building permit which do not have sufficient information to assure construction of a building conforming to Safety Code requirements.

(City official) stated that the submission of incomplete plans has become a chronic problem with some registrants - that additional plan checking fees and resubmittal time have not been effective in correcting the problem. The City of Phoenix staff in cooperation with American Institute of Architects have suggested the appointment of a Committee for reviewing plans and filing complaints against registrants who continually submit incomplete plans, however, City Attorney has expressed the opinion that until Building Permit has been issued, plans are not available for public review. The City will not allow review of such plans due to liability involved.

City Attorney suggested State Board of Technical Registration provide for plan review committee under its Rules and By-Laws with authority to review plans prior to issue of Building Permit. This would operate at a State level and would reduce liability of parties concerned provided review requirements conform to reasonable consistent professional practice." (Emphasis added)

Board Action - The Board directed its ad-hoc committee to "...make a concrete suggestion on the plans review committee for the City."

June 18, 1971

Situation - The ad-hoc committee reported to the Board at its June 18, 1971 meeting, that a group of local licensed architects and engineers had volunteered to review design plans for the City.

Board Action - None

COMMENT - The ad-hoc committee never made a formal recommendation to full Board regarding the establishment of a plans review committee for the City of Phoenix.

January 19, 1973

Situation - The volunteer group of architects and engineers appeared before the Board at its January 19, 1973 meeting to request the Board's assistance because they had reviewed a number of design projects that were examples of substandard work.

Board Action - The Board directed the volunteer group to file verified complaints with the Board after they had sufficient evidence.

December 14, 1973

Situation - At the December 14, 1973 Board meeting, a Board member recommended that the Board hire a full-time investigator "...due to the poor quality of plans being submitted to the City of Phoenix."

Board Action - None

In spite of continual reports of incompetent work by its licensees over a period of at least 3 years the Board failed to investigate the complaints. As a result of its inaction, the Board was "remiss in its duty...(to) investigate complaints...to see if such acts constituted professional misconduct sufficient upon which to predicate formal charges." (page 14)

According to the licensed architect who served as chairman of the volunteer group, their primary goal was to identify the major problem areas as a means to help improve the overall quality of design work in the Phoenix area. It was not the group's original intention to file complaints with the Board. However, after the group encountered some design projects that they considered to be "flagrant violations," the chairman felt the group should file complaints with the Board. Other members of the group, however, refused to sign complaints because of the threat of personal liability. According to the chairman of the volunteer group, the Board refused to consider anything other than a verified (notarized) complaint.

It should be noted that in its fiscal year 1975-76 Budget Request (which was prepared in August 1974) the Board identified, as a "Pressing Issue,"

"Co-ordination with all political subdivisions empowered to issue building permits..."

However, our review revealed that the Board has not attempted to establish a working relationship with the building safety departments functioning within the political subdivisions of the state.

Case 2

The City of Phoenix - A Concerned Licensee - Minutes of the Board reveal that at least one other person was concerned about the quality of work being submitted to the City of Phoenix. This individual, a licensed engineer, reported these concerns along with allegations of illegal practices to the Board. The individual was unsuccessful in persuading the Board to take appropriate action, as chronicled by the following events.

December 13, 1968

Situation - A licensed engineer appeared before the Board at its December 13, 1968 meeting to discuss the inadequacies of several sets of plans that had been submitted to the City of Phoenix.

Board Action - According to the Board's minutes:

"...the consensus of the Board was that if (the complainant) would produce the plans together with supplemental information to the office of the Board with a letter in writing, the matter could be taken into consideration by Grievance Committee #1 for investigation." (Emphasis added)

December 16, 1968

Situation - The complainant submitted a written complaint to the Board which stated, in part:

"The City Plan Check Department has uncovered many sets of plans that are in direct violation or fail completely to comply with the accepted minimums of good engineering practice.

The electrical engineers have set up some minimum standards for electrical plans which have been reviewed and accepted (by the Board) as guidelines for basic requirements.

As an interested electrical engineer, I have been working closely with the City on codes, standards and revisions, and feel the following from a list of unsatisfactory plans should be reviewed by the Board as a start." (Emphasis added)

March 28, 1969

Situation - At the Board's March 28, 1969 meeting, Grievance Committee #1 recommended that the full Board consider the submitted complaint.

Board Action - The Board directed its Executive Director and Assistant Attorney General to investigate the letter of complaint and report the results of their investigation to Grievance Committee #1 before the next Board meeting.

COMMENT - There is no indication that an investigation was ever conducted or that a report was ever submitted to Grievance Committee #1.

May 29, 1970

Situation - The complainant submitted the following letter to the Assistant Attorney General responsible for the Board:

"You will recall from our recent correspondence and telephone conversation that we feel the Arizona Technical Board of Registration has failed to act on behalf of the citizens in connection with the violation of state law. I have selected three representative examples for your information and further investigation and I have in my possession several other situations that are similar in nature.

You will note that the reference items number one and two are signed by architects and advise their client that they are not responsible for a complete set of plans and/or the electrical contractor is responsible for installation and calculations. In either case the professional is aiding and abetting contractors to perform engineering services. The third example is of a contractor signing as an engineer without a seal." (Emphasis added)

"The first and third examples were presented to the State Technical Board of Registration and they have taken no action for over one year. In fact several other of my personal requests for investigating malpractice have been ignored.

Please do not consider my own experiences as the only times that the Board has failed to act or even investigate unprofessional conduct or professional practice not short of fraud. The City of Phoenix Building Department has literally given up trying to get action. The exact number of unprofessional designs submitted to the City is unknown, but I would judge they are in the hundreds. These records can be subpoenaed to substantiate the facts, if necessary.

I will appreciate a reply to this matter at your earliest convenience, and volunteer to assist you in any way possible to see that the Technical Registration Board begins to function in the best interest of all people in our fine State. Maybe your office needs to give them additional support in matters effecting public, health and safety." (Emphasis added)

June 5, 1970

The Assistant Attorney General responded to the complainant as follows:

"While I appreciate your interest, I must inform you that this office, pursuant to ARS 41-191, is limited to rendering legal services to departments and agencies of the State, and has no supervisory control over such agencies. Additionally, there are no common law powers or duties which attach to the office of the Attorney General, but only those prescribed by statute. Shute v. Frohmiller, 53 Ariz. 483, 90 p. 2d 998."(Emphasis added)

"As I note that a copy of your correspondence has already been directed to the office of the Chief Executive, I am forwarding your suggestions to the Board of Technical Registration for review or whatever action they deem necessary." (Emphasis added)

June 24, 1970

Situation - At its June 24, 1970 meeting, the Board reviewed the letter sent to the Assistant Attorney General and the Assistant Attorney General's response.

Board Action - The Board directed that:

"...the Assistant Attorney General be advised the Board had no jurisdiction in the matters presented to him...."

No further action was taken.

By not taking any additional action the Board failed, after a year and a half delay, to pursue a complaint that included allegations of violations of the Technical Registration Act. Our review of the Board's complaint files revealed that a file does not exist for this complaint. (page 18) Consequently, the Board's reasons for not pursuing this complaint cannot be documented.

Case 3

Insufficient Access for the Physically Handicapped - In May 1976, the Assistant Attorney General for the Board sent a letter to the Board informing them that he had received three letters alleging that several buildings were not properly designed or built to accommodate the physically handicapped. The complainant stated that this situation was a violation of Arizona Revised Statutes (ARS) Title 34, Chapter 4, Article 1. The Board failed to act on these charges of statutory violations as detailed by the following events.

June 11, 1976

Situation - The Assistant Attorney General advised the Board at its June 11, 1976 meeting that it could initiate its own investigation of alleged statutory violations by its licensees.

Board Action - The Board directed its Executive Director to assess the problem and report to the Board at its next meeting.

December 10, 1976

Situation - At its December 10, 1976 meeting, the Board discussed a letter they had received from the same architect that had previously contacted the Board's Assistant Attorney General. The subject of the letter was again violations of ARS Title 34, Chapter 4, Article 1.

Board Action - The Board responded to the architect that:

"...the law does not provide for policing the profession as to the conformance to the local codes, but if he wants to file a complaint against a certain architect, it is permissible." (Emphasis added)

February 4, 1977

Situation - The architect filed a formal complaint with the Board regarding violations of Arizona Statutes.

Board Action - The Board responded to the architect that:

"...this Board does not have any jurisdiction over this."

By not initiating its own investigation or pursuing a formal complaint, the Board failed to take appropriate action on allegations of statutory violations. In addition, our review of the Board's complaint files revealed that a file does not exist for this complaint. (page 18)

Case 4

The Mohave County Attorney - In September 1977, the Board was informed by a Mohave County Deputy Attorney of statutory violations by a licensee of the Board. The Deputy Attorney subsequently filed a formal complaint with the Board; however, the Board never investigated the charges or imposed any disciplinary sanctions against the licensee as outlined by the following events.

September 9, 1977

Situation - On September 9, 1977, the Board received a letter from the Office of the Mohave County Attorney. The correspondence included evidence supporting the allegation that a registered land surveyor had violated the provisions of ARS 33-105.*

Board Action - The Board informed the Deputy County Attorney that its jurisdiction was limited to violations of the Technical Registration Act.

December 2, 1977

Situation - At its December 2, 1977 meeting, the Board considered a formal complaint that had been filed by the Mohave County Deputy Attorney which stated:

"I am enclosing your letter of September 9, 1977, and am again sending the exhibits, along with an executed complaint.

Although, as you accurately state, my original letter sets forth a violation of ARS 33-105, it seems clear to me that the Board is empowered to investigate this matter and take any appropriate disciplinary action under the provisions of ARS 32-128(A) (2) and 32-128(B) (providing for investigation upon oral or written complaints not under oath)." (Emphasis added)

* The provisions of ARS 33-105 specify the requirements for the recordation of land surveys.

"Mohave County has encountered some serious problems with boundary discrepancies due, in part, to the fact that some surveyors and engineers have failed to consistently act in complete accord with recording statutes concerning such discrepancies. It is incumbent upon your board, as the licensing agency for such individuals, to assure the public that your licensees will not engage in such misconduct. While I don't believe that criminal action is appropriate or that the individual's license should necessarily be revoked, certainly, if found guilty of misconduct or gross negligence, a serious reprimand would be in order." (Emphasis added)

Board Action - The Board voted to reaffirm its decision that the alleged violation was not within its jurisdiction. .

March 3, 1978

Situation - At its March 3, 1978 meeting, the Board reviewed the following letter from the Mohave County Deputy Attorney:

"In light of your recent letter, it has become evident to me that there is either very little within the jurisdiction of your board or that you are not quite certain which if any matters are properly within your jurisdiction.

Accordingly, it is my intention to request the Governor and the Attorney General's Office to apprise us of the precise purpose of your existence. It seems incredible to me that you would insist that violation of a state law requiring recordation of surveys does not constitute professional misconduct by a licensed surveyor." (Emphasis added)

Board Action - The Board voted to reconsider its previous decision.

September 8, 1978

Situation - At its September 8, 1978 meeting, the Board reconsidered its previous decision.

Board Action - The Board issued the following statement:

"...the Board's position is that all registrants shall comply with all state laws affecting professional practice and the Board shall exercise its jurisdiction to assure such compliance."

As of June 30, 1979, or nearly two years after receiving the initial complaint the Board has not taken any action on the complaint filed by the Mohave County Deputy Attorney other than a directive to send a letter to the licensee stating that surveyors are to comply with all laws regarding the recording of surveys.

Case 5

Bridge Failures - During the latter part of 1978 and the early part of 1979, the State of Arizona experienced several bridge failures. ARS 32-142(A) requires that:

"Drawings, plans, specifications and estimates for public works of the state or a political subdivision thereof involving architecture, engineering, assaying, geology, landscape architecture or land surveying, shall be prepared by or under the personal direction of, and the construction of such works shall be executed under the direct supervision of a qualified registrant within the category involved."

Further, major projects of the State Department of Transportation are designed and constructed under the personal supervision of an engineer licensed by the Board. During our review we found no indication that the Board has taken any formal action on these bridge failures or the allegations of faulty designs. According to the Executive Director, the Board is waiting for the outcome of the investigations that are being conducted by other agencies.

On June 18, 1979, the consulting engineers commissioned by the State Department of Transportation issued their report regarding the failures of the Maricopa Freeway Salt River bridge and the Arizona 74 bridge over the Agua Fria River. The consultants found that the bridges "...experienced pier settlements because certain footings were not designed and constructed at a depth sufficient to accommodate scour caused by heavy runoffs...." As of August 6, 1979, the Board had taken no action regarding the bridge failures or the consulting firm's report.

Inconsistent Policies

In addition to the aforementioned cases where the Board has failed or refused to take action, our review showed several instances in which the Board has refused to consider a complaint because the complainant did not file a verified (notarized) complaint. We also found, however, that this policy is not consistently applied in that the Board has conducted several investigations based on either an oral complaint or written complaint which had not been notarized.

The Board's informal policy is to require a verified complaint before it will initiate any disciplinary actions, including investigations, against licensees. According to the Board's Executive Director, verified complaints are necessary to help weed out unfounded and frivolous complaints. Further, the Board feels that this requirement is justified due to the serious potential consequences of a formal hearing to a licensee.

However, according to the Board's Assistant Attorney General, it is clearly within the Board's jurisdiction to investigate either an oral complaint or a written complaint which has not been notarized, per ARS 32-128(B) which states:

"The board shall have authority to make investigations, employ investigators and conduct hearings...when the board, after receiving an oral or written complaint not under oath, makes an investigation into such complaint and determines that there is sufficient evidence to warrant a hearing...."

Adverse Effect of the Board's Inactivity

The State Board of Technical Registration is not viewed, by various building safety department officials and many of its own licensees, as an effective vehicle for investigating and resolving complaints regarding professional incompetency. In addition, it appears that some consumers have incurred financial or physical harm as a result of incompetent service provided by Board licensees but that these consumers have not filed complaints with the Board regarding these instances of possible professional incompetency.

As a means to assess the Board's complaint review process and the presence of professional incompetence on the part of Board licensees, the Office of the Auditor General contacted: 1) ten building safety departments in Arizona, 2) licensees of the Board, and 3) several professional liability insurance carriers. The results of this process are summarized below.

Building Safety Department - The ten local building safety departments contacted were:

City of Phoenix	City of Tucson
City of Scottsdale	City of Flagstaff
City of Tempe	Maricopa County
City of Mesa	Pima County
City of Yuma	Navajo County

All ten of the building safety departments responded to the Office of the Auditor General that they have received design projects prepared by licensees of the Board that are examples of substandard work. All ten departments also responded that they do not, however, file complaints with the State Board of Technical Registration. Instead, these departments merely refuse to issue building permits until the design projects meet minimal building code standards. The Phoenix Building Safety Department indicated that the reason they do not file complaints with the Board is because of the Board's failure to take appropriate action in the past. (page 21) According to one City official, because of corrections made during the plan review process, the ultimate consumer of these professional services (the public) may never be aware of the amount or nature of such substandard work.

Licensees of the Board - A survey* of 557 licensees of the Board by the Office of the Auditor General revealed an element of dissatisfaction with the Board's complaint review process. Three common bases for licensee dissatisfaction with the complaint review process centered on the Board itself and were: 1) the lack of Board action, 2) the Board's leniency in those cases where it has taken action, and 3) the lack of information regarding the Board's disciplinary functions. For example, one licensee stated that "(Board's) Response is lacking and penalty is non-existent." Many felt that the previous disciplinary actions have been nothing more than "mere wrist-slappings." Another licensee echoed the feelings of many of the respondents in his statement, "I believe the Board should be more aggressive in looking for poor practice." According to one engineer, "(The Board is) hesitant to deal out discipline when such is required."

Many of the licensees surveyed made additional comments about the Board's disciplinary actions, such as:

"It is well known that the board will go to almost any length to avoid responsibility in disciplinary cases and that it also has limited power and jurisdiction."

"They always seem reluctant to get involved."

"I feel that as with any professional board the board is reluctant to discipline fellow engineers."

"The Board is very apathetic to even investigate charges of unethical conduct or incompetency filed by one or more registrants citing lack of authority."

"(A licensee) was convicted in Federal Court for land fraud, however, he is a current registrant. The Board takes no initiative toward disciplinary action. Should it be up to individual(s) to file a complaint with the Board?"

* Appendix VI contains a summary of the survey results.

"The office is a record keeping office. Their concern is business as usual - 'don't rock the boat.' Instead of publishing the roster as their main duty, they need to enforce the law for (the) safety of the general public."

"Not comprehensive, not consistent, not stringent enough."

"There is very little disciplinary action relative to the current level of incompetence displayed in the profession."

"Although I have seen some serious errors, I have never heard of any disciplinary actions. Human nature dictates that a member of the 'club' will not be too hard on another member."

Other problem areas in the Board's disciplinary procedures, as identified by the surveyed licensees, included:

- Insufficient funding to conduct thorough investigations,
- Insufficient legal advice,
- The threat of personal liability for potential complainants,
- The practice of the regulated professions by non-registrants, and
- The law is too vague and does not give the Board enough authority to prosecute those that violate the law.

It is interesting to note that in a survey of the current Board members conducted by the Office of the Auditor General, three of the nine Board members shared some of the same concerns expressed by the surveyed licensees. For example, these Board members responded:

- "The board has been able to resolve most complaints handled very adequately - however, I believe there are many obvious violations of the law that are not investigated or pursued for lack of resources."
- "Well on complaints brought to our attention - we should be doing more on our own - and we plan to do so."
- "Very limited (complaint activity) due to the Attorney General's work load."

Professional Liability Insurance Carriers - To further assess the Board's complaint review process and the presence of professional incompetence on the part of Board licensees the Office of the Auditor General contacted four professional liability insurance carriers operating in Arizona.* Unfortunately, only one insurance carrier could produce claims data. However, the claims data from this one insurance carrier revealed that, as of March 1979, there were twenty claims pending against licensees of the Board. The estimated total value of these 20 claims was \$541,800, of which two claims alone accounted for more than \$350,000. A review of complaints filed with the Board indicates that associated complaints have not been filed with the Board for these 20 claims.

Board Reasons For Inactivity

According to Board members and the Executive Director of the Board the reasons for the Board's limited investigations of allegations of illegal or incompetent work performed by its licensees are 1) limited resources, and 2) lack of legal support. Our review of the Board, however, revealed that the Board has had ample resources to conduct investigations and has virtually ceased to request legal assistance from the Office of the Attorney General.

Available Resources - From fiscal year 1970-71 through fiscal year 1978-79, the State Board of Technical Registration has had a surplus of available funds ranging from a low of \$54,878 to a high of \$151,470. In fact, the Board has reduced the already relatively low annual renewal fee it charges its licensees twice during that period; from \$20 to \$15 to \$10, in order

"...to maintain a reasonable balance in the fund without undue cost to the registrants...."***

Table 7 summarizes the receipts, expenditures, fund balances and annual renewal fees for the Board from fiscal year 1970-71 through 1978-79.

* An Office of the Auditor General survey of persons licensed by the Board indicated that over one-third carry professional malpractice insurance. (Appendix VI)

** Appendix III chronicles Board discussions of funding investigations and methods to reduce the Board's fund balance during the period from December 1969 to July 1979.

TABLE 7

SUMMARY OF RECEIPTS, EXPENDITURES,
FUND BALANCES AND ANNUAL RENEWAL FEES
FOR THE STATE BOARD OF TECHNICAL
REGISTRATION FROM FISCAL YEAR
1970-71 THROUGH 1978-79

<u>Fiscal Year</u>	<u>Receipts (Net of Reversion to General Fund)</u>	<u>Expenses</u>	<u>Excess (Shortage) of Receipts Over Expenditures</u>	<u>Fund Balance June 30</u>	<u>Annual Renewal License Fee</u>
1970-71	\$116,660	\$ 79,152	\$ 37,508	\$ 54,878	\$20
1971-72	127,538	83,235	44,303	99,181	20
1972-73	116,991	95,962	21,029	120,210	15
1973-74	124,438	106,700	17,738	137,948	15
1974-75	129,600	116,078	13,522	151,470	15
1975-76	103,209	117,593	(14,384)	137,086	10
1976-77	107,363	123,800	(16,437)	120,649	10
1977-78	114,922	140,183	(25,261)	94,747*	10
1978-79	129,901	145,748	(15,847)	78,900	10

* Includes adjustment to correct prior errors.

It should be noted that the Board has consistently maintained a high fund surplus in spite of the fact that the annual license renewal fee it charges to its licensees is significantly less than that charged by other professional boards. Table 8 compares the annual license renewal fee charged by the Board to that charged by other selected Arizona professional regulatory boards.

TABLE 8

COMPARISON OF THE ANNUAL LICENSE RENEWAL FEE
CHARGED BY THE STATE BOARD OF TECHNICAL
REGISTRATION TO THAT CHARGED BY OTHER SELECTED
ARIZONA PROFESSIONAL REGULATORY BOARDS

<u>Professions/Occupations</u>	<u>Annual License Renewal Fee Charged</u>
Contractors	\$85 to \$110
Physicians (M.D.'s)	\$60
Accountants (C.P.A.'s and P.A.'s)	\$50
Optometrists	\$50
Dentists	\$35
Psychologists	\$25
Physician's Assistants	\$25
Pharmacists	\$22.50
TECHNICAL REGISTRATION	\$10

An Office of the Auditor General trend analysis of the number of Board license renewals and Board expenditures* revealed that the Board's June 30, 1979 fund balance surplus of \$78,900 will be eliminated by fiscal year 1983-84 unless the Board's annual renewal fee of \$10 is increased. However, a modest renewal fee increase of \$10 will not only maintain the June 30, 1979 fund surplus but will increase it to approximately \$415,069 by June 30, 1984. Such a fee increase could provide the Board with ample funding for investigations of allegations of illegal or incompetent work performed by its licensees. Table 9 contains projections of 1) annual increases (decreases) of the fund balance and 2) the resulting Board fund balances at June 30, 1980 through June 30, 1984 based upon annual license renewal fees of \$10, \$15, and \$20.

TABLE 9

PROJECTED BOARD OF TECHNICAL REGISTRATION
REVENUE, EXPENDITURES, INCREASES (DECREASES)
TO FUND BALANCES AND ENDING FUND BALANCES
FOR FISCAL YEARS 1980, 1981, 1982, 1983,
AND 1984, BASED UPON ANNUAL LICENSE
RENEWAL FEES OF \$10, \$15, AND \$20.

	FISCAL YEARS				
	1979-80	1980-81	1981-82	1982-83	1983-84
Projected Total Revenue:**					
\$10 Renewal Fee	\$133,230	\$140,693	\$148,145	\$155,598	\$163,051
\$15 Renewal Fee	170,490	180,779	190,153	199,527	208,902
\$20 Renewal Fee	209,550	220,865	232,160	243,456	254,752
Projected Expenditures	(150,175)	(157,549)	(164,923)	(172,297)	(179,670)
Projected Increase (Decrease) of Fund Balance:					
\$10 Renewal Fee	\$(16,954)	\$(16,856)	\$(16,778)	\$(16,699)	\$(16,619)
\$15 Renewal Fee	20,315	23,230	25,230	27,230	29,232
\$20 Renewal Fee	59,375	63,316	67,237	71,159	75,082
Projected Ending Fund Balance:***					
\$10 Renewal Fee	\$ 61,955	\$ 45,099	\$ 28,321	\$ 11,622	\$ (4,997)
\$15 Renewal Fee	\$ 99,215	\$122,445	\$147,675	\$174,905	\$204,137
\$20 Renewal Fee	\$138,275	\$201,591	\$268,828	\$339,987	\$415,069

* See Appendix IV and V.

** Net of the 10% reversion to the State General Fund.

*** The fund balance at the beginning of fiscal year 1979-80 was \$78,900.

It should be noted that the Board at its December 12, 1969 and December 14, 1973 meetings considered hiring a full-time investigator and/or increasing their complaint review and oversight activities as a means to decreasing their fund surplus. The Board, however, opted for decreasing its annual license renewal fee as an alternate means of decreasing its fund surplus.

It should also be noted that at its July 20, 1979 meeting, the Board voted to:

"...retain a consultant to gather and assimilate information to develop a positional report and model law for utilization during the Sunset Review...." (Emphasis added)

The cost is not to exceed \$5,000.

Such an action on the part of the Board is particularly notable in view of the following:

1. The Board's contention that the lack of funds is a cause of inadequate complaint investigations.
2. The Board has spent a total of \$3,547 on complaint investigations and hearings during the three-year period from fiscal years 1975-76 through 1977-78 - an average of only \$1,182 per year.

Thus, it appears that the Board will expend more of its resources defending itself during the "Sunset Review" process than it spent on investigating allegations of professional incompetence on the part of its licensees during the three-year period ending June 30, 1978.

Availability of Legal Support - Our review of Board records revealed that historically some limitations have been placed on the services provided by the Office of the Attorney General to the Board. For example, at the December 1975 Board meeting, the Board's Assistant Attorney General stated that he was limited to handling one case per each of the boards he represented. However, the current Assistant Attorney General assigned to the Board stated that this limitation is no longer in effect. Although the Board's Assistant Attorney General indicated that the current workload of the Attorney General's Office does create some practical limitations on the amount of service that can be provided to the Board, he has been able to respond to the Board's needs for legal services. In fact, according to the Board's Assistant Attorney General, the State Board of Technical Registration has requested virtually no legal assistance from the Office of the Attorney General since March 1978.

CONCLUSION

The Board is not fulfilling its responsibility to protect the public against incompetent or unscrupulous licensees. In spite of specific legislative intent, legal precedent and its own statement of goals; the Board has failed to adequately pursue numerous allegations of illegal or incompetent work performed by its licensees. As a result of the Board's inaction, some public agencies and a number of licensees have ceased filing complaints with the Board.

RECOMMENDATIONS

The Board should:

1. Establish an aggressive peer review program similar to the one currently used by the State Board of Accountancy. (See Appendix VII)
2. Make a special effort to work with the various building safety departments throughout the state.

3. Maintain better records of its disciplinary process, including:
 - More complete records in the complaint files (this may include a transcript of formal hearings), and
 - A clear indication in each file of how the complaint was resolved and a record of formal Board actions relating to the resolution of the complaint.
4. Inform licensees and the public of the Board's oversight responsibility and the results of its disciplinary actions. (See page 67 for a more thorough discussion of public participation.)
5. Increase the license renewal fees to allow for the investigation of allegations of illegal or incompetent work performed by its licensees.
6. Discontinue the current policy which requires a verified formal complaint prior to Board action.
7. Include the Office of the Attorney General more completely in all Board deliberations.

ARS 32-101 et. seq. should be amended to include the following provisions:

1. Include censure and probation as disciplinary alternatives available to the Board.
2. Require professional liability insurance carriers to report insurance claims to the Board.
3. Provide personal immunity for anyone acting in good faith with regards to the enforcement of the Technical Registration Act.

FINDING II

THE ABSENCE OF WRITTEN POLICIES AND ADEQUATE RECORDS OF PROCEEDINGS PRECLUDES A DETERMINATION THAT THE BOARD OF TECHNICAL REGISTRATION HAS EXERCISED ITS DISCRETIONARY AUTHORITY IN THE PUBLIC INTEREST.

The Technical Registration Act conveys to the State Board of Technical Registration broad discretionary powers with regard to 1) evaluating applicants for licensure, and 2) enforcing standards of professional practice. (page 14) Our review of the Board revealed that, despite warnings from the Office of the Attorney General, the Board has not 1) established sufficient standards to ensure that all applicants for licensure are evaluated equitably, and 2) sufficiently documented its proceedings and decision-making process. This absence of standards and documentation precludes a thorough, independent, qualitative evaluation of the manner in which the Board has exercised its discretionary authority. However, our review of the limited records that are available indicates that the Board may have exercised its discretionary authority in an arbitrary and capricious manner and that the absence of formal policies causes confusion for applicants with resultant unnecessary expenditures of time and money.

Evaluation of Applicants

Through the provisions of Arizona Revised Statutes (ARS) section 32-101 et seq., the State Legislature delegated a great deal of discretionary authority to the Board of Technical Registration with regard to evaluating applicants for licensure. ARS 32-122, 32-123 and 32-126, pertaining to the qualifications for licensure, provide:

"32-122. Qualifications of applicant

- A. An applicant for registration as an architect, engineer, geologist or landscape architect shall be of good moral character and repute, and shall have engaged actively for at least eight years in architectural, engineering, geological or landscape architectural work of a character satisfactory to the board,...
- B. An applicant for registration as an assayer or a land surveyor shall have engaged actively for at least four years in assaying or land surveying work of a character satisfactory to the board,...

32-123. Application for registration

- A. A person desiring to practice architecture, assaying, engineering, geology, landscape architecture, or land surveying shall make application for registration on a form prescribed by the board, subscribed under oath and accompanied by the registration fee. If the evidence submitted satisfies the board that the applicant is fully qualified to practice the profession for which registration is asked, it shall give him a certificate of registration, signed by the chairman and secretary and attested by the official seal.
- B. If in the judgment of the board the applicant has not furnished satisfactory evidence of qualifications for registration, it may require additional data, or may require the applicant to submit to an oral or written examination.

32-126. Registration without examination

The board may register without examination an applicant who holds a valid and subsisting certificate of registration issued by another state or foreign country which has requirements for registration satisfactory to the board, or who holds a certificate of qualification issued by a national bureau of registration or certification." (Emphasis added)

In administering the Technical Registration Act, the board has promulgated the following rule:

"R4-30-03. Experience

Qualifying experience, other than time allowed for education, shall in general be limited to that time in which an applicant has been directly employed in a responsible position of a character satisfactory to the Board." (Emphasis added)

Our review of the applications for licensure that have been submitted to the Board revealed that the two primary reasons for the Board's refusal to license an applicant were:

- The applicant did not have adequate experience, and
- The applicant had not passed the appropriate examination prior to applying for licensure.

In addition, prior to March 1979* the Board had no written criteria other than Rule R4-30-03, as shown above, regarding what constituted "...requirements for registration (from another state or foreign country) satisfactory to the Board..." or experience "...of a character satisfactory to the Board..."

These deficiencies exist in spite of warnings from the Board's Assistant Attorney General that unwritten evaluative criteria are inappropriate. For example:

- At the February 1978 meeting of the Board the Board's Assistant Attorney General warned the Board that they should "...define in their Rules what is experience of a character satisfactory to the Board."

* See Appendix VIII for a summary of Board actions taken since March 1979.

- At the March 1978 meeting of the Board, their Assistant Attorney General again addressed the lack of written guidelines by stating, "...as (I have) advised before, these requirements (for prior examination) cannot be based on an unwritten policy but should be in the rules as to why the Board makes their decision."

Further, a majority of Board licensure application denials are based upon a Board perception of insufficient experience on the part of the applicant. Board files do not, however, contain sufficient information to document the manner in which the Board arrived at that conclusion. In addition, most applicants for licensure are reviewed and evaluated by Board subcommittees (Evaluation Committees). The deliberations of these subcommittees are not formally recorded and thus cannot be reviewed.*

Finally, our review of the Board's application review process revealed that the Board is not complying with ARS 32-106 (A) which requires that the Board shall:

- "7. Keep a register which shall show the date of each application for registration, the name, age, qualifications and place of business of the applicant, and the disposition of the application."

At the time of our review, the Board did not have the required register of applicants.

As a result of the lack of formal applicant evaluation criteria, the insufficiency of information in Board files regarding applicants, and the absence of formal records of Board subcommittee's meetings; the decision-making process of the Board and the manner in which it exercised its discretionary authority are not adequately documented to allow for a thorough, independent, qualitative analysis.

* Such a procedure is allowed under ARS 38-431.01(B)

However, our review of the limited Board records that are available indicates that 1) the Board may have exercised its discretionary authority to evaluate applicants for licensure in an arbitrary and capricious manner, and 2) the absence of formal applicant qualification policies creates confusion for applicants which can result in an unnecessary expenditure of time and money on the part of applicants.

The Board May Have Exercised Its Discretionary Authority To Evaluate Applicants For Licensure In An Arbitrary And Capricious Manner

Examinations. The Board has an informal policy that all applicants must pass appropriate examinations* prior to being licensed in Arizona. However, our review of Board minutes regarding appeals of Evaluation Committee rulings indicates that the Board has been inconsistent in applying this policy. The following cases illustrate that inconsistency.**

Case 1

Situation - The applicant requested waiver of the Architectural Theory Examination*** because 1) he had passed the other parts of the examination, and 2) of his experience and background with the Federal Housing Authority.

Board Action - The Chairman of the Board was requested to explain to the applicant.

"...that to our knowledge, this Board has not - registered anyone without passing all parts of the examinations; second, advise the applicant that there are particular courses which could be taken by correspondence to assist him, and recall his own statement that he plans to go into private practice in seven years and all others who are in private practice have passed - the examination..." (Emphasis added)

The Board required the applicant to take and pass the remaining part of the examination.

* See Appendix IX for a summary of the Board's examinations.

** All appeals presented in this section were reviewed by the Board between March 1975 and June 1976.

*** The Architectural Theory Examination is a portion of the Equivalency Examination which is used to evaluate an applicant's eligibility for the Professional Licensure Examination.

Case 2

Situation - The applicant requested waiver of the entire Architecture Examination on the basis of his experience in Texas where he was licensed without examination because he was a graduate of a Texas School.

Board Action - A member of the Board stated:

"...there are times people come before this Board who have outstanding past experience who are qualified to be registered without further examination and because of their age and experience to submit to a written or oral examination...." (Emphasis added).

The Board waived the examination.

Case 3

Situation - The applicant requested waiver of Parts 1 and 2 (Fundamentals of Engineering)* of the Mining Engineering Examination because 1) he had passed Parts 3 and 4 of the examination, and 2) of his experience and background with a copper company.

Board Action - The Board waived Parts 1 and 2 of the examination.

Case 4

Situation - The applicant requested waiver of Parts 1 and 2 (Fundamentals of Engineering)* of the Electrical Engineering Examination on the basis of recommendations from his employer and other consulting engineers.

Board Action - The Board waived Parts 1 and 2 of the examination.

Case 5

Situation - The applicant requested waiver of Parts 1 and 2 (Fundamentals of Engineering)* of the Highway Engineering Examination which the applicant had previously failed.

Board Action - The Board waived Parts 1 and 2 of the examination.

* The Fundamentals of Engineering constitute parts 1 and 2 of all engineering exams given by the Board.

Case 6

Situation - The applicant requested waiver of Part 1* of the Sanitary Engineering Examination on the basis that he had passed Parts 2, 3 and 4 of the examination.

Board Action - The Board required the applicant to take Part 1 of the examination.

Case 7

Situation - The applicant requested waiver of Part 2* of the Mining Engineering Examination on the basis that he had passed the other three parts.

Board Action - The Board required the applicant to take Part 2 of the Mining Engineering Examination.

Case 8

Situation - The applicant requested waiver of Parts 1 and 2 (Fundamentals of Engineering)* of the Electrical Engineering Examination on the basis 1) that he had passed Parts 3 and 4 of the examination and 2) that he was Chief Electrical Engineer for the City of Phoenix.

Board Action - The Board required the applicant to take Parts 1 and 2 of the Electrical Engineering Examination.

Case 9

Situation - The applicant requested waiver of Parts 3 and 4 of Mechanical Engineering Examination on the basis of 1) his registration in California (which he obtained without examination) and 2) his 14 years of experience as a principal engineer.

Board Action - The Board waived the Mechanical Engineering Examination and licensed the applicant.

* The Fundamentals of Engineering constitute parts 1 and 2 of all engineering examinations given by the Board.

Case 10

Situation - The applicant requested waiver of Parts 3 and 4 of the Electrical Engineering Examination on the basis of 1) his registration in Massachusetts (which he obtained without examination), and 2) his many years of experience in the profession.

Board Action - The Board denied the request for waiver and required the applicant to take Parts 3 and 4 of the Electrical Engineering Examination.

Case 11

Situation - The applicant requested waiver of Parts 3 and 4 of the Land Surveying Examination* on the basis of 1) his registration in New Mexico (which he obtained without examination), and 2) his law degree and familiarity with Arizona Statutes relating to surveys.

Board Action - The Board waived the examination and licensed the applicant.

Case 12

Situation - The applicant requested waiver of Parts 3 and 4 of the Mechanical Engineering Examination on the basis of 1) his registration in Texas (which he obtained without examination), and 2) the recognition he had received (various awards) for his work in the field.

Board Action - First, the Board moved and seconded that the waiver be granted. However, after further discussion the Board voted to deny the request for waiver. Board minutes of the discussion of the applicant's appeal included:

* Part 4 of the Land Surveying Examination is prepared locally and is designed to test the applicant's knowledge of Arizona Statutes as they relate to surveys.

"During discussion of the motion, (Board member) noted that we have had similar applicants come to the Evaluation Committee and who are highly qualified but we have held them for the examination of Parts 3 and 4. (Board member) stated that those in the past in the academic field who have taken the examination and passed it has given the successful applicant far more authority in his teaching career than those who were granted under the Grandfather - Clause. He told (applicant) that he believed it would be to his benefit to take the examination and he could stand up in front of his students and say I took the examination." (Emphasis added)

Experience Satisfactory to the Board. The Board has delegated the responsibility for the initial review of an applicant's experience to various subcommittees (Evaluation Committees).* Because of the exemption provided in ARS 38-431.01(B), the Board does not record the deliberations of these subcommittees. The lack of such records precludes a review of the Evaluation Committees' deliberations and rulings. However, our review of subsequent appeals of Evaluation Committee actions, as found in the Board minutes, indicates that the Evaluation Committees may have acted in an arbitrary and capricious manner. Because our review was limited to records of cases that were appealed to the full Board, we were unable to fully evaluate the potential magnitude of the problem.

The following cases are illustrative of the appeals of Evaluation Committee decisions regarding the sufficiency of an applicant's experience.

Case 1

Situation - The applicant requested that the full Board reconsider the Evaluation Committee's decision that 1) persuaded him to change his application from civil to structural engineering and 2) required him to take Parts 3, 4, 5 and 6 of the Structural Engineering Examination. The Evaluation Committee felt that the experience record that the applicant had submitted indicated that he was qualified for the Structural Engineering Examination but not the Civil Engineering Examination.

* Board records indicate that the Board routinely adopts the recommendations of the Evaluations Committees.

Board Action - Based on the additional information provided by the applicant, the Board voted to accept the civil engineering application and to require the applicant to take Parts 3 and 4 of the Civil Engineering Examination. However, after further discussion, the Board voted to license the applicant as a Civil Engineer based on his prior examination and licensure in Indiana.

Case 2

Situation - The applicant requested that the full Board reconsider the Evaluation Committee's decision that 1) persuaded him to change his application from civil to structural engineering and 2) required the applicant to take Parts 3, 4, 5 and 6 of the Structural Engineering Examination. The basis for his appeal was 1) his prior examination and licensure in Colorado and 2) his experience in the field of civil engineering.

Board Action - The Board voted to accept the civil engineering application and license the applicant on the basis of 1) his experience and 2) his prior examination and licensure in Colorado.

Case 3

Situation - The Board reviewed the experience record of a civil engineering applicant. The applicant stated that his experience had been in a supervisory capacity of construction with the Corps of Engineers and that he had no design experience nor formal or informal education.

Board Action - The Board voted to allow the applicant to take the Civil Engineering Examination.

Case 4

Situation - The applicant requested waiver of Parts 3 and 4 of the Civil Engineering Examination on the basis of 1) his experience, and 2) his prior licensure in Ohio (which he obtained without examination).

Board Action - Because the applicant's experience was in mechanical engineering, the Board required the applicant to take Parts 3 and 4 of the Civil Engineering Examination.

Case 5

Situation - The applicant presented the Board an outline of his experience which included research work for the EPA (Environmental Protection Agency) and the Office of Water Resources Research in addition to his teaching in the Civil Engineering Department of a major university.

Board Action - The Board denied the application because of a lack of satisfactory experience.

Case 6

Situation - The applicant presented additional information regarding his experience in the field of architecture, including a brief statement from his present supervisor (a registered architect). The applicant's supervisor stated that the work the applicant had been doing was "...no different than working for an architect in private practice."

Board Action - The Board Chairman stated, "...an applicant should also have in addition to this type of experience how to run an architectural office from payroll duties to seeking additional work for the office, and prepare documents in all types of construction." The Chairman further explained, "...the object of the registration act is to protect life and property and it is the Board's duty to register qualified applicants."

The Board denied the application for licensure as an architect because of a lack of experience satisfactory to the Board.

Case 7

Situation - The supervisor (a registered architect) of an applicant seeking licensure as an architect wrote to the Board concerning the decision of the Architectural Evaluation Committee. The Committee had found that "... (the applicant) did not have a well rounded experience and may have to change his employment where he can get the experience needed. The candidate should be aware of what constitutes good experience and seek out jobs where he can do this. It is the candidate's responsibility to evaluate his own experience record..."

The supervisor responded that "... (the applicant) has worked full time, directly under my supervision, for the last three years during which time he has received comprehensive and practical training in design, drafting, structural calculations, office practice, cost estimating, specification writing, job supervision and customer relations of an intensity quite comparable with what he would be offered anywhere else in a Tucson architect's office..."

Board Action - The Board directed the Chairman of the Board to write to the applicant's supervisor stating "...we simply question the fact that his experience he had received was not a type suitable to the Board and we felt he needed a wider variety which we did not feel he could get there as the work indicated in this particular applicant's record did not indicate his experience was satisfactory..." The Board denied the application because of lack of satisfactory experience.

It should be noted that the Board expected the applicant to evaluate his own experience record, yet they had no written criteria regarding what constituted "experience satisfactory to the Board."

Our review revealed that the Board is aware of the problems created by the lack of written evaluative criteria and has begun to develop some policies in this area. (See Appendix VIII for a summary of Board actions regarding the development of written policies.)

The Absence Of Formal Applicant Qualification
Policies Creates Confusion For Applicants Which
Can Result In An Unnecessary Expenditure
Of Time And Money On The Part Of Applicants

The State Board of Technical Registration has unwritten policies regarding what an applicant must do in order to obtain licensure in Arizona through comity*. These policies are not only unwritten but are apparently not communicated to applicants for comity prior to their incurring the expense of traveling to Arizona for the mandatory personal audience with the Board's Evaluation Committee. (page 60) As a result of these unwritten and uncommunicated policies, applicants have incurred unnecessary expenditures of time and money. The following two cases are examples.

Case 1

The applicant was a graduate of an accredited college and had passed a 16-hour examination prior to being licensed in Ohio. Further, the applicant was licensed and had practiced in seven other states. After traveling to Arizona for his mandatory personal audience, the Engineering Evaluation Committee informed the applicant that an (unwritten) Board policy required all structural engineering candidates to pass a 24-hour examination. Consequently, the applicant would be required to pass an additional eight hours of examination to qualify for licensure in Arizona. The applicant's local chapter of Society of Professional Engineers wrote to the Board regarding the Evaluation Committee's decision. Their letter stated, in part:

* Comity is a process by which any individual who meets a specified set of standards is granted a license to practice despite their state of residence. No reciprocal agreement between the states is required as in a system of reciprocity.

"In your correspondence with (the applicant) you forwarded copies of Rules and By-Laws and the Code of the State Board of Technical Registration and instructions for filing of the application sent to him. Upon satisfactory completion of the application requirements, he was notified by the board to appear for a personal interview and a 20 to 30 minute examination covering the Statutes and Rules. The time for the foregoing was set by the board and the tone of the notice was such that it was imperative that the candidate should keep the appointment or be assigned a later date set by the discretion of the board. At considerable expense and the use of the better part of two business days, (the applicant) traveled to Phoenix, where he took the aforementioned exam (passed) and was interviewed by the Evaluation Committee.

At the close of the interview the applicant was told that in spite of his qualifications and active practice as a structural engineer, he must undergo eight hours of examination to obtain registration as a structural engineer in the state of Arizona because the board has an unwritten policy requiring this...." (Emphasis added)

Board records indicate that one of the Board members was directed to respond to the letter and that the applicant did not pursue licensure in Arizona.

Case 2

The following letter to the Board, dated September 6, 1977, describes the experience of another applicant for comity.

"On Friday, August 12, 1977 I appeared as required for a personal audience with the Architectural Evaluation Committee of the Board. At that time, I took and passed the 20-minute test on the Code, Rules and By-Laws of the State Board of Technical Registration. My education, experience and the fact that I am a registered Architect in the State of Washington, via the NCARB Professional Examination, was duly noted and accepted. However, I was informed that I would be required to take the Design and Site Planning portion of the NCARB Equivalency Examination. I did not learn of this requirement until less than ten minutes before my audience with the committee. This exam is only given in June, which means I can not get my license for the State of Arizona until September 1978 (over a one year delay).

I have again reviewed all the written material I have received from the Board; there is nothing in this material indicating the requirement of the Design and Site Planning Exam. There is, however, a specific mention of the requirement for a Seismic Treatise in the instructions for filling out the Application for Registration to Practice as well as the Rules and By-Laws under General Provisions R-4-30-01, a requirement aimed only at a portion of the Architectural applicants. I find it inconsistent that this requirement is duly noted and yet there is no mention of a Design and Site Planning Examination requirement.

I do not contest the right of the Board to set the qualifications for the practice of Architecture in the State of Arizona; however, I believe that it is the duty of the Board to establish, in writing, its requirements and to make them known to registration applicants on demand. Therefore, I believe that the Board has been negligent in not publishing its requirements and informing applicants of all the prerequisites necessary to obtain a license to practice Architecture in Arizona and thereby causing a hardship for myself in terms of money (\$700), time and "client goodwill" lost. Therefore, I request that the Board waive the Design and Site Planning Exam requirement and grant me Architectural registration in the State of Arizona." (Emphasis added)

The applicant subsequently passed the remaining portion of the examination in June 1978 and was licensed to practice architecture in Arizona.

CONCLUSION

The Technical Registration Act grants the State Board of Technical Registration broad discretionary powers regarding the approval of applicants for licensure. The Board has not, however, 1) established sufficient evaluative criteria to insure that all applicants are evaluated and treated equally, and 2) sufficiently documented their decision-making process to allow for an independent qualitative analysis of the process. A review of the limited Board records that are available indicates that 1) the Board may have exercised its discretionary authority to evaluate applicants for license in an arbitrary and capricious manner, and 2) the absence of formal applicant qualification policies creates confusion for applicants which can result in an unnecessary expenditure of time and money on the part of applicants.

RECOMMENDATIONS

1. The Board make a concerted effort to continue to develop a formal evaluative criteria regarding 1) the determination of the adequacy of an applicant's experience and 2) the requirement for examination. Once developed, these criteria should be incorporated into the Rules and Regulations of the State Board of Technical Registration.
2. The Board improve the documentation of their decision-making process to allow for a thorough, independent, qualitative evaluation of the process.
3. The Board comply with ARS 32-106(a) which requires the Board to keep a register of applicants showing the date of each application, the name, qualifications, and place of business of the applicant and the disposition of the application.

FINDING III

CHANGES NEEDED TO IMPROVE THE EFFICIENCY AND EFFECTIVENESS OF THE STATE BOARD OF TECHNICAL REGISTRATION.

Our review of the State Board of Technical Registration has shown that there are several changes needed to improve the efficiency and effectiveness of the Board. These changes are:

1. Implement a triennial renewal system; (page 58)
2. Delete the mandatory requirement for personal audiences; (page 60)
3. Impose a minimal charge upon non-governmental recipients of the annual roster; (page 61)
4. Delete the Board rule that requires an applicant that is denied licensure to wait one year before reapplying, (page 63) and,
5. Amend ARS 32-124 to allow the Board to establish fees charged to applicants commensurate with costs to the Board. (page 63)

The implementation of these changes could result in a savings of \$61,741 and 668 staff days over a four-year period, as summarized below:

TABLE 9

SOURCE AND NATURE OF
POTENTIAL SAVINGS

<u>Method of Realizing Savings</u>	<u>Estimated Cost Savings Over A Four-Year Period</u>	<u>Estimated Time Savings Over A Three-Year Period</u>
Triennial Renewal System	\$13,865	380 staff days
Eliminate Mandatory Personal Audiences		288 staff days
Charge for Annual Roster	<u>47,876</u>	_____
	<u>\$61,741</u>	<u>668 staff days</u>

In addition, the earlier collection of revenue that will result from the implementation of a triennial renewal system will generate increased interest earnings for the State General Fund. The increased interest earnings could be as much as \$52,000 over a four-year period.

Implement A Triennial
Renewal System

The Technical Registration Act requires the licensees of the Board to renew their licenses prior to December 31 of each year. ARS 32-127 states, in part:

- "A. Certificates of registration shall expire on December 31 of each year, and shall be invalid after that date unless renewed by payment of the required renewal fee...."
- "C. The board shall establish the annual renewal fees for each proficiency registered under this chapter which shall not exceed twenty-five dollars."

Each year the Administrative Office of the State Board of Technical Registration processes an increasing number of renewals.* Based on estimates of the Board's Executive Director, the office staff spent a total of 167 work days during fiscal year 1978-79 processing 8,024 renewals. Because of the backlog of work created by the renewal process during the months of November, December and January; the Board has considered requesting additional part-time clerical help for this period.

One means of reducing the number of renewals processed each year and the resultant strain on the operations of the Administrative Office is to implement a triennial renewal cycle.** With such a system, only one third of the Board's licensees would renew their licenses each year. By adopting a triennial renewal cycle the State Board of Technical Registration could realize estimated cost and time savings over a four-year period, as shown on Table 10.

* See Appendix IV for a trend line analysis of the number of annual renewals.

** Currently, the California State Board of Registration for Professional Engineers operates a quadrennial renewal system.

TABLE 10

ESTIMATED SAVINGS RESULTING
FROM THE IMPLEMENTATION OF
A TRIENNIAL RENEWAL SYSTEM

<u>Fiscal Year*</u>	<u>Estimated Cost Savings</u>	<u>Estimated Staff Time Savings</u>
1980-81	\$ 4,297	118 Work Days
1981-82	4,622	127 Work Days
1982-83	<u>4,946</u>	<u>135 Work Days</u>
Total	<u>\$13,865</u>	<u>380 Work Days</u>

When questioned by the Office of the Auditor General about the possibilities of using an extended renewal cycle (two or three years), Board members expressed no major objections. In fact, one of the members felt that it would be "a very good way to reduce (the Board's operating) expenses."

Increased Interest Earnings Generated By The Earlier Collection Of Revenues - Revenues collected and deposited in the Technical Registration Fund (90 percent of the Board's revenue) and the State General Fund (10 percent of Board's revenue) are invested by the State Treasurer until they are needed. All interest earnings from such investments are retained in the General Fund. As a result of converting to a triennial renewal cycle, additional interest earnings of as much as \$52,000** will be generated over a four-year period assuming a nine percent rate of return on investments***.

The increase in interest earning will result because revenue collected during the initial years of implementation will exceed the amount need to finance those years operations. The additional amount can be invested until needed, thus generating the additional interest earnings.

* No cost or time savings would be incurred during the first year because all renewals would be processed during the implementation of the triennial renewal system.

** This estimate is based on an annual renewal fee of \$20.00 illustrated on page 37.

*** According to the State Treasurer, the annual rate of return on investments for 1979 is projected to be nine percent.

Delete The Mandatory Requirement

For Personal Audiences

During fiscal year 1978-79, the State Board of Technical Registration processed over 800 applications for licensure. Under the requirements of Rule R4-30-17, each applicant must appear for a personal audience with one of the Board's Evaluation Committees. Based on estimates of the Executive Director, fiscal year 1978-79 personal audiences required over: 1) 384 hours of Board members' time, and 2) 576 hours of administrative staff time. By implementing the changes recommended below the Board could reduce the amount of administrative staff time involved in the application review process by as much as 288 days over a four-year period.

The current process used by the Board to evaluate applicants is as follows. The Executive Director of the Board reviews the applicant's file and evaluates the applicant's qualifications. Based on his review, the Executive Director recommends the type of action that should be taken by the Evaluation Committee. The Evaluation Committee conducts personal interviews with the applicants and determines which applicants should be licensed, held for examination or rejected. The Evaluation Committee submits its recommendations to the full Board for ratification. Our review of 171 applications for licensure, processed by the Board between August 1978 and January 1979, revealed that:

1. The Executive Director made recommendations on 142 (83%) of the applications. (The Executive Director routinely does not make any recommendations on those applications that he feels should not be licensed or held for examination because of an obvious lack of experience.)
2. The Evaluation Committees subsequently agreed with the Executive Director's recommendations for 133 (94%) of the 142 applicants.

Our review of the application review process of other similar state boards* revealed that the Kansas State Board of Technical Professions has developed a system that requires substantially less staff time. In place of the mandatory personal audiences, members of the Kansas review committees received a summary for each applicant and a ballot on which they indicate approval or disapproval of the applicant. If the committee members agree on the applicant the only remaining action is for the full Board to approve the decision of the committee. If the committee members disagree on an applicant either the committee members resolve their differences or the applicant is interviewed in person at the next Board meeting. The Executive Director of the Kansas Board estimated that Board members spend only 10 to 15 minutes on each application.

The applicant evaluation system used by the Kansas Board was reviewed by the Executive Director of the Arizona Board of Technical Registration. The Executive Director agreed that the implementation of a similar system in conjunction with his own review of the applications, presented no practical problems and could substantially reduce the workload resulting from the mandatory personal audiences.

Impose A Minimal Charge
Upon Non-Governmental Recipients
Of the Annual Roster

In June 1979, the State Board of Technical Registration mailed out over 8,000 copies of their Fifty-Seventh Annual Report with Roster of Active Registrants at no charge to the licensees of the Board. The publication and distribution costs for the roster were approximately \$12,000. It appears that this represents an unnecessary expenditure for the Board in that 1) actual usage of the Roster by licensees is limited, and 2) there is a precedent in Arizona government for imposing a minimal charge upon non-governmental recipients of such a roster.

* Only 13 of 88 other states' boards that license engineers and architects require personal audiences of all applicants.

In a survey of the licensees of the Board conducted by the Office of the Auditor General* the recipients of the annual Roster were asked to evaluate how frequently they need the Roster. Ninety-six percent of the licensees responding indicated that they use the roster infrequently. Only four percent of the licensees indicated that they use the Roster as frequently as once a week. Further, 92 percent of the licensees stated that they would direct any inquiries they might have regarding registrants to the Board Administration Office if they did not have the Roster. However, the survey also showed that those licensees that frequently use the Roster feel that its publication and distribution is a very necessary function of the Board.

The Registrar of Contractors publishes a very similar roster of over 12,000 licensees. However, instead of distributing the rosters free, they charge \$4.00 per copy to those persons who request a copy of the roster. During fiscal year 1978-79 the Registrar published 2,000 copies of the annual roster and had requests for approximately 1,900 copies which were sold at \$4.00 each. The total revenue generated exceeded the publication and distribution costs.**

If the Board of Technical Registration were to adopt a roster policy similar to that of the Registrar of Contractors, then: 1) the total number of rosters published and distributed would decrease because it appears that a substantial percentage of licensees would not request a copy, and 2) the costs of publication and distribution could be recovered, provided the sales price was appropriately established.

* Appendix VI contains a summary of the survey results.

** Total costs include the publication and distribution of six month supplement.

When the members of the Board were questioned as to the concept of imposing a charge for the annual roster, seven of the nine members responded that they had no objections to implementing a charge for the roster to offset publication and distribution costs.

Delete The Board Rule That Requires
An Applicant Who Is Denied Licensure
To Wait One Year Before Reapplying

The State Board of Technical Registration Rule R4-30-01(G) requires:

"When an application for registration is denied or withdrawn, the applicant will be so notified of the Board's action. No reapplication will be accepted until one year has elapsed from the date of the formal Board action denying the original application." (Emphasis added)

Our review of the State Board of Technical Registration revealed that Rule R4-30-01(G) has caused substantial and unnecessary delays in the licensure process.

Further, our review revealed that the Board is inconsistent in imposing Rule R4-30-01(G) in that some applicants are made to wait one year before reapplying while others are not. According to the Executive Director of the Board, Rule R4-30-01(G) is oftentimes imposed as a "penalty" for those applicants that the Board feels have been uncooperative during the application process.

Amend ARS 32-124 To Allow The Board
To Establish Fees Charged To Applicants
Commensurate With Costs To The Board

Our review of the Board's Rules and Regulations revealed that the fees established in Board Rules R4-30-27 and R4-30-28 exceed the statutory limit of \$100 as provided in ARS 32-124. However, our review also revealed that the fees currently charged by the Board are reasonable and that any substantial reductions in these fees would preclude the recovery of associated costs incurred by the Board.

Arizona Revised States section 32-124 states:

"The board shall publish in its rules a schedule of fees for applications, examinations, and such other miscellaneous fees for services rendered as required which shall not exceed one hundred dollars."

In establishing its fees, the Board had interpreted the provisions of ARS 32-124 to mean that the \$100 limitation applies to each type of fee category individually. As a result, the current application and examination fees charged by the Board for licensure as an Architect or Landscape Architect are \$115 and \$105 respectively. According to the Legislative Council these fees are not in compliance with ARS 32-124. In an April 13, 1979 opinion the Legislative Council stated:

"The statutory limit of one hundred dollars pertains to the items mentioned in section 34-124, Arizona Revised Statutes, collectively. Thus the maximum fee chargeable against an applicant for registration is limited to one hundred dollars."*

Our review of the application and examination fees, as provided in Rules R4-30-27 and R4-30-28, revealed that, while two of these fees exceed the statutory limitations in ARS 32-124, they are reasonable when compared to the associated expenses incurred to administer examinations and process application.

* See Appendix I for the full text of the Opinion.

CONCLUSION

Our review of the State Board of Technical Registration revealed that by 1) implementing a triennial renewal system, 2) eliminating the mandatory personal audiences, and 3) charging non-governmental recipients a minimal fee for the annual roster, the operating expenses of the Board could be reduced by as much as \$61,741 and the workload of the administrative staff could be reduced by as much as 668 work days over a four-year period. In addition, the earlier collection of renewal fees resulting from the implementation of the triennial renewal system will increase interest earnings by as much as \$52,000 over a four-year period.

Further, our review revealed that 1) Rule R4-30-01(g) is inconsistently enforced, and 2) when it is enforced it is an unnecessary delay for licensure applicants. Finally, our review showed that, although fees charged by the Board exceed the statutory limit, they are reasonable when compared to the associated expenses incurred by the Board.

RECOMMENDATIONS

1. Arizona Revised Statutes section 32-127 and Rule R4-30-29 should be amended to allow for the implementation of a triennial renewal system.
2. Rule R4-30-17 should be amended to delete the mandatory requirement for personal audiences. Further, the Board should implement an application review process similar to the one used by the Kansas Board.
3. The Board should adopt a policy requiring non-governmental recipients of the annual roster to pay a nominal fee to cover the publication and distribution costs (similar to the requirement used by the Registrar of Contractors).

4. Rule R4-30-01(G) should be deleted to remove the possibility of unnecessary delays for applicants.

5. Arizona Revised Statutes section 32-124 should be amended to allow the Board to establish fees charged to applicants commensurate with costs to the Board.

FINDING IV

THE STATE BOARD OF TECHNICAL REGISTRATION HAS BEEN SUBSTANDARD IN ITS ENCOURAGEMENT AND USE OF PUBLIC INPUT IN ITS OPERATIONS. INFORMATION REGARDING MEETING NOTICES, PROPOSED RULES AND REGULATIONS, AND BOARD ACTION HAS NOT BEEN ADEQUATELY PROVIDED TO LICENSEES OF THE BOARD OR THE CONSUMERS OF THE LICENSEES' SERVICES.

The State Board of Technical Registration has been substandard in its encouragement of public input from the consumer of licensees' services and in notifying license holders of Board meetings, proposed rules and regulations, and Board actions. The Board needs to expand its efforts to encourage participation by potential and actual consumers and to notify all licensees of Board meetings, activities and actions.

Board Actions Regarding

Public Notice Of Meetings

Arizona Revised Statute 38-431.02A defines the responsibility of the State Board of Technical Registration to provide public notice of all meetings:

"Public notice of all meetings of public bodies shall be given as follows:

1. The public bodies of the state shall file a statement with the secretary of state stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to meetings."

The Board has not filed a statement with the Secretary of State identifying the location where meeting notices will be posted. However, notices have been consistently posted in the Occupational Licensing Building at the State Capitol.

The Attorney General in a memorandum to all state agencies dated August 19, 1975, noted that an:

"'open meeting' is open only in theory if the public has no knowledge of the time and place at which it is to be held."

The Attorney General stated further that the law on open meetings was not specific, and outlined guidelines to be followed in complying with the public meeting law. He also cautioned agencies against the serious consequences for failure to comply with the law:

"Decisions made at a meeting for which defective notice was given may likely be declared null and void..."*

In providing guidelines to agencies regarding what would constitute sufficient "additional" public notice of meetings beyond posting printed notices, the Attorney General stated:

"F. Additional Notice

In deciding what types of notice shall be given in addition to posting, governing bodies should consider the following:

1. Newspaper Publication

In many cases, notice of meetings can be disseminated by providing press releases to newspapers published in the area in which notice is to be given. In addition, paid legal notices in such newspapers may be purchased by the governing body.

2. Mailing List

Some bodies may wish to provide a mailing list whereby persons desiring to obtain notices of meetings may ask to be placed on a mailing list. All notices of meetings issued will then be mailed to those appearing on the current mailing list. (Emphasis added)

* Appendix X contains the full text of the Attorney General's memorandum.

"3. Articles or Notices in Professional or Business Publications

In addition, the governing body may obtain publication of articles or notices in those professional and business publications relating to the agency's field or regulation.

It is not necessary that all of these types of notices be given. Indeed, merely providing notice through the use of a mailing list and by posting should be sufficient in most cases. Neither should the above listings be considered exclusive and, to the extent other forms of notice are reasonably available, they should be used." (Emphasis added)

The Board has not adopted any of the "additional notice" methods for notifying the public and its licensees of meetings as outlined by the Attorney General.

It should be noted that in a survey by the Office of the Auditor General of the Board's licensees*, 70 percent (382) of the 544 licensees responding stated they were not aware of scheduled Board meetings. Thus, by the current public notice methods used by the Board, only 30 percent of the license holders, and only those consumers who are notified through the postings in the Occupational Licensing Building, would be aware of meetings.

Board Actions Regarding
Public Notice Of Proposed
Rules And Regulations And
Other Board Actions

When proposing changes in rules and regulations, each agency is required by ARS 41-1002 (Administrative Procedures law) to file a notice of such changes with the Secretary of State at least 20 days prior to the proposed adoption date. The Secretary of State publishes the proposed changes monthly in the Administrative Procedures Digest.

The State Board of Technical Registration has complied with this statute; however, a review of the distribution list for the Digest, as of May 1, 1979, revealed that 87.4 percent (195) of the 223 individuals or organizations receiving the Digest were law firms or government agencies. Thus, the publication of proposed rules in the Digest does not appear to be an effective method of notifying the consuming public or Board registrants of proposed rule changes.

* Appendix VI contains the results of the survey.

A survey of 34 Arizona regulatory agencies by the Office of the Auditor General regarding methods used to encourage public input and participation in the promulgation of rules and regulations and in developing legislative proposals revealed that 82 percent (28) notified registrants of rule changes prior to the required public hearing and 35 percent (12) notified registrants of legislative proposals. Table 11 summarizes the various public input methods used by these 34 other regulatory agencies.

TABLE 11

SUMMARY OF METHODS USED BY ARIZONA
REGULATORY BODIES TO ENCOURAGE PUBLIC
INPUT AND PARTICIPATION IN THE PROMULGATION
OF RULES AND REGULATIONS AND DEVELOPING
LEGISLATIVE PROPOSALS

AGENCY	METHOD OF ENCOURAGING PUBLIC INPUT AND PARTICIPATION									
	PROMULGATING RULES				DEVELOPING LEGISLATIVE PROPOSALS					
	Informs Affected Registrants Prior To Hearing	Advertises in News Media	Informs Consumer Groups	Holds Pre-adoption Meetings Other Than Hearings	Informs Affected Registrants Prior to Adoption	Contacts Professional Associations	Advertises in News Media	Holds Pre-adoption Meetings	Solicits Consumer Group Participation	
STATE BOARD OF TECHNICAL REGISTRATION						X				
Professional Regulatory Agencies										
State Bar of Arizona	X	X			X		X			
State Board of Accountancy	X ^A					X				
State Board of Barber Examiners	X				X			X		
State Board of Chiropractic Examiners	X	X				X				
State Board of Cosmetology	X	X	X	X	X			X	X	
State Dental Board	X									
State Board of Funeral Directors and Embalmers	X	X					X	X		
Board of Medical Examiners	X				X					
State Naturopathic Board of Examiners	X					X				
State Board of Nursing	X	X			X	X	X			
Board of Optometry						X				
Arizona Board of Osteopathic Examiners in Medicine and Surgery							X			
Arizona State Board of Pharmacy	X						X			
Board of Physical Therapy Examiners	X					X	X			
State Board of Podiatry Examiners	X				X	X				
State Board of Psychologist Examiners	X		X		X	X		X		
Arizona State Veterinary Medical Examiners Board	X									
State Board of Education			X ^C	X ^C	X	X	B	X		
SUBTOTAL	15	5	3	2	8	12	3	4	1	
Other Regulatory Agencies										
Arizona Commission of Agriculture and Horticulture	X	X	X							
Arizona State Athletic Commission	X					X				
Arizona Atomic Energy Commission		X								
State Banking Department, Collection Agencies	X									
Registrar of Contractors						X		X		
Division of Mobile and Manufactured Housing Standards	X				X	X				
State Dairy Commissioner	X									
State Board of Dispensing Opticians	X									
State Egg Inspection Board	X					X				
Department of Insurance	X				X					
Department of Liquor Licenses and Control	X	X					X			
Board of Nursing Care Institution Administrators	X				X	X				
Arizona Racing Commission	X									
State Real Estate Department	X	X								
Structural Pest Control Board	X				X					
SUBTOTAL	13	4	1	0	4	6	0	1	0	
TOTAL	28	9	4	2	12	18	3	5	1	

A Statutes require notification to registrants

B Agency does not draft legislative proposals

C Agency creates task forces of professional and lay persons to develop proposals

According to the Board of Technical Registration, it utilizes two methods of soliciting input from its licensees. These methods are:

- The Board contacts various professional associations regarding the development of legislative proposals (as indicated in Table 11); and
- The Board requests the two largest professional societies to include notices of Board hearings on proposed rules and regulations in their monthly publications.

It should be noted however, that: 1) the Board has not been formally involved in the development of legislative proposals since 1974; 2) one of the two identified professional societies responded to the Office of the Auditor General that it has not received Board requests to include notices of Board hearings in their monthly publications; and 3) the other identified professional society frequently receives Board notification of proposed hearings too late to be included in their monthly publication.

As shown in Table 11, a total of nine methods are used by Arizona's regulatory agencies to solicit public input and participation when promulgating rules and developing legislative proposals. Since the State Board of Technical Registration utilizes only one of these nine methods, the Board is significantly substandard in its efforts to encourage public participation in its decision-making process.

Reflecting this substandard effort, a majority of Board license holders are not aware of actions or proposed actions by the Board. In the survey of Board licensees by the Office of the Auditor General,* approximately 67 percent of those responding stated they were not aware of Board actions and 74 percent responded they were unaware of proposed Board actions.

* Appendix VI contains a summary of the survey results.

Therefore, the licensees of the Board appear to be inadequately informed regarding the Board's action or proposed actions.

Methods For Improving

Public Participation

Mr. Ernest Gellhorn, former Dean of Arizona State University College of Law and a recognized authority on administrative procedure law, has formulated recommendations for improving the Federal Administrative Procedures Act.* Many of these recommended actions are equally applicable to state regulatory bodies. According to Mr. Gellhorn:

- "1. Agency obligations. Minimum constitutional requirements are insufficient reasons for agencies to fail to explore appropriate procedures for providing effective notice to the affected public. (Emphasis added)
2. Meeting public notice needs. Agencies should be required to provide identified, accessible sources of information about proceedings in which public participation is likely to be effective. At a minimum, each agency should:
 - a. Strive to provide notice as far in advance of the proceeding as possible; and
 - b. Prepare a separate bulletin issued periodically, identifying the proceeding and providing relevant information.
3. Attracting and focusing public attention. The public can be made aware of important agency proceedings in many ways, such as press releases to news media; requirements that applicants directly inform users; special notice to governmental bodies, citizen groups or trade associations and separate agency listing of significant matters.

* Gellhorn, Ernest, "Public Participation in Administrative Proceedings," Yale Law Journal, Volume 81, No. 3 (January 1972) pp 398-401.

"Coverage in the news media is perhaps the most effective way of reaching the average citizen, and public interest groups and agencies should make special efforts to encourage reporting of their activities. Factual press releases written in lay language should explain the significance of the proceedings and the opportunities for public participation. Releases describing important proceedings with a local geographical impact should be sent to area news media. In major matters, agencies might consider public service advertisements and announcements over local broadcasting facilities. Direct mailings are yet another alternative." (Emphasis added)

Benjamin Shimberg, a recognized authority on occupational regulation, addressed the issue of public participation in the regulatory process in a recent Council of State Governments publication*. The following section of the booklet discusses public representation on regulatory boards as one method of increasing public participation.

"The Regulatory Structure and Board Composition
Should Promote Accountability and Public Confidence

The public should be involved in the regulatory process.

For many years, trade and professional groups fostered the idea that only members of their own occupational group were qualified to make judgments about entrance standards, examination content, or disciplinary matters. This professional mystique argued that the public had no role to play in the regulatory process.

In recent years this view has been challenged. Consumers now argue that since regulation affects their vital interests, they have a right to share in the decision-making process. They point out that every day laymen legislators and jurors must make decisions in highly technical areas. They are able to do so by utilizing the testimony of experts to set forth the facts and clarify the issues.

There has been a growing movement to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation. Those who favor the idea believe that the presence of public members will help to break up the in-group psychology that often prevails when all board members are practitioners. Ideally, public members will provide a point of view otherwise absent on a board composed solely of license holders.

* Shimberg, Benjamin, and Roederer, Doug. Occupational Licensing: Questions a Legislator Should Ask. Lexington, Kentucky: Council of State Governments, 1978.

"Initial experience with public members often was not favorable because those appointed lacked the qualifications for effective service on a board. Recent experience suggests that public members can make significant contributions when they have backgrounds equipping them to deal with problems and issues likely to come before the board, a strong interest in serving, sufficient time to devote to board activities, and prior experience in community affairs so that they know how to get things done in the public arena.

While public members may not know much about the technical aspects of an occupation, they may nevertheless contribute to board deliberations by raising questions about such topics as the appropriateness of entrance requirements, board rules, tests, fees, and disciplinary procedures.

How many public members should be on a board? There is no simple answer, but if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to 10 members. In California, the legislature has decreed that for certain boards* a majority shall be public members." (Emphasis added)

The publication went on to point out another problem that may result from professionally dominated boards, by stating:

"Many regulatory agencies are perceived as overly protective of those whom they regulate. This has led consumers to question whether professionally dominated boards are willing to deal forcefully with their peers when complaints are received from the public. Consumers also express doubts that they will receive a fair hearing before boards composed solely of licensed practitioners." (page 33)

When questioned by the Office of the Auditor General about the possibility of public representation on the Board, six of the Board members agreed with the concept. One of the members commented:

"Addition of lay members to the Board could result in improving the Board's performance regarding consumer complaints...."

* "In California, the boards that regulate architects, engineers, geologists, landscape architects and land surveyors have public representation which constitute a majority of the boards' membership."

The three Board members that opposed the concept expressed the following concerns:

- "It would be difficult for a lay member to determine competency of applicant."
- "I am against this. I see no constructive contribution that a lay person could add to the board. Politics would then enter the board and be detrimental to public safety."
- "Not necessary since we have a mixed membership of Geologist*, Architects, Engineers, etc."

Under ARS 41-2354 (The Sunset Law), one factor that shall be considered in determining the need for continuation or termination of each agency is:

"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."

In our opinion, the State Board of Technical Registration has not adequately encouraged the input of license holders, consumers of licensees' services or the general public in the promulgation of rules or other actions and has not adequately informed the public of its actions and their expected impact.

Cost Of Program To
Encourage Public Input
Would Be Minimal

The Executive Director of the Board has stated that because of the Board's concern regarding the cost of notifying the Board's licensees and the public of Board meetings and actions, the Board has limited its efforts to notifying the professional societies.

* Current Board membership does not include a geologist.

A review of the costs of selected public input methods revealed that the combined cost for a mailing to Board license holders and professional associations, a press release to news media, and legal advertisement in five Arizona Newspapers would be approximately \$1,200. Table 12 details the estimated costs for encouraging public input.

TABLE 12

ESTIMATED COSTS* FOR IMPLEMENTING
THREE METHODS OF ENCOURAGING PUBLIC
PARTICIPATION BY THE BOARD OF OPTOMETRY

<u>Public Participation Method</u>	<u>Estimated Cost</u>
Copying and postage costs to mail announcements to license holders, professional associations and interested individuals*	\$1,125
Copying and postage costs for press release to 25 newspapers, radio and TV Stations*	5
Legal advertisements in five Arizona newspapers @ \$14.75 average** cost per newspaper	<u>74</u>
Total	<u>\$1,204</u>

* Staff time to type and mail copies not included in cost estimate.

** Based on actual costs for legal advertising in 20 Arizona newspapers.

The estimated cost for these three methods for encouraging public participation, if utilized four times per year, would be approximately \$4,800. This represents 3.3 percent of the 1978-79 fiscal year expenditures for the Board and 2.8 percent of the 1979-80 budget. It appears that this represents a minimal level of expenditure affordable by the Board.

CONCLUSION

The Board of Technical Registration has been substandard when compared to other Arizona regulatory agencies in its encouragement and use of public input in its operations. As a result, license holders are not adequately informed of Board meetings, actions and proposed actions and consumers have significantly limited opportunities to be informed concerning Board activity.

RECOMMENDATION

It is recommended that:

- The State Board of Technical Registration adopt methods to encourage public input and participation in the promulgation of rules and regulations, development of legislative proposals and other decision-making processes of the Board. Consideration should be given to the methods being used by other Arizona regulatory bodies and other methods of increasing public input and participation including:
 - Press releases,
 - Special notices,
 - Public service announcements, and
 - Direct mailings.

- The State Board of Technical Registration file a statement with the Secretary of State indicating where all public notices of their meetings will be posted.

- ARS 32-102 and 32-103 be amended to provide for public membership on the State Board of Technical Registration.

OTHER PERTINENT INFORMATION

Potential Restraint of
Trade Violation

Arizona Revised Statutes section 32-125(C) states:

"It is unlawful for a registrant whose certificate has expired or has been revoked or suspended to use the seal, or for a registrant to sign, stamp or seal any document not prepared by him or his bona fide employee." (Emphasis added)

Because of the lack of an explicit statutory definition of a "bona fide employee," the Board has informally established the following conditions that must be present before a licensee of the Board can consider an unlicensed person a "bona fide employee:"

The licensee must -

1. Deduct federal and state employee-related taxes from the unlicensed person's pay,
2. Set the hours to be worked by the unlicensed person,
3. Provide suitable working space for the unlicensed person, and
4. Provide other employee benefits to the unlicensed person, as applicable.

The Board has determined that if a licensee signs the work of an unlicensed person and if the preceding conditions are not met then the licensee is guilty of aiding and abetting an unlicensed person. The Legislative Council, in a May 30, 1979 Opinion*, stated that while ARS 32-125(C) is probably exempt from federal or state laws regarding restraint of trade, the Board's interpretation of what constitutes a "bona fide employee" may well violate federal and state laws relating to restraint of trade. The opinion states, in part:

* Appendix I contains the full text of this opinion.

"Finally, a good argument can be made that the limitation on the employer/employee relationship imposed by the board of technical registration results in action by a conspiracy to illegally restrain trade. A registrant's right to hire a person to prepare documents is limited to those persons who meet the board's definition of a 'bona fide employee.' A registrant thus could not hire a person to prepare documents, for instance, on a contract basis. As a result of this practice, the registrant's fee to the public possibly could be inflated, a practice which is contrary to the federal and state antitrust policies of preserving competition and thereby protecting consumers by ensuring quality at a fair price. Meyer and Smith, Attorney Advertising: Bates and a Beginning, 20 Ariz. L. Rev. 427, at 438 n. 62 (1978)."

It should be noted that the majority of disciplinary actions taken by the Board during the last fifteen years may have resulted from the Board's enforcement of ARS 32-125(C).*

* Table 6 on page 17 contains a summary of the formal hearings conducted by the Board from April 1968 through June 1979.

Equal Employment Opportunity
Responsibilities of Licensing
Authorities

The Federal Equal Employment Opportunity Act, promulgated federal regulations and recent case law, define equal employment opportunity responsibilities of state licensing authorities such as the State Board of Technical Registration. Under the Equal Employment Opportunity Commission (EEOC) regulations, licensing tests which have a discriminatory adverse impact on minorities may have to be validated to demonstrate the relationship between the test and job performance. In a court decision involving a selection test used by the Duke Power Company the court noted the dangers of using tests, diplomas, or degrees "as fixed measures of capability." The decision continued, "history is filled with examples of men and women who rendered highly effective performance without the usual badges of accomplishment in terms of certificates, diplomas or degrees." Further, "diplomas and tests are useful servants, but congress has mandated the common-sense proposition that they are not to become masters of reality." The major thrust of the decision appears to be, "nothing in this act precludes the use of testing or measuring procedures. Congress has not recommended that the less qualified be preferred over the better qualified...what congress has considered is that any tests used must measure the person in the job and not the person in the abstract."

Advice from Albert Maslow, chief of the Personnel Measurement Research and Development Center, U.S. Civil Service Commission, should be considered by licensing boards. He says, "I am convinced that we need to sharpen our ability to develop and demonstrate the rational relationship between the job requirements and the measurement system used to certify or qualify people for an occupation. A number of techniques are available to improve the process of job analysis to get a much more exact fix on the critical requirements for the work to be done. I would urge, therefore, that, especially in examinations for occupational knowledge and proficiency, you insist, at the very least, on a clear-cut showing of how one proceeds from the decision as to the skills and abilities required for effective performance to the decision that certain tests

or other measures will ensure that the applicant can adequately perform in that occupation. The entire decision-making process, from setting minimum standards to making a final certification on the basis of appraisal data, must be very carefully analyzed step by step to make sure that it does not inadvertently lock out certain segments of our population."*

It should be noted that two studies of the national examinations administered by the Board have raised questions regarding the EEOC guidelines. Appendix XI contains the report from one of these studies.

* Appendix I contains a Legislative Council memorandum dated May 15, 1979, describing state licensing authorities responsibilities and interpretation of EEOC guidelines.



State of Arizona
BOARD OF TECHNICAL REGISTRATION

FOR ARCHITECTS, ASSAYERS, ENGINEERS, GEOLOGISTS, LANDSCAPE ARCHITECTS AND LAND SURVEYORS
1645 W. JEFFERSON, SUITE 315 • PHOENIX, ARIZONA 85007 • (602) 255-4053

August 31, 1979

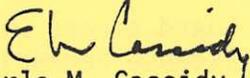
The Honorable Douglas R. Norton
Auditor General - State of Arizona
112 North Central Avenue
Phoenix, Arizona 85004

Dear Mr. Norton:

A review of the draft report of your performance audit for the State Board of Technical Registration has been made by the members of this Board. Written comments of the Board are enclosed.

The opportunity to review the draft report has been appreciated by the members of the Board, and your office is to be complimented for the thoroughness of your efforts.

Sincerely,


Earle M. Cassidy
Executive Director

vbn
Enclosures

COMMENTS ON PERFORMANCE AUDIT
by State Board of Technical Registration

FINDING I The State Board of Technical Registration has been remiss in its duty to protect the safety, health and welfare of the public.

COMMENTS:

- a. On Summary Recommendations, Page 3.

Board in past years emphasized careful evaluation of applicants for registration as a preferred means of assuring satisfactory performance by licensees. Board recognizes the need for increased effort in the investigation of complaints and agrees that Recommendations 1, 2 and 3 are some of the means to achieve better enforcement of standards of professional practice. Board will request an increase in staffing level and budget to support this effort.

- b. On Specific Recommendations, Pages 39-40.

Board agrees with Recommendations 1 and 2. The 1980-81 budget request calls for an additional staff member that will allow the Executive Director to conduct more field investigations and to work closely with Building Safety Departments throughout the state.

Board agrees with Recommendation 3. Since June 1978 all board meetings have been taped and kept on file, and taping of committee meetings with written summaries in files and appended to board meeting minutes is being expanded.

Board agrees with Recommendation 4 and notes that since March 1979 a news summary (including complaint actions) of each board meeting has been mailed to newspapers, building departments and professional and technical societies within the state. An expansion of this effort is in order.

Board agrees with Recommendation 5 and in July 1979 increased the license renewal fee from \$10 to \$15 annually (effective for 1980) in order to balance its budget and increase its investigative efforts.

Board agrees with Recommendation 6 and notes that it prefers a formal complaint prior to board action, but does not require it. Of 19 complaint files opened in 1979 to this date (August 31) eight were based upon informal letters of complaint or information.

- c. On Recommended Amendments to A.R.S. 32-101, et seq., Page 40.

Board agrees with need for additional punishment options, such as proposed by Recommendation 1.

Board disagrees with Recommendation 2 and would require courts, insurance carriers and licensees to report judgments or settlements in cases involving fraud, deceit, negligence or incompetence.

Board disagrees with Recommendation 3 and would encourage instead of require licensees to report known violations.* To "require"

* Office of the Auditor General concurs. The report draft was amended accordingly.

licensees to report has certain "police state" inferences that are unsavory. A Code of Ethics for the professions as a part of the statutes might be a more effective means to accomplish the desired results.

Board agrees with Recommendation 4.

Board disagrees with Recommendation 5 and believes that restitution properly is the province of arbitration boards and civil courts.*

Board and Attorney General should seek to include the Attorney General (through the assistant assigned to the Board) more completely in all Board deliberations, and therefore overcome the need for independent action by the Attorney General as proposed by Recommendation 6.*

FINDING II The absence of written policies and adequate records of proceedings precludes a determination that the Board of Technical Registration has exercised its discretionary authority in the public interest.

COMMENTS:

a. On Summary Recommendations, Page 3.

In support of Recommendations 4 and 5, Board will continue its recent efforts to establish additional rules and policies describing its interpretation of its discretionary powers regarding satisfactory experience and the criteria for waiver of examinations. Additional documentation of committee deliberations and decisions is desirable and will be forthcoming, with proper regard paid to freedom of information and privacy statutes.

b. On Specific Recommendations, Page 56.

Board agrees with Recommendation 1. In early 1979 the Board adopted formal evaluation criteria for architects and is continuing its efforts to adopt common criteria for other disciplines wherever practical and whenever professional judgment allows it.

Board agrees once again with need for better documentation, as expressed in Recommendation 2.

Board agrees with Recommendation 3 and will instruct its staff to comply.

FINDING III Changes needed to improve the efficiency and effectiveness of the State Board of Technical Registration.

COMMENTS:

a. On Summary Recommendations, Page 3.

See Board comments in Paragraph b below as they apply to Summary Recommendations 6 - 8.

* Office of the Auditor General concurs. The report draft was amended accordingly.

b. On Specific Recommendations, Pages 65 and 66.

Board agrees with Recommendation 1 that a multi-year renewal system appears desirable.

Board agrees with Recommendation 2. Most comity applications (applicants already registered in another state with requirements equal to those in Arizona) could be evaluated satisfactorily without the personal audience. However, applications from non-registrants should be subject to a personal audience without exception.

Board agrees with Recommendation 3. The annual roster is a heavy expense to the Board and of questionable value to the bulk of the licensees.

Board disagrees with Recommendation 4, noting that denials are issued after proper deliberation, and the one-year wait is invoked only in those cases where applicants have repeatedly failed to comply with board requirements.

Board agrees with Recommendation 5.

FINDING IV The State Board of Technical Registration has been substandard in its encouragement and use of public input in its operations. Information regarding meeting notices, proposed rules and regulations, and Board action has not been adequately provided to licensees of the Board or the consumers of the licensees' services.

COMMENTS:

On Recommendation 9, Page 3 (See also Page 76).

Board agrees with Recommendation 9. Board recognizes this weakness and has begun efforts to improve information dissemination (see comments on Specific Recommendation 3 under Finding I). Board will request increase in staffing level and budget to support this effort.

APPENDICES

ARIZONA LEGISLATIVE COUNCIL

MEMO

April 13, 1979

TO: Douglas R. Norton, Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-79-17)

QUESTION PRESENTED:

Does the statutory limit of one hundred dollars for fees for registration of architects, assayers, engineers, geologists, landscape architects and land surveyors with the state board of technical registration prescribed in section 32-124, Arizona Revised Statutes, apply severally or collectively to the fees mentioned?

ANSWER: Collectively.

Section 32-124, Arizona Revised Statutes, provides:

The board shall publish in its rules a schedule of fees for applications, examinations, and such other miscellaneous fees for services rendered as required which shall not exceed one hundred dollars.

The issue presented by the inquiry is whether the board of technical registration may charge up to one hundred dollars for an application, up to one hundred dollars for the examination and an additional maximum of one hundred dollars for miscellaneous fees for services rendered, whether only a total of one hundred dollars for all three fee categories collectively may be charged or whether "one hundred dollars" only modifies "miscellaneous fees for services rendered."

By reference to the fee schedule published by the board (A.C.R.R. R4-30-27 through R4-30-31), the fees charged architects and landscape architects already collectively exceed one hundred dollars. The office of the state board of technical registration confirmed that there is some question concerning the meaning of section 32-124, Arizona Revised Statutes, but they have interpreted the provision to mean that the one hundred dollar limitation applies to each type of fee category individually.

On its face, the section is not clear as to the total amount which may be charged by the board. The modifying clause "which shall not exceed one hundred dollars" could be interpreted to apply to each fee category, only the miscellaneous fee category or all three fee categories collectively.

No case law was found construing this statute and there is no similar statutory provision. Additionally no other Arizona profession and occupation regulatory law exists that has been interpreted by a court as to this issue.

An examination of the legislative history of section 32-124, Arizona Revised Statutes, is instructive regarding its interpretation. Until 1970, the laws relating to the state board of technical registration fees set forth specific fee amounts for application for registration. For example, section 32-124, Arizona Revised Statutes, as amended by Laws 1968, chapter 92, section 5 provided for the following application fees:

1. For an architect, engineer, geologist or landscape architect, twenty-five dollars.
2. For an assayer or land surveyor, fifteen dollars.
3. For an engineer-in-training, ten dollars.

Since no written examination was required in 1968, these fees were exclusive.

In Laws 1970, chapter 88, sections 6 and 7, the Legislature repealed section 32-124, Arizona Revised Statutes, and replaced it with the section 32-124, Arizona Revised Statutes, that is currently effective. Because only two years had elapsed, it seems evident that the intent of the new provision was to raise the total fee to a maximum of one hundred dollars and not that the board could charge one hundred dollars for the application, another one hundred for examination and a third one hundred for miscellaneous fees instead of a total fee of twenty-five dollars. You may wish to recommend that section 32-124, Arizona Revised Statutes, be amended to clearly reflect the appropriate fee charges, perhaps in conjunction with the upcoming sunset review.

CONCLUSION

The statutory limit of one hundred dollars pertains to the items mentioned in section 32-124, Arizona Revised Statutes, collectively. Thus the maximum fee chargeable against an applicant for registration is limited to one hundred dollars.

ARIZONA LEGISLATIVE COUNCIL

MEMO

May 30, 1979

TO: Douglas R. Norton, Auditor General
FROM: Arizona Legislative Council
RE: Request for Research and Statutory Interpretation (O-79-32)

This is in response to a request made on your behalf in a memo dated April 26, 1979 by Gerald A. Silva.

FACTS:

Arizona Revised Statutes section 32-125, subsection C states:

C. It is unlawful for a registrant whose certificate has expired or has been revoked or suspended to use the seal, or for a registrant to sign, stamp or seal any document not prepared by him or his bona fide employee.

The purpose of this chapter which regulates architects, assayers, engineers, geologists and surveyors is set forth in Arizona Revised Statutes section 32-101, subsection A, which states:

A. The purpose of this chapter is to provide for the safety, health and welfare of the public through the promulgation and enforcement of standards of qualification for those individuals licensed and seeking licenses pursuant to this chapter.

The board of technical registration has informally determined that for a person to be considered a "bona fide employee" his employer must:

1. Deduct federal and state employee-related taxes from the employee's pay.
2. Set the hours to be worked by the employee.
3. Provide suitable working space for the employee, and
4. Provide other employee benefits, as applicable.

QUESTION PRESENTED:

1. How does [the] required employee/employer relationship [set forth in Arizona Revised Statutes section 32-125, subsection C] between the preparer of the documents and the registered professional who reviews, seals and issues the documents relate to the purpose of the chapter as defined in Arizona Revised Statutes section 32-101, [subsection] A?

2. Would enforcement of [Arizona Revised Statutes section 32-125, subsection C or the Board of Technical Registration's determination of what constitutes a "bona fide employee"] represent a violation of state or federal laws regarding restraint of trade?

DISCUSSION:

1. Courts generally use a purpose clause as a way of focusing attention on an insight that is often helpful in making a judgment about intent or meaning. Legislative purpose thus represents a starting point for inquiry and analysis rather than a standard of decision. Sutherland, Statutory Construction, 4th Ed. Section 45.09.

However, a purpose clause should be relied on only insofar as its objectives cannot otherwise be achieved as a clear by-product of the concrete working sections of the bill. Dickerson, Legislative Drafting, Section 9.1 (1954).

In this case, the intent of Arizona Revised Statutes section 32-125, subsection C is clear on its face. This subsection was written to make certain that the public welfare would be protected by prescribing that a licensee could only approve documents prepared by a person who is employed by the licensee. By requiring an employer-employee relationship, this subsection assures that the quality of documents prepared by the employee remains high.

2. Arizona Revised Statutes sections 44-1401 et seq. contain the Arizona antitrust laws. Section 44-1402 states:

A contract, combination or conspiracy between two or more persons in restraint of, or to monopolize, trade or commerce, any part of which is within this state, is unlawful.

The federal antitrust law is found in the Sherman Antitrust Act. 15 U.S.C. Section 1, et seq. Section 1 of this Act provides that "Every contract, combination . . . or conspiracy in restraint of trade or commerce among the several states . . . is declared to be illegal." Generally, both laws concern private persons combining in such a manner as to restrain or prevent competition.

In any analysis of a federal antitrust claim there are certain possible exemptions to the application of the Sherman Act. One of these exemptions is termed "state action". This exemption was first expressed in Parker v. Brown, 317 U.S. 341 (1943). In Parker, the Court upheld the activities of a California agency fixing raisin production and prices even though this was done at the request of and with the concurrence of a majority of growers. The Court held that the Sherman Act's prohibition against contracts in restraint of trade by "any person" applied to private businesses, not government agencies.

As explained in Meyer and Smith, Attorney Advertising: Bates and a Beginning, 20 Ariz. L. Rev. 427 (1978), the state action exemption:

. . . is based upon the state's right, as a sovereign, to legislate, and exempts from the antitrust laws anticompetitive activity required by the state that would ordinarily be an antitrust violation if effected by a private person. The purpose of the state action exemption is to prevent confrontations between a state and the federal government in situations where certain

economic behavior, allowed by a particular state, contravenes provisions of the federal antitrust laws. Id. at 437-438.

The state action exemption underwent further analysis in Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975). In Goldfarb the Court held that a lawyer's price fixing scheme mandated by the Virginia State Bar violated the Sherman Act. The Court dispelled the notion that a state instrumentality was automatically immune from liability under antitrust laws. The Court's language indicated that the issue of a state mandate was only the initial inquiry in a federal antitrust analysis, thereby implying that something more is required than the sole fact that the state took anticompetitive action. Goldfarb at 790-791.

This "something more" was expressed in Bates v. State Bar of Arizona, 433 U.S. 350 (1977). Although the Bates Court held that the ban against lawyer advertising is a violation of the First Amendment, the U.S. Supreme Court stated that the ban against lawyer advertising was not subject to challenge on antitrust grounds since the ban was promulgated by the state supreme court. This qualified as action by the state and thus was exempt from the Sherman Act under the state action exemption. In regard to the state action exemption the Court stated that:

The disciplinary rules reflect a clear articulation of the state's policy with regard to professional behavior . . . the rules are subject to pointed reexamination by the policymaker -- the Arizona Supreme Court -- in enforcement proceedings. Our concern that federal policy is being unnecessarily and inappropriately subordinated to state policy is reduced in such a situation; we deem it significant that state policy is so clearly and affirmatively expressed and that the state's supervision is so active. Bates at 362.

In this case it is clear that the state legislature, in enacting Arizona Revised Statutes section 32-125, was taking action by the state in its sovereign capacity. The statute is a clear expression of state policy to regulate the profession in order to protect the health and welfare of the public. The employer/employee relationship required by section 32-125, subsection C assures that the quality of documents prepared by the employee remains high.

Thus we conclude that the required employer/employee relationship prescribed in Arizona Revised Statutes section 32-125, subsection C is exempt from federal antitrust laws under the state action theory.

In addition, a reading of Arizona Revised Statutes sections 44-1401 et seq. indicates that the state antitrust law was intended to operate against individuals, corporations and business combinations. However, it seems obvious that a person's action that is prescribed by the state legislature is not subject to the state antitrust law.

In this case, the Board of Technical Registration, by informally defining what constitutes a bona fide employee, has narrowed the scope of the employer/employee relationship prescribed in Arizona Revised Statutes section 32-125, subsection C. Recent cases have indicated that actions by state agencies and boards are not state-compelled and thus not entitled to an exemption under the state action theory. Cantor v. Detroit Edison Co., 428 U.S. 579 (1976); City of Lafayette v. La. Power and Light Co., 98 S.Ct. 1123 (1978).

The Board of Technical Registration has the authority to "[d]o . . . things necessary to carry out the purposes of this chapter." Arizona Revised Statutes section 32-106, subsection A, paragraph 8. It is arguable whether the board's definition is something which is necessary to carry out the purpose of this chapter and whether the board's informal action is the proper method to prescribe a restriction upon the registrants. In addition, since the state legislature did not define the term "bona fide employee" it apparently intended to leave the definition open. Although we cannot predict how a court might rule in this matter, we conclude that the board's informal action in narrowing the term "bona fide employee" was not action by the state and thus does not fall under the state action exemption.

If the board action is not action by the state, it must be analyzed as a possible antitrust violation under state or federal antitrust law. A threshold question is whether actions by licensees pursuant to board action could be considered a contract, combination or conspiracy. The essence of conspiracy is a voluntary assent to a common scheme or plan. In U.S. v. Texas State Board of Public Accountancy, 1978-1 Trade Cases (CCH) paragraph 62,039, mod. & aff. (C.A. 5th) 1979-1 (CCH) paragraph 62,546, the court stated that a conspiracy could arise (within the meaning of the Sherman Antitrust Act) from any agreement, express or implied, to accomplish an unlawful purpose or to accomplish some purpose not in itself unlawful by unlawful means. In the Texas case, the court held that actions by the permit holders pursuant to a board rule were a conspiracy since neither the board nor the permit holders could put the rule into effect acting alone. Each acted knowing the assent of the other was required. Thus, under the facts presented to us, it appears that actions by the registrants pursuant to an informal rule of the board of technical registration could be held by a court to be action of a conspiracy.

Finally, a good argument can be made that the limitation on the employer/employee relationship imposed by the board of technical registration results in action by a conspiracy to illegally restrain trade. A registrant's right to hire a person to prepare documents is limited to those persons who meet the board's definition of a "bona fide employee". A registrant thus could not hire a person to prepare documents, for instance, on a contract basis. As a result of this practice, the registrant's fee to the public possibly could be inflated, a practice which is contrary to the federal and state antitrust policies of preserving competition and thereby protecting consumers by ensuring quality at a fair price. Meyer and Smith, Attorney Advertising: Bates and a Beginning, 20 Ariz. L. Rev. 427, at 438 n. 62 (1978).

CONCLUSION:

1. A purpose clause is generally designed to clarify legislative intent. However, it would be relied upon in a court interpretation only if the substantive portions of a statute are unclear or ambiguous.

2. The requirements of Arizona Revised Statutes section 32-125, subsection C probably are exempt from federal or state laws regarding restraint of trade under the state action theory. However, the determination by the board of technical registration as to what constitutes a "bona fide employee" may well violate federal and state laws relating to restraint of trade.

ARIZONA LEGISLATIVE COUNCIL

APPENDIX I.C

MEMO

May 1, 1979

TO: Douglas R. Norton, Auditor General
FROM: Arizona Legislative Council
RE: Request for Research and Statutory Interpretation (O-79-27)

This is in response to a request made on your behalf by Gerald A. Silva, received on April 17, 1979.

QUESTIONS PRESENTED:

1. Is there any legal precedent that indicates licensing, especially renewal licensing, is an assurance of continued proficiency in a profession or occupation?
2. If so, should license holders be required to demonstrate this through testing or continued education to retain their optometry or other professional/occupational licenses?

ANSWERS:

1. No.
2. See discussion below of this legislative policy.

1. It is stated in your memo that the board of optometry, as with numerous other Arizona licensing boards, administers examinations and reviews educational backgrounds of potential optometrists when issuing initial licenses, and that neither Arizona law nor the board's current rules and regulations contain any requirement for demonstration of continued proficiency by license holders.

We have discovered no legal precedent indicating that licensing or renewal licensing is an assurance of continued proficiency on the part of an occupational licensee. On the contrary, the Arizona Supreme Court in 1937 in a case relating to a plumber licensed by the city of Phoenix who had allowed his "grandfather" license to expire made this appraisal of the whole field of occupational licensees:

It seems to us that the only plausible argument which may be urged by petitioner in favor of his right to be exempt from examination is that since he was once given a license as a master plumber without examination, he is now entitled to have one for the balance of his life free from such restriction. We are of the opinion that this is not a constitutional right of the applicant. In the first place, the ordinance might properly have required an examination even of men who had been in the plumbing business for many years, as a condition precedent to the issuance of any license, for the mere fact that a man has, without examination, followed an occupation for many years, although it may be accepted as *prima facie* evidence that he is sufficiently qualified to continue so to do, is by no means conclusive to that effect. There are many, in almost every occupation, who are totally unfitted to follow it, even though they have "practiced" on a helpless or unsuspecting public for many years. The concession made by the ordinance

under which petitioner obtained his first license is a matter of grace and not a matter of right, and we see no reason why the ordinance might not have required periodic examinations, had the authorities so desired, of every applicant for a renewal of a license. (Emphasis supplied) Bd of Examiners v. Marchese, 49 Ariz. 350, 359.

The court also quoted with approval the following language from State v. Williams, 297 Mo. 607, 250 S.W. 44:

It is a mistaken conception of the nature of any calling, professional, commercial, or industrial, that it is invested with such sanctity as to exempt it from reasonable legal regulations. The ever-expanding exercise of the police power manifested in the enactment of regulatory statutes, embracing every possible vocation, demonstrates the fallacy of this conception. The purpose of such statutes is in some instances to encourage efficiency and in others to promote sanitation, whereby in the first incompetency may be eliminated and in the second the public health preserved. . . .

A re-examination of one who has permitted his license to expire is not an oppressive requirement or an invasion of his inherent right. It affords the board an opportunity to determine whether, under that feeling of security afforded by a license renewable upon a mere application, the applicant has not become inefficient through mental inertia.

CONCLUSION:

Legal precedent does not indicate that licensing or renewal licensing is an assurance of continued proficiency in a profession or occupation.

2. The applicant for an initial license is not ordinarily one who has demonstrated proficiency in a field, since the applicant is seeking to enter the field. Except in those relatively few occupations which require some experience or a period of apprenticeship, or where a practical demonstrative examination is given, educational qualifications and a written examination are the usual bases for licensing. The proficiency which results from experience and judgment develops from practice, which can only occur after a license is issued. It would be difficult to say at what point after initial licensing a licensee in each licensed field who has not been the subject of complaints should be required to demonstrate his proficiency or continued proficiency, or whether this can be demonstrated by still another examination or by proof of continuing education. Successfully engaging in an occupation may itself be considered continuing education.

While a licensed calling may not be "invested with sanctity", periodic reexamination would require a licensee in an area to which he has devoted years of preparation to accept what amounts to a provisional or eternally probationary license, dependent upon a future repetitive showing on his part that he is competent to exercise that license. It would reverse or at least shift the burden of the present system of licensure in which a licensee need not defend his competence until called upon to answer a complaint made to the regulatory agency. In effect, all state licensees would be in the position of one who moves here from another jurisdiction. It is doubtful that this would be found to be "reasonable regulation". It would be more reasonable to cancel licenses for non-use, than to require justification of active licenses. Automatic renewal must result in the holding of licenses in many fields by licensees who do not engage in the licensed occupation but keep the license as a hedge against future reentry into the field. Relatively few occupations tie the license to the employment.

In Shimberg, Improving Occupational Regulation, a report prepared for the Employment and Training Administration, U.S. Department of Labor in 1976, remarks on continued proficiency made at four regional conferences of legislators, administrators and representatives of governors are summarized at pages 35-37:

Legislators recognize continued competence as one of the thorny issues with which they must deal now and in the years ahead. The rising cost of malpractice insurance and pressures from professional groups for mandatory programs of continuing education are forcing legislators to look closely at an issue that has heretofore been largely ignored. Most of the emphasis in licensing occupations and professions has been on initial competence. Little attention has been paid to the question of continued competence.

* * *

Legislatures have felt increased pressure to require that licensed practitioners participate in programs of continuing education (CE) as a condition of relicensure. Some people believe that this is a tactic to forestall programs that might require practitioners to be reexamined periodically. Regardless of the truth or fallacy of that assertion, some people maintain that one reason some associations are promoting continuing education is that they stand to benefit financially by developing and marketing continuing education programs for their occupation or profession. However, others point out if continuing education was widely adopted it would put an almost intolerable burden on the educational community. For example, in New York State, there are more than 275,000 registered nurses and licensed practical nurses. A shortage of qualified faculty is said to exist even without mandatory continuing education programs. A representative from that state said, *It is hard to imagine what a mandatory program would do to us.*

During the course of the conferences, many questions were raised about the need for mandatory CE programs. One person asked, *Is there proof that anyone has been seriously harmed because of the lack of competency reassessment or mandatory continuing education?* Another asked, *Is it worthwhile to subject a whole discipline to mandatory continuing education when only a small minority may need it?* There was some feeling that continuing education programs should be required only where a specific and justifiable need can be demonstrated. *Priorities should be established based on need*, one participant suggested. *We should not try to mandate continuing education for everyone until we have a better feel for what the continuing education approach can accomplish.* Another participant criticized continuing education as *window dressing, especially where a person gets credit for attending a meeting or taking a course. That doesn't necessarily mean he's competent!*

Several individuals expressed concern about the potential cost of continuing education to the consumer. One asked, *What assurance do we have that continuing education will provide the consumer with greater protection against the incompetent practitioner?* A legal officer supported this view. He stated that most complaints do not stem from allegations of incompetence. *Most of the rip-off artists are extremely competent. They are just out to make a fast buck.* Several licensing officials felt that the problem -- if there really was one -- could be better handled by investigating all complaints and by a vigorous enforcement program.

Two practical problems relating to continuing education were raised in the course of the discussion:

Practitioners in rural areas do not have ready access to seminars and training programs that are readily available in urban areas. If they are required to take the same exam as their urban counterparts, they would probably be at a serious disadvantage. Indeed, some might not qualify for relicensure. This would represent a serious social loss since rural practitioners are in short supply.

Interstate mobility would be made more difficult if practitioners licensed in a number of states had to meet differing education requirements in each state. One participant said, *We have engineers who are licensed in 17 states. They could make a full-time career of keeping up with continuing education requirements.* Another said, *It would be difficult to implement the concept of endorsement if states had widely differing continuing education requirements.* Someone suggested that the problem should not be dealt with on a piecemeal basis. *It has national implications and a national system should be created. Some sort of credit clearinghouse is a must.*

Periodic Reexamination

The idea of periodic reexamination to establish competence met with considerable resistance and skepticism. Doubt was expressed that written tests could provide trustworthy evidence of competence. *Even if they could,* one person said, *it would be a nightmare to test everybody.* The problem with testing, several people noted, was that after they leave training most professionals tend to specialize. Hence they probably couldn't pass an examination covering the entire field the way they once could. This doesn't mean they are incompetent or that taking courses is necessary to insure that they will function properly.

A number of people asked whether it might make sense to license practitioners to render services only in their specialties . . . and to forego the myth that they are competent to provide services across the entire range. If a person has lost touch with certain aspects, he shouldn't insist that he is still qualified because his original license says so.

Voluntary Certification

As an alternative to requiring reexamination as a condition for relicensure, it was suggested that greater emphasis be placed on voluntary certification in various specialties. Thus, an individual would be licensed and could legally work in any of the specialties, but the public would have a basis for selecting practitioners who had demonstrated their competence by voluntarily meeting the standards of a certification agency. The certification process might include some type of examination as well as evidence of appropriate education and experience.

Performance Audit

Several individuals suggested that boards be given statutory authority to audit the work of licensees in a manner appropriate to the occupation or profession. There might be some tie-in with a Professional Standards

Review Organization (PSRO). It was also suggested that investigations or audits should be conducted by an independent agency, not by the same agency that is responsible for licensure.

Arizona Revised Statutes provide for continuing education for renewal of licenses in seven license categories, six of them in the health field: chiropractors (32-923), podiatrists (32-829), dentists and affiliated occupations (32-1207), physicians and surgeons (32-1429), osteopathic physicians and surgeons (32-1825), nursing care institution administrators (36-446.07) and real estate brokers and salesmen (32-2130). All continuing education requirements were added since 1974, and three were added in 1977. In 1978, S.B. 1132 was introduced to repeal all of them. Those relating to chiropractors were removed this year by Laws 1979, ch. 46, sec. 1. Some are waivable by the regulatory board for various causes in individual cases. Some seem perfunctory: the two-day course required by statute of osteopathic physicians and surgeons can be satisfied, among other alternatives, by attending the annual meeting of the American Osteopathic Association or the annual meeting of the state osteopathic society (Arizona Rules and Regulations R4-22-01). The requirement that physicians and surgeons show proof every three years of completion of a continuing medical education program has been implemented by the board of medical examiners by rule (R4-16-14) effective this year requiring a minimum of 60 hours. The medical profession, of course, has a wide range of voluntary continuing education programs leading to specialty recognition within the profession. The rules of the board of chiropractic examiners before the requirement was removed detailed at length the programs which satisfied the 24-hour professional education program required of chiropractors; presentation of a paper to a professional audience was worth ten hours of credit (R4-7-60 through R4-7-62). The dental board has promulgated a rule not yet published, to be effective July 1, 1979, to implement the discretion granted in 1974 to the board of dental examiners to require continuing education. The rule will require from 60 to 75 hours over a five-year period in a program approved by the board. The real estate board is required by statute to maintain a list of approved sessions fulfilling the requirement of up to 24 hours of educational sessions. The board of podiatry examiners (R4-25-50 through R4-25-53) requires 24 hours of approved courses, although the statute is silent as to the hours required. The board of examiners for nursing care institution administrators (R4-33-30) details at length the kind of courses which satisfy the 25-hour statutory requirement. Unlike osteopathic physicians and surgeons, nursing care institution administrators may earn a maximum of only 6 hours credit for attendance at annual meetings of national health care organizations.

There is no formal requirement for continuing legal education in Arizona, although that may be on the way. The proposal is not universally recommended by scholars. Gellhorn, Abuse of Occupational Licensing, 44 Univ. of Chicago L. Rev. 6 (1976) states at p. 24:

The advocacy of mandatory continuing legal education, sometimes linked with proposals concerning specialist certification, has also become clamorous. Four states have already approved mandatory systems intended (as their proponents say) to maintain high levels of professional competence; similar plans are said to be under serious consideration in more than half the states. A common feature of the plans is that all licensed lawyers must annually enroll for a stated number of hours in formal course work, in programs approved by a state supervisory body.

The efficacy of this kind of compulsory education is dubious. Advocates of forced schooling have at times ignored the expense involved, have overlooked the reality that sitting in lecture halls for, say, fifteen hours a

year may not be a highly productive mental exercise, and have made assumptions about the cause and cure of professional inadequacies without verifying them by empirical studies. Moreover, mandatory continuing legal education involves large hidden social costs.

The most recent approach in Arizona to the concept of certification for specialization rather than of continuing education for all is in the field of solar energy installation, recently the subject of complaint against certain licensed contractors and others demonstrating a lack of competence in this new field. A licensed contractor may, and after June 30, 1980 must, qualify as a solar contractor within the scope of his particular license by passing an examination administered by the registrar of contractors based on materials provided by the state solar energy research commission (H.B. 2077, Thirty-fourth Legislature, First Reg. Sess., not yet signed by the Governor) before installing or repairing a solar device.

CONCLUSION:

Informed opinion differs as to the value of reexamination or mandatory continuing education as devices for demonstrating continued proficiency in a profession or occupation.

cc: Gerald A. Silva
Performance Audit Manager

ARIZONA LEGISLATIVE COUNCIL

MEMO

May 15, 1979

TO: Douglas R. Norton, Auditor General
FROM: Arizona Legislative Council
RE: Request for Research and Statutory Interpretation (O-79-35)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated April 27, 1979.

GIVEN FACT SITUATION:

Under the Equal Employment Opportunity Commission regulations, state licensing authorities must use validated procedures in their selection processes.

QUESTIONS PRESENTED:

- (1) What consequences might arise if a state licensing board's selection procedures, such as professional entrance exams, are not validated?
- (2) Could a selection procedure be declared unusable if it has not been validated?

ANSWERS:

(1) Since the EEOC could not, under any conceivable interpretation of existing federal regulations, require such exams to be validated absent a finding of discriminatory adverse impact, no specific consequences can presently be anticipated.

(2) Since the extent of the EEOC's authority over state licensing and certification functions is unclear, the EEOC's authority to declare such selection procedures unusable under any circumstances is also subject to dispute.

The Equal Employment Opportunity Commission (hereinafter EEOC), together with the U.S. Civil Service Commission (now the Office of Personnel Management), the U.S. Department of Justice and the U.S. Department of Labor, promulgated a set of federal regulations known as the Uniform Guidelines on Employee Selection Procedures in the Federal Register, Volume 43, No. 166, pp. 33290 et seq. (effective September 25, 1978). These guidelines were developed by the EEOC in the enforcement of Title VII of the Civil Rights Act of 1964, as amended. The three other federal agencies which joined with the EEOC in promulgating these guidelines also acted under the authority of Title VII as well as various related federal acts, regulations and executive orders. In Title VII, Congress authorized the "... use of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate". (See Section 703(h) 42 U.S.C. 2000 e(2)(h).)

The Uniform Guidelines were developed primarily in response to continuing disputes as to what constituted federal law in this area. The guidelines are based on the

premise that employer policies or practices which have an "adverse impact" on employment opportunities of any race, sex or ethnic group are illegal unless justified by business necessity. This general principle was adapted unanimously by the U.S. Supreme Court in Griggs v. Duke Power Company, 401 U.S. 424 (1974) and ratified by Congress in the passage of the Equal Employment Opportunity Act of 1972 which amended Title VII of the Civil Rights Act of 1964.

According to the Uniform Guidelines, "adverse impact" on equal employment opportunities means a substantially different rate of selection in hiring, promotion or other employment decision which works to the disadvantage of members of a race, sex or ethnic group. While there is no specific definition as to what constitutes a substantially different rate of selection, the federal agencies issuing the Uniform Guidelines agreed to an informal "rule of thumb" known as the 4/5ths rule. Under this rule, the agencies agreed to generally consider a selection rate for any race, sex or ethnic group which was less than 4/5ths or 80 percent of the selection rate for the group with the highest selection rate as a substantially different rate of selection. If adverse impact is found to exist under this rule of thumb, it must be justified. Such justification can, under the guidelines, come only by means of some type of validation test which demonstrates the relationship between the selection procedure or test utilized and performance on the job. It should be emphasized that the Uniform Guidelines specifically do not require that any selection procedure or process be subject to validation until a finding of adverse impact has been made.

Section 2B of the Uniform Guidelines provides that these federal regulations apply to tests and other selection procedures used as a basis in any employment decision. (See Federal Register, Volume 43, No. 166, at p. 38296.) Employment decisions are designated by the Uniform Guidelines to include licensing and certification functions to the extent that such functions may be covered under federal equal opportunity law. The Uniform Guidelines do not specify the extent of such coverage.

In March 1979, the EEOC and the three agencies which promulgated the Uniform Guidelines issued what purported to be a clarification. (See Federal Register, Volume 44, No. 43, pp. 11996 et seq.) In this clarification, the issuing agencies determined that the Uniform Guidelines applied to the licensing and certification functions of state and local governments to the extent such functions were covered by federal law. Again, however, the extent to which such functions were covered under federal law was not specified. The federal agencies have taken the position that at least some types of licensing and certification procedures which deny persons access to employment opportunity may be enjoined in an action brought pursuant to Section 707 of the Civil Rights Act of 1964, as amended. There is a body of case law contradicting the federal position.

In Woodard v. Virginia Board of Bar Examiners, et al., 420 F. Supp. 211 (1976), a black law school graduate who failed to pass the Virginia bar examination brought a class action alleging that the test was structured in a racially discriminatory fashion to deny black applicants an equal opportunity to practice law in Virginia. In holding against the plaintiff's use of Title VII to challenge the bar exam, the court found that EEOC guidelines were not applicable to professional licensing examinations. The following portion of the Woodard opinion is directly on point:

This Court is satisfied that the principles of test validation developed under Title VII do not apply to

professional licensing examinations. The EEOC guidelines in this area were developed in the context of traditional employment practices. See generally, Albemarle Paper Co. v. Moody, 422 U.S. 405, 425-35, 95 S.Ct. 2362, 45 L.Ed.2d 280 (1975); Griggs v. Duke Power Co., 401 U.S. 424, 433-36, 91 S.Ct. 849, 28 L.Ed.2d 153 (1971). See also 29 C.F.R. Section 1607 et seq. The employment tests utilized in the industrial setting are designed to measure an individual's ability to perform certain limited functions or operate particular machinery. The bar examination, however, serves a much broader purpose. A licensed attorney is presumed competent to handle any of a number of substantively divergent legal problems which may face his or her clients. Successful passage of the bar examination is intended to reflect a mastery of a wide range of substantive knowledge with which to approach such problems. The competing interests of an employer and the state as a licensing body, moreover, are also quite different. The employer, whether public or private, has the limited interest in insuring that the individual hired is capable of performing the required tasks. Whatever the magnitude of this interest, cf. Albemarle Paper Co. v. Moody, supra; Griggs v. Duke Power Co., supra, it falls short of that involved in professional licensing. The Supreme Court has recognized "that the States have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions." Goldfarb v. Virginia State Bar, 421 U.S. 773, 792, 95 S.Ct. 2004, 2016, 44 L.Ed.2d 572 (1975) (emphasis added). See also Brown v. Supreme Court of Virginia, 359 F.Supp. 549, 554 (E.D.Va.), aff'd, 414 U.S. 1034, 94 S.Ct. 533, 38 L.Ed.2d 327 (1973); Richardson v. McFadden, supra, at p. 749.

The Court accordingly concludes that the test validation guidelines promulgated by the EEOC do not govern the instant matter, and that the job relatedness of the Virginia bar examination will be measured under the principles enunciated in Richardson v. McFadden, supra. (420 F.Supp. 211, 214 (1976))

The related case of Delgado v. McTighe, 442 F.Supp. 725 (1977), involved a class action claim by certain black and Hispanic law school graduates that an increase in the grade required to pass the Pennsylvania bar exam over the previously established level was discriminatory under Title VII in its impact on minorities. The court rejected the Title VII claim in finding that the provisions of the federal legislation applied to unlawful employment practices by employers where there was a distinct employer-employee relationship. (See Hachett v. McGuire, 445 F.2d 442 (1974), and Kyles v. Calcasieu Parish Sheriffs Department, 395 F.Supp. 1307 (1975).) Certainly, the court noted, the State Board of Bar Examiners did not function as an "employer" in any traditionally accepted sense.

The Delgado court also rejected plaintiffs' argument that Title VII had been expanded to cover those cases in which there was direct interference with an individual's employment opportunities by citing Woodard v. Virginia Board of Bar Examiners, supra, and the related case of Parrish v. Board of Commissioners of Alabama State Bar, 533 F.2d 942 (1976).

The EEOC does, as noted previously, take a conflicting view. For example, in EEOC Decision No. 75-249 (May 6, 1975), the commission found that upon a statistical showing that a disproportionately large number of Hispanics were excluded from the insurance profession by a state licensing examination, state authorities were required to show that the exam was job-related. In the same decision, the EEOC held that a state insurance department engaged in unlawful employment discrimination based on national origin by administering an insurance licensing examination only in the English language. Notwithstanding the EEOC position in this and other similar administrative decisions, research failed to indicate substantial case law support for the conclusion that Title VII applies to state and local licensing and certification functions. The courts have shown much more willingness to scrutinize Title VII testing claims in the traditional context of employer-employee relations. See Davis v. County of Los Angeles, 566 F.2d 1334 (1977) involving the use of a verbal aptitude test by a county fire department; Chance v. Board of Education, 458 F.2d 1167 (1972) involving the use of an examination in the promotion of public school teachers; and Vulcan Society v. Civil Service Commission, 490 F.2d 387 (1973) involving a test of the ability to comprehend written materials as a basis for measuring the ability to perform as a fireman.

CONCLUSION:

Since there is no formal requirement under the Uniform Guidelines for the validation of employee selection procedures absent a finding of adverse impact, no specific consequences can presently be anticipated as resulting from a failure to validate all professional licensing exams. The lack of any clarity on the extent of EEOC jurisdiction over licensing and certification functions similarly precluded a definitive answer to the second part of your question. Beyond the question of test validation,* however, is whether licensing and certification functions of state and local governments are vulnerable to challenge under Title VII of the Civil Rights Act of 1964, as amended. The small body of case law developed on this point suggests that such functions are not generally subject to a Title VII challenge. As a general rule, it would appear that the further removed a licensing and certification function is from the traditional employer-employee relationship (as is the case of a bar exam or, conceivably, a medical practices exam), the less open it would be to challenge under Title VII of the Civil Rights Act of 1964, as amended.

*Test validation, as should be now apparent, is not really the issue. The issue is whether employee selection practices result in adverse impact on the employment opportunities of a particular group or groups. Then and only then is validation of the job-relatedness of the test associated with the particular selection practice required.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX II

<u>Complaint Filed By</u>	<u>Complaint Filed Against</u>	<u>Nature of Complaint</u>	<u>Board's Disciplinary Action</u>	<u>Other Board Action</u>	<u>Comments</u>	
<u>1964</u>						
1	Public	Nonlicensee	Illegal use of title "Architect"	None	None	Individual was found not guilty in a related civil case.
<u>1965</u>						
2	Public	Licensee	Faulty design of a jail heater that resulted in the death of four juveniles	None	None	Licensee was found not guilty in a related court case.
3	Licensee	Nonlicensee	Illegal use of title "Architect"	None	None	
4	Licensee	Licensee	Substandard electrical design	None	Complaint dismissed after investigation	
5	Licensee	Licensee	Substandard work	None	Investigative committee recommended a formal hearing - no further action was taken	
6	Licensee	Licensee	Aiding and abetting unlicensed practice	None	Investigative committee recommended a formal hearing - no further action was taken	
7	Licensee	Nonlicensee	Unlicensed practice	None	Letter sent to individual - complaint closed	
<u>1966</u>						
8	Licensee	Licensee	Aiding and abetting unlicensed practice	None	Strong reprimand following investigation	
9	Licensee	Licensee	Architect doing engineering designs	None	Letter of admonishment	
10	Licensee	Licensee	Engineer doing architectural designs	None	None	
11	Public	Licensee	Contract default	None	Investigation followed by a letter of admonishment	
12	Licensee	Licensee	Aiding and abetting unlicensed practice	License revoked		Decision reversed by Superior Court because the revocation "...was too severe a penalty, and therefore an unreasonable action...."
<u>1967</u>						
13	Licensee	Licensee	Aiding and abetting unlicensed practice	None	Tabled pending further investigation - no further action was taken	
14	Licensee	Nonlicensee	Unlicensed practice	None	Closed because of insufficient evidence	
15	Licensee	Nonlicensee	Unlicensed practice	None	Referred to County Attorney	

	Complaint Filed By	Complaint Filed Against	Nature of Complaint	Board's Disciplinary Action	Other Board Action	Comments
16	Licensee	Nonlicensee	Unlicensed practice	None	None	
17	Licensee	Nonlicensee	Unlicensed practice	None	Complaint was dismissed after investigation	
18	Public	Licensee	Unethical conduct	None	Licensee was interviewed by Board committee - no further action indicated in file	
19	Licensee	Licensee	Aiding and abetting unlicensed practice	None	Interview followed by a letter of reprimand	
20	Licensee	Licensee	Aiding and abetting unlicensed practice	None	Interview followed by a letter of reprimand	
21	Public	Licensee	Non return of retainer fee	None	None - Board notified complainant that it did not have jurisdiction over fee disputes	
22	Not indicated	Nonlicensee	Unlicensed practice	None	None	
23	Not indicated	Nonlicensee	Unlicensed practice	None	Referred to Attorney General	
24	Licensee	Nonlicensee	Unlicensed practice	None	Closed pending further investigation - no further action taken	
26	Licensee	Nonlicensee	Unlicensed practice	None	None	
1968					Referred to County Attorney	
27	Licensee	Licensee	Plagiarism	None	None - no violation of Technical Registration Act	
1969						
28	Licensee	Nonlicensee	Unlicensed practice	None	None - case closed pending further investigation - no further action was taken	
29	Not indicated	Nonlicensee	Unlicensed practice	None	Referred to County Attorney	
30	Licensee	Nonlicensee	Illegal use of title	None	Referred to Corporation Commission	
31	Licensee	Nonlicensee	Illegal use of title	None	Letter of warning	
32	Licensee	Nonlicensee	Unlicensed practice	None	None - insufficient evidence	
33	Licensee	Nonlicensee	Unlicensed practice	None	None - case closed because of insufficient evidence	
34	Public	Nonlicensee	Unlicensed practice	None	None	
35	Licensee	Nonlicensee	Unlicensed practice	None	Board authorized further investigation - no further action was taken	
36	Licensee	Nonlicensee	Unlicensed practice	None	Requested Attorney General Opinion - No further action taken	
37	Licensee	Nonlicensee	Unlicensed practice	None	Letter to individual - no further action	
38	Licensee	Licensee	Engineer practicing outside discipline	None	None - no reason for action	

	<u>Complaint Filed By</u>	<u>Complaint Filed Against</u>	<u>Nature of Complaint</u>	<u>Board's Disciplinary Action</u>	<u>Other Board Action</u>	<u>Comments</u>
39	Licensee	Nonlicensee	Illegal use of title	None	None - individual agreed to seek licensure	
40	Licensee	Nonlicensee	Illegal use of title	None	None - referred to Corporation Commission	
41	Public	Nonlicensee	Unlicensed practice	None	None - referred to County Attorney	
42	Licensee	Licensee	Aiding and abetting unlicensed practice	License sus-pended for six months but immediately reinstated		
43	Licensee	Licensee	Engineer practicing architecture	License sus-pended for one month		
44	Licensee	Licensee	Aiding and Abetting unlicensed practice	License sus-pended for one month		
<u>1970</u>						
45	Public	License	Aiding and abetting unlicensed practice	License sus-pended for 90 days		License was suspended even though the license had expired
46	Licensee	Nonlicensee	Illegal use of title	None	None - referred to County Attorney	
47	Licensee	Nonlicensee	Unlicensed practice	None	None referred to County Attorney	Individual was convicted of misdemeanor offense
48	Not indicated	Nonlicensee	Unlicensed practice	None	None - no violation	
49	Not indicated	Nonlicensee	Illegal use of title	None	None - Individual agreed to change letterhead	
50	Licensee	Licensee	Aiding and abetting unlicensed practice	License sus-pended for six months		
51	Licensee	Licensee	Aiding and abetting unlicensed practice	None	Formal hearing - Individual not guilty	
52	Licensee	Licensee	Aiding and abetting unlicensed practice	None	None- insufficient evidence	
53	Licensee	Nonlicensee	Unlicensed practice	None	(firm) voluntarily complied	
54	Licensee	Licensee	Unethical conduct	None	None	
55	Licensee	Licensee	Unethical conduct - soliciting bids	None	None	
56	Licensee	Licensee	Aiding and abetting unlicensed practice	License sus-pended for three months		

<u>Complaint Filed By</u>	<u>Complaint Filed Against</u>	<u>Nature of Complaint</u>	<u>Board's Disciplinary Action</u>	<u>Other Board Action</u>	<u>Comments</u>
<u>1971</u>					
57	Licensee	Unlicensed practice	None	None - No violation	
58	Licensee	Illegal use of title	None	None	
59	Licensee	Unlicensed practice	None	None - letter to complainant stating that the Board did not have jurisdiction - complainant should contact County Attorney	
60	Licensee	Illegal use of title	None	None	
<u>1972</u>					
61	Licensee	Unlicensed practice	None	None - letter of warning to individual	
62	Public	Negligence, misconduct, incompetence	Licensee suspended for 90 days		
63	Public	Negligence, misconduct, incompetence	Licensee suspended for 120 days		
<u>1974</u>					
64	Public	Aiding and abetting unlicensed practice	License suspended for 30 days		
65	Public	Incompetent design	None	Formal hearing - not guilty	
66	Not indicated	Aiding and abetting unlicensed practice	License suspended for 90 days		
<u>1975</u>					
67	Licensee	Unlicensed practice	None	Complaint investigated - no further action	
68	Public	Negligence, misconduct	None	Formal hearing - licensee found not guilty	An earlier Superior Court trial found licensee guilty and awarded damages to complainant
<u>1976</u>					
69	Public	Unlicensed practice	None	Case closed when individual voluntarily complied	
70	Licensee	Unlicensed practice	None	None	
71	Licensee	Aiding and abetting unlicensed practice	License suspended for six months		
<u>1977</u>					
72	Licensee	Unlicensed practice	None	None	
73	Licensee	Aiding and abetting unlicensed practice	None	Licensee found not guilty after Board review	
74	Licensee	Unlicensed practice	None	None - Board advised complainant to file a complaint with the County Attorney	
75	Licensee	Unlicensed practice	None	Complaint closed after Board mailed a letter of warning	

<u>1978</u>	<u>Complaint Filed By</u>	<u>Complaint Filed Against</u>	<u>Nature of Complaint</u>	<u>Board's Disciplinary Action</u>	<u>Other Board Action</u>	<u>Comments</u>
76	Licensee	Licensee	Negligence, misconduct, incompetence	None	None	
77	Licensee	Nonlicensee	Unlicensed practice	None	Complaint was investigated - no further action	
78	Public	Licensee	Negligence, misconduct, incompetence	None	None - dismissed because of a lack of jurisdiction	
79	Licensee	Nonlicensee	Unlicensed practice	None	None - dismissed - no violation of Technical Registration Act	
80	Public	Nonlicensee	Unlicensed practice	None	Complaint closed when individual agreed to stop illegal practice	
81	Public	Licensee	Negligence, misconduct incompetence			
82	Public	Nonlicensee	Incomplete design	None	None - Board notified the complainant that the complaint was not within their jurisdiction	
83	Licensee	Nonlicensee	Unlicensed practice	None	Board requested a list of licensees working for the firm - no further action was taken	
84	Licensee	Nonlicensee	Unlicensed practice	None	Letter to the firm requesting information about their operations - no further action was taken	
85	Licensee	Licensee	Unlicensed practice	None	None - Individual was properly licensed	
86	Public	Nonlicensee	Unlicensed practice	None	None - Board could not locate the individual named in the complaint	
87	Licensee	Nonlicensee	Unlicensed practice	None	None - no violation of the statutes.	
88	Licensee	Nonlicensee	Unlicensed practice	None	None - complaint closed when the individual named in the complaint agreed to stop illegal practice.	
89	Public	Licensee	Misconduct	None	None - dismissed after committee review	
90	Public	Licensee	Misconduct	None	None - dismissed after committee review	
91	Public	Nonlicensee	Illegal use of title	None	None - complaint dismissed after warning letter was sent to the individual named in complaint	
92	Licensee	Nonlicensee	Illegal use of title	None	None - firm named in complaint agreed to change their name	

<u>1979</u>	<u>Complaint Filed By</u>	<u>Complaint Filed Against</u>	<u>Nature of Complaint</u>	<u>Board's Disciplinary Action</u>	<u>Other Board Action</u>	<u>Comments</u>
93	Licensee	Nonlicensee	Illegal use of title	None	Complaint was closed after warning letter was sent to the individual.	
94	Public	Licensee	Misconduct - fee dispute	None	None as of 6/13/79	
95	Public	Nonlicensee	Unlicensed practice	None	Complaint closed when review committee found no violation of statute	Work performed by the individual is exempt from the licensure requirements
96	Licensee	Nonlicensee	Unlicensed practice	None	Letters to both parties - no further action as of 6/13/79	

APPENDIX III

Excerpt From Board Minutes

Meeting Date

December 12, 1969

"After the conclusion of (Asst. Attorney General)'s presentation, discussion was held on the responsibility of the Board and the advisability of increasing its investigative powers. It was moved by (Board Member) and seconded by (Board Member) that the Budget Committee of this Board be instructed to include an investigator in its next budget presented to the Legislature. Motion carried."

June 24, 1970

"At the request of the Chairman, (Board Member) as Chairman of the Budget Committee reported out of the agenda on the preliminary budget study made by his committee and the Executive Secretary for the fiscal year 1971-1972. (Board Member) fully apprised the members of the Board that a change in the fee schedule of renewal fees would be required if the Board desired to consider hiring a professional investigator in that fiscal year."

February 18-19, 1971

"(Board Member) suggested that we appoint a committee at the March meeting of the Board to write up a job description for the employment of the attorney/investigator to be hired the first of July."

December 10, 1971

"Regarding the recommendation of reducing the annual renewal fee in the above report (Board Member) suggested that it be referred to the Rules and By-Laws Committee for consideration of reducing it to \$15.00."

March 17, 1972

"(Board Member) presented the report of the Rules and By-Laws Committee meeting held February 22, 1972, as shown on Minute Page 3013.

The Chairman called a recess to permit a brief meeting of the Rules and By-Laws Committee.

The committee amended the first paragraph of the report on Minute Page 3013 to read "In regard to the requests of several persons for reduced fees, it is recommended that all persons age 70 or older be exempt from the registration fee provided they have been registered in Arizona for ten consecutive years immediately prior to attaining the age of 70."

The Chairman recalled the meeting of the Board to order. It was then moved by (Board Member) and seconded by (Board Member) that the amended report be adopted and implemented in accordance with Section IV, 1 of the By-Laws, by which publication will be made of the revisions to the Rules and a public hearing will be called for the June meeting of the Board. Motion carried."

September 6, 1972

"(Board Member) read the proposed Rule changes, as follows:

Repeal Paragraph 6 of Rule II, C and repeal Rule III, C.

Adopt a new Rule III, C, to read:

Rule III. FEES

C. Renewal Fees

For renewal of a certificate of registration, if received prior to December 31st of each year (a certificate of registration not renewed prior to December 31st of each year will accrue a penalty of 10 percent of each month or fraction of month delinquency), the following fees will be required:

1. Renewal as an Architect, Assayer, Engineer, Geologist, Landscape Architect or Land Surveyor, fifteen dollars; except that persons age 70 or older shall be exempt from the registration fee provided they have been registered in Arizona for ten consecutive years immediately prior to attaining the age of 70.
2. In-Training certificates, none."

Meeting Date

Excerpt From Board Minutes

"It was moved by (Board Member) and seconded by (Board Member) that the words "or older" be added to the end of the paragraph under Rule III, C(1). Motion carried.

It was moved by (Board Member) and seconded by (Board Member) that the proposed Rules, as changes, be so adopted. Motion carried."

December 14, 1973

"Considerable discussion as how to reduce the Technical Registration Fund besides reducing the annual renewal fee was made. (Board Member) suggested the hiring of an investigator which he preferred to call a Quality Control Officer on a full time basis. He felt this was necessary due to the poor quality of plans which were being submitted to the City of Phoenix. (Board Member) felt we should hire an investigator or expertize as a complaint warrants the necessity of hiring for such investigation. The Chairman requested the Budget Committee to accept the responsibility of additional review for reducing the Technical Fund which would be of benefit to our registrants and make a positive recommendation at the next meeting. He, also, appointed (Board Member) as a temporary member of this committee."

June 27-28, 1974

"(Board Member) stated that over the years we were not sure how to use our excess funds and it appears that this law gives us some support for doing some real investigative work."

September 12-13, 1974

"Provision was made for an additional office employee under Personal Service and for additional investigations under Professional Services, to provide for expenses incidental to the new law on Injunctive Power, A.R.S. 32-106.01.

At June 30, 1974, the Technical Fund balance was \$137,948, an increase of \$17,738 over the preceding year. It is expected that expenses will exceed receipts and the fund will begin to reduce."

June 6, 1975

"The Cash Flow Report shows estimated expenses of \$116,022 for FY 1974-1975. Expenses for the previous year were \$106,584. The major difference was in salaries, examinations and investigations. It is expected that the Technical Fund balance will be approximately \$150,000, a gain of about \$12,000 over the previous year.

If the Legislature does not enact HB 2167, removing the Board's access to the Technical Fund, and if the appropriation for 1975-1976 is approved at the \$161,500 figure, it is suggested that consideration be given to reducing the renewal fee to \$10.00. With anticipated income and expenses, it is expected that this would result in a fund decrease of \$27,000 for 1975-76, which could be reduced to \$22,000 by raising the architectural examination fees which were about \$5,000 below cost for the year 1974-75."

July 30, 1975

"It was moved by (Board Member) and seconded by (Board Member) that the renewal fee for all registrants be reduced from \$15.00 to \$10.00 for 1976, and, secondly, the architectural examination fees be revised as follows:

- "R4-30-28. Examination Fees
- 1. In-Training Examinations
 - a. Architect-in-Training..... \$50.00
- 2. Architect Examinations
 - Equivalency Examination:
 - Construction Theory & Practice..... \$25.00
 - Architectural Theory..... 5.00
 - Architectural Design & Site Planning..... 30.00
 - Professional Examination..... \$60.00

Motion carried."

Meeting Date

December 2, 1977

Excerpt From Board Minutes

"Our object, therefore, is to maintain sufficient funds to defray our expenses, and to secure an adequate appropriation from the Legislature so we may expend those funds as required.

On the other hand, our fund is built up by receiving application fees, examination fees and renewal fees. The most flexible figure is renewal fees, and by adjusting the annual fee, the Board has attempted to maintain a reasonable balance in the fund without undue cost to the registrants. The balance must always be sufficient to defray expenses from July 1 to November 15, when the renewals are beginning to come in.

Past boards, by reducing fees from \$20 to \$15, and from \$15 to \$10, have considered that relief could be extended to the registrants without jeopardizing our ability to meet expenses."

September 8, 1978

"Submitted budget expenses have included for the past several years about \$20,000 more for unforeseen examination costs and enforcement costs than have actually been spent. Consequently, the submitted budgets have always predicted a faster rate of depletion of the Technical Registration Fund than has actually occurred. For instance, the 1979-80 budget predicted a Technical Registration Fund with a negative balance on June 30, 1980, using the current fee schedule. Of course this will not happen if we continue to underspend by \$20,000 per year as we have under our current level of operations.

Using the current level of operations as a guide, a fee schedule increase of 20-25 percent seems adequate. However, if the Board chooses to move more actively into enforcement and increase its level of activity there, then a greater increase in the renewal fee income is needed."

February 2, 1979

"(Board Member) then made a motion that Rule R4-30-29 amended (as shown in the Executive Director's Report on Minute Page 4125) to change the annual renewal fee to TWENTY DOLLARS, and that the legal requirements for this amendment be implemented. The motion was seconded by (Board Member).

After further discussion (Board Member) moved to amend this motion to change the annual renewal fee to SEVENTEEN DOLLARS. This amendment was seconded by (Board Member). Amendment carried. Motion, as amended, carried."

March 2, 1979

"The public hearing for the adoption of the proposed change to Rule R4-30-29, Renewal Fees, was held at 10:15 A.M. There were no persons present to present statements, arguments or contentions, and there was no correspondence received regarding this proposed change in the rules.

It was moved by (Board Member) and seconded by (Board Member) that the proposed rule change to Rule R4-30-29, Renewal Fees, as shown on Minute Page 4153 be adopted subject to certification by the Attorney General. Motion carried."

Meeting Date

June 1, 1979

Excerpt From Board Minutes

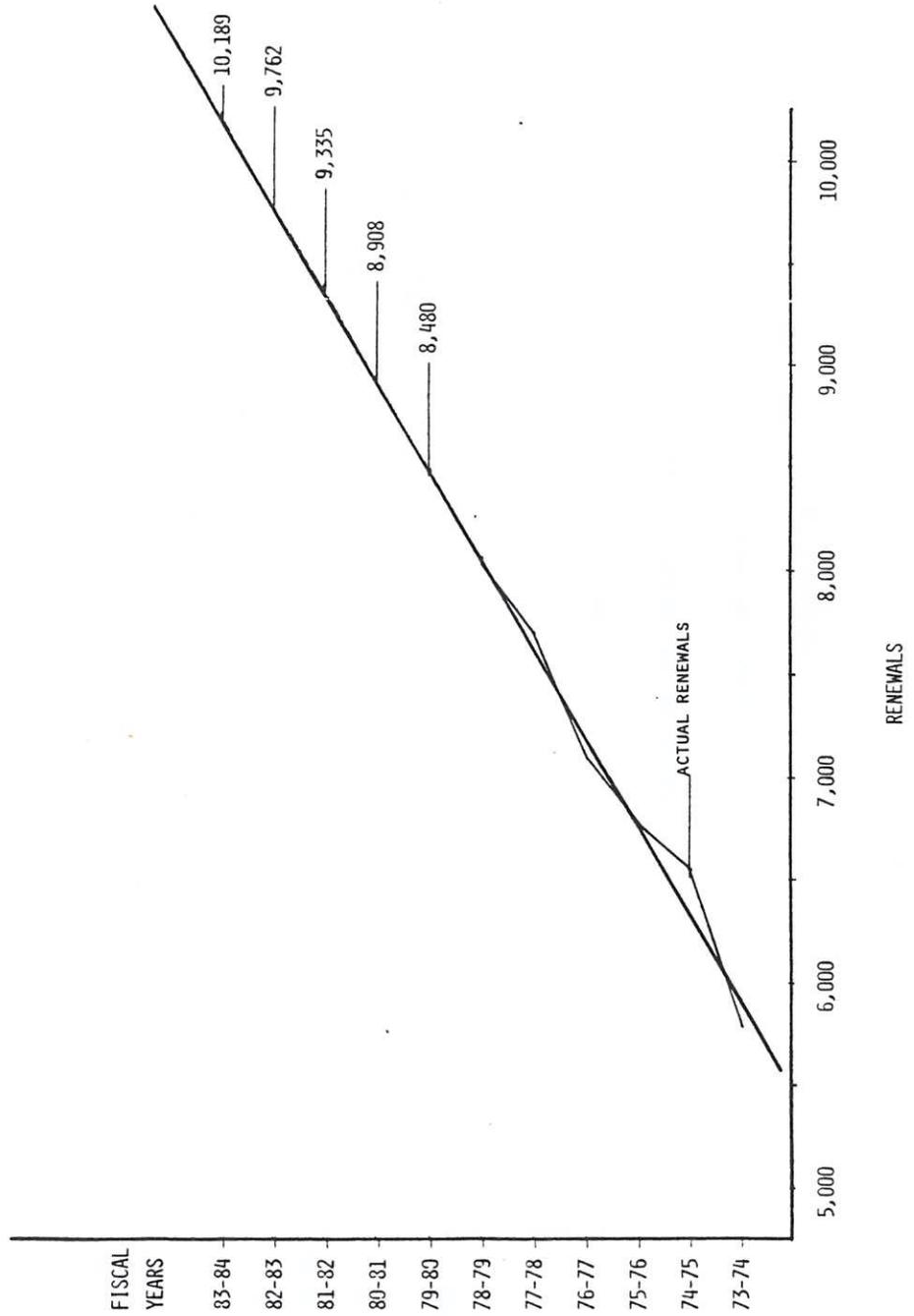
"The Committee presented the May 30, 1979 letter from the Attorney General, shown on Page 4180, declining to certify Rule R4-30-29, as submitted for adoption after the public hearing on March 2, 1979. A revision of Rule R4-30-29, deleting the unauthorized age 70 exemption, shown on Page 4181, was recommended for hearing and adoption. It was moved by (Board Member) and seconded by (Board Member) that a public hearing be scheduled for July 20, 1979 regarding the adoption of this revision. Motion carried."

July 20, 1979

"(Board Member) moved that the renewal fee in proposed rule R4-30-29 be reduced from seventeen dollars to fifteen dollars and that Rule R4-30-29 Renewal Fees, as shown on Minute Page 4218 be adopted subject to certification by the Attorney General. (Board Member) seconded this motion; motion carried."

APPENDIX IV

TREND LINE ANALYSIS OF THE NUMBER
OF ANNUAL LICENSE RENEWALS

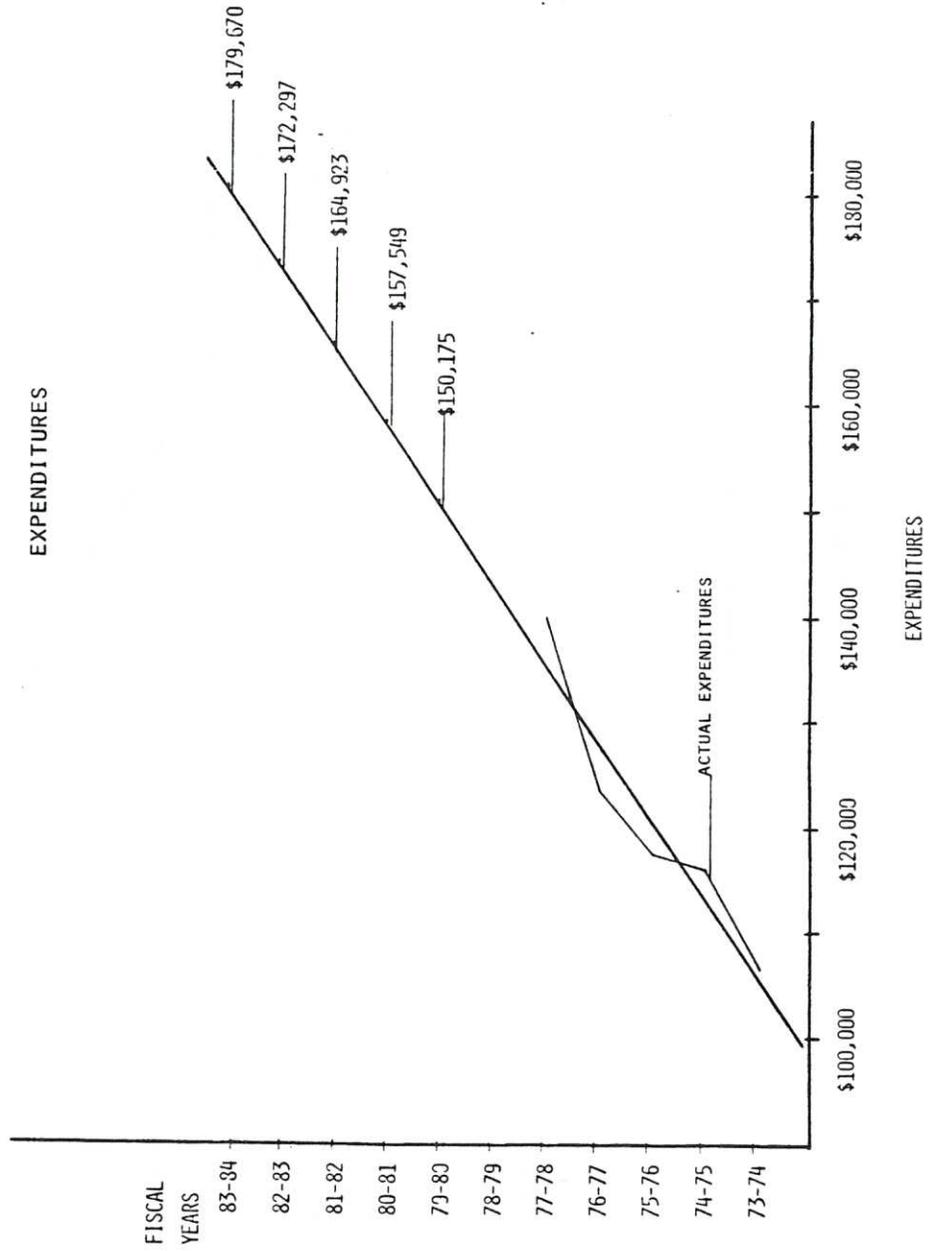


APPENDIX V

TREND LINE ANALYSIS OF

BOARD OF TECHNICAL REGISTRATION

EXPENDITURES



APPENDIX VI

STATE OF ARIZONA
OFFICE OF THE AUDITOR GENERAL
SURVEY OF REGISTRANTS
STATE BOARD OF TECHNICAL REGISTRATION

1. Please indicate the type of license you currently hold:

20.3%	Architect
0.5%	Assayer
66.1%	Engineer
1.4%	Geologist
1.6%	Landscape Architect
4.1%	Land surveyor
6.0%	Multiple Registrations

2. How did you obtain your Arizona license?

1.6%	Exam waived
56.5%	Examination
39.7%	Comity
2.2%	Exam and comity

3. In your opinion, an aspiring registrant should be allowed to take the professional portion of the exam:

19.5%	Upon fulfilling the in-training education/ experience requirements
69.7%	Upon fulfilling the complete experience requirements (<u>as presently required</u>)
6.2%	After passing a qualifying exam in place of the in-training experience requirements
4.6%	Other _____

4. If you feel that the present education/experience requirements are the best alternative, please explain why.*

1.0%	-	Need both to pass exams
3.5%	-	Need both to protect public
51.7%	-	Need both to be competent practitioner
15.2%	-	Present system works
10.0%	-	Other

5. If you feel that the present education/experience requirements are not the best alternative, please explain why.*

2.9%	-	Take professional exam prior to completion of experience
1.1%	-	Too much delay in entry into profession
1.6%	-	Board has too much discretion
13.0%	-	Other

6. If you applied for comity do you feel that the present requirements are too restrictive?

1.3%	Other
3.8%	Yes
94.9%	No

If yes, why? _____

* Total of #4 and #5 is 100%

7. How would you rate the potential harm to the public that is directly attributable to the services provided by each profession:

		Risk of Severe Harm (Loss of life)	Moderate Harm (Severe financial loss)	Risk of Limited Harm (Recoverable damages)
Architects	500	65.2%	24.0%	10.8%
Assayers	456	1.3%	46.9%	51.8%
Engineers	511	79.4%	13.9%	6.7%
Geologists	464	25.4%	50.9%	23.7%
Landscape Architects	472	2.1%	11.2%	86.7%
Land Surveyors	478	1.7%	60.3%	38.1%

8. What is the best method of insuring continued competency?

10.8%	Multiple responses
6.8%	Periodic re-examination
36.3%	More stringent disciplinary actions
22.0%	Peer review
11.7%	Other _____
12.4%	Continuing education

9. Have you ever been involved in the Board's complaint review process?

5.3%	Yes
94.7%	No

If you have been involved

	<u>Yes</u>	<u>No</u>
- Was the matter resolved in a timely fashion?	82.1%	17.9%
- Was the resolution equitable?	64.0%	36.0%
- Was a formal hearing held?	65.2%	34.8%
- Was the Board's decision appealed?	0.0%	100.0%
- If appealed, was the decision reversed?	0.0%	100.0%

10. Have you had any contact with the Board's administrative office?

49.2%	Yes
50.8%	No

If yes:

Was your request dealt with in a timely manner?

93.7%	Yes
6.3%	No

The quality of the response was:

53.2%	Excellent
40.1%	Adequate
6.7%	Substandard

Any recommended changes for the office? _____

11. Have you had any contact with similar boards in other states?

47.0% Yes
53.0% No

If yes, how would you rate Arizona's Board?

20.7% Superior
72.8% Equal
6.5% Inferior

If it is inferior, how can Arizona's Board be improved?

12. Are you aware of:

Scheduled board meetings?	29.8% Yes	70.2% No
Proposed actions of the board?	25.7% Yes	74.3% No
Actions taken by the board?	33.1% Yes	66.9% No

13. In your opinion, has the board through its licensing function properly protected the profession from incompetent practitioners?

77.8% Yes
22.2% No

14. How often do you use the annual roster?

4.2% Regularly (weekly)
42.9% Occasionally (monthly)
52.9% Rarely

15. Would you have any objection to a roster that is published once every three years with annual supplements?

11.8% Yes
88.0% No
0.2% Other

If yes, please explain _____

16. If you did not receive the roster, would you direct any inquiries you had regarding licensees to the Board's office?

92.4% Yes
7.4% No
0.2% Other

17. Do you or does your firm carry professional liability insurance?

37.1% Yes
 62.9% No

If yes, please provide the following information:*

	<u>1976</u>	<u>1977</u>	<u>1978</u>
Amount of total coverage	_____	_____	_____
Amount of deductible	_____	_____	_____
Total annual premium	_____	_____	_____
Total amount of business	_____	_____	_____
Number of claims filed against policy	_____	_____	_____
Total dollar value of claims	_____	_____	_____

18. In your opinion, the board's primary function should be:

2.0% Other
 4.4% To protect the profession (1)
 40.9% To insure competence (2)
 32.3% To protect the public (3)
 10.5% (2) & (3)
 9.9% (1), (2) & (3)

19. Do you feel that the Board's present disciplinary procedures are adequate?

54.2% Yes If no, why? _____
 19.4% No _____
 0.9% Other _____
 25.5 No response _____

20. Please estimate the percentage of your services provided to:*

_____ Governmental entities
 _____ Development companies
 _____ Other business entities
 _____ Private individuals (for personal use)

Please return this questionnaire to:

Brian Dalton
 Office of the Auditor General
 112 N. Central Avenue
 Suite 600
 Phoenix, Arizona
 85004

* Due to data conversion problems, we were unable to tally these responses.

Process of Investigation
and Resolution of Complaints
and Quality Review Findings

The State Board of Accountancy responds to all public complaints that appear to infringe on state accountancy law, rules or regulations and initiates an investigation of the situation.

Since 1976 the Board has also increased investigations through the implementation of a "quality review" for public filings. Audit reports and expressions of opinion regarding financial statements are, in selected instances, public filings when specified by law. Examples of these public filings include audit reports of cities and towns and financial statements filed when a corporation proposes to offer securities for public sale. When conducting a "quality review", the Board investigator compares the filings to a preliminary review checklist containing the basic elements of "generally accepted auditing standards and accounting principles." The investigator reports exceptions from these standards and principles to the Board for its consideration and action.

The Board follows a standard procedure in quality review and complaint investigations. The Board begins by reviewing 1) complaints, 2) referrals, and then determines 3) if sufficient resources exist to direct that a specified number of quality reviews be conducted.

The Board may elect to obtain additional information on complaints and referrals from such sources as the Attorney General or the referral agency before proceeding.

- If, based on this information, no further action is warranted, the Board may close the case. For complaints, the Board will send a letter to the complainant explaining the closure.
- If, however, an in depth investigation appears to be needed, the Board will assign the investigator to perform a "cold review" of the financial statements.

The Board investigator conducts the "cold review" using a checklist developed by the Arizona Society of Certified Public Accountants. This checklist is based on generally accepted auditing standards and accounting principles. The same review is used for complaint investigations and quality reviews performed by the investigator.

The reviewer then prepares a report for Board consideration noting any deficiencies or deviations from standards.

Upon receipt of the investigator's report the Board may: request additional information from the registrant, order a further investigation, refer the matter to the Board's complaint committee, refer to the Attorney General for consent order negotiation, initiate a formal hearing or refer the case to the Attorney General prior to rendering a final decision.

For cases not dismissed, the Board votes upon sanctions to be ordered based on hearing results, consent order negotiations and all obtained information.

The procedure described is used for investigating deviations from standards for auditing and financial statement preparation. Complaints regarding illegal use of the restricted titles "Certified Public Accountant" or "Public Accountant" are usually resolved through direct correspondence with affected parties.

Resolution and Source of
Investigations Conducted

During 1978, the State Board of Accountancy issued 60 resolutions of investigations. Table 12 summarizes these resolutions.

TABLE 12

RESOLUTIONS OF INVESTIGATIONS BY
THE STATE BOARD OF ACCOUNTANCY
DURING CALENDAR YEAR 1978

<u>Resolution</u>	<u>Number</u>	<u>Percent of Total</u>
Revocation	3	5.0%
Suspension	2	3.3
Corrective Sanctions	8	13.3
Cease and Desist Orders	4	6.7
Advisory Notices	8	13.3
No Action	<u>35</u>	<u>58.4</u>
Total	<u>60</u>	<u>100.0%</u>

As Table 12 details, sanctions were imposed in 41.6 percent of the investigations resolved in 1978. These include revocations, suspensions, corrective sanctions, cease and desist orders and advisory notices.

Definitions of these resolutions are:

Revocations - An individual's certificate is rescinded along with privilege of use of title and ability to perform certain functions restricted by law.

Suspension and Corrective Sanctions - An individual's certificate is revoked for a period of time and the individual must complete certain corrective tasks before regaining the certificate.

Corrective Sanctions - Requirements, such as professional education, peer review and restrictions of practice, are imposed to correct the deficient portion of the accountant's practice.

Cease and Desist Orders - Used in enforcement of restrictive title statutes, whereby violators are sent a notice directing the individual to stop the violation. If the individual does not agree and comply, further sanctions may be imposed.

Advisory Notices - If a minor violation of the law or rules has occurred, the violator is notified.

No Action - If an investigation discloses no violations or the Board determines the case is outside of its jurisdiction, no action is taken. If initiated by a complaint, the Board issues a letter of explanation to the complainant.

Quality of Investigation

In a survey of the accounting profession conducted by the Office of the Auditor General in March 1979, accountants who had been subjected to an investigation by the Board were asked to rate the quality and fairness of the Board's investigation process.

APPENDIX VIII

SUMMARY OF EVALUATIVE
CRITERIA ADOPTED BY THE
BOARD SINCE MARCH 1, 1979

At the March 2, 1979 meeting, the State Board of Technical Registration adopted the following as formal policies:

- 1) Architectural applicants who are not graduates of an accredited architectural program (shall) be required to pass the Qualifying Test before being allowed to take Section B of the Professional Examination.
- 2) Appendix B of the National Council of Architectural Registration Board's Circular of Information No. 1, 1978, was adopted as the basic criteria for architectural experience "of a character satisfactory to the Board".
- 3) Waive Parts 1 and 2 (of the Professional Engineering Exam) if the applicant has an (accredited) engineering (or geology) degree and has more than twenty years of satisfactory experience to the Board in the category in which registration is desired. Don't waive because of advanced degrees or for non-graduates of an accredited program.
- 4) An applicant whose educational program is in a branch area different from his work experience and his registration application branch will receive reduced credit for his education time. The amount of educational credit allowed under these circumstances will be determined by the Evaluation Committee upon full review of the applicant's file.

APPENDIX IX

SUMMARY OF LICENSURE
EXAMINATIONS ADMINISTERED
BY THE STATE BOARD OF
TECHNICAL REGISTRATION

<u>Examination</u>	<u>Source</u>	<u>Dates Exam Administered</u>	<u>Length of Exam</u>	<u>Credit Given for Parts Passed</u>
<u>ARCHITECTURE</u>				
Professional Exam Section A	NCARB	June	12 Hours	N/A
Professional Exam Section B	NCARB	December	16 Hours	No
<u>ASSAYING</u>				
Professional Exam	Local	April and November	8 Hours	Yes
<u>GEOLOGY</u>				
Professional Exam	Local	April and November	16 Hours	Yes
<u>LAND SURVEYING</u>				
Professional Exam				
Parts 1, 2, 3	NCEE	April and November	16 Hours	Yes
Part 4	Local	April and November		
<u>LANDSCAPE ARCHITECTURE</u>				
Professional Exam	CLARB	June	18 Hours	Yes
<u>ENGINEERING</u>				
Fundamentals	NCEE	April and November	8 Hours	Yes
Practices and Principles:				
Aeronautical	NCEE	April and November	8 Hours	Yes
Agricultural	NCEE	April and November	8 Hours	Yes
Chemical	NCEE	April and November	8 Hours	Yes
Civil	NCEE	April and November	8 Hours	Yes
Electrical	NCEE	April and November	8 Hours	Yes
Geological	Local	April and November	8 Hours	Yes
Geophysical	Local	April and November	8 Hours	Yes
Highway	NCEE and Local	April and November	8 Hours	Yes
Industrial	NCEE	April and November	8 Hours	Yes
Mechanical	NCEE	April and November	8 Hours	Yes
Metallurgical	Local	April and November	8 Hours	Yes
Mining	Local	April and November	8 Hours	Yes
Nuclear	NCEE	April and November	8 Hours	Yes
Petroleum	NCEE	April and November	8 Hours	Yes
Sanitary	NCEE	April and November	8 Hours	Yes
Structural	NCEE and Local	April and November	16 Hours	Yes

Memorandum

August 19, 1975

To: All State Agencies
From: Bruce E. Babbitt, Attorney General
Re: The Public Notice and Minute Taking
Requirements Under Arizona's Open
Meeting Act, as amended Laws 1975

Several questions have arisen as to the specific requirements imposed by Arizona's Open Meeting Act with respect to the giving of notice of public meetings. In addition, the Legislature, in its last regular session, amended the Open Meeting Act by including specific requirements with respect to the taking of minutes of public meetings. This memorandum is designed to clarify the public notice requirements imposed under the Act and to inform all state agencies of the recently enacted minute taking requirements.

If you have any questions regarding this memorandum, please call Roderick G. McDougall, Chief Counsel of the Civil Division at 271-3562.

PUBLIC NOTICE REQUIREMENTS

It has been stated that an "open meeting" is open only in theory if the public has no knowledge of the time and place at which it is to be held. 75 Harv. L. Rev. 1199 (1962). The right to attend and participate in an open meeting is contingent upon sufficient notice being given. Like other acts, Arizona's Open Meeting Act affords few statutory requirements for the mechanics of giving notice of meetings of governing bodies.

A.R.S. § 38-431.02, added Laws 1974, which sets forth the public notice requirements, provides as follows:

A. Public notice of all regular meetings of governing bodies shall be given as follows:

1. The state and its agencies, boards and commissions shall file a statement with the secretary of state stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

2. The counties and their agencies, boards and commissions, school districts, and other special districts shall file a statement with the clerk of the board of supervisors stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

3. The cities and towns and their agencies, boards and commissions shall file a statement with the city clerk or mayor's office stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

B. If an executive session only will be held, the notice shall be given to the members of the governing body, and to the general public, stating the specific provision of law authorizing the executive session.

C. Meetings other than regularly scheduled meetings shall not be

held without at least twenty-four hours' notice to the members of the governing body and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances.

D. A meeting can be recessed and held with shorter notice if public notice is given as required in paragraph A of this section.

The Open Meeting Act when originally enacted in 1962 made no specific provision for the giving of notice. While the requirements set forth in the 1974 amendments provide some guidelines, the particular mechanics of giving notice have not been set forth. Moreover, the language used in the 1974 amendments relating to notice is ambiguous, confusing and often contradictory. Without engaging in a long discussion of the many problems involved, we offer the following guidelines to be followed in complying with the notice requirements of A.R.S. § 38-431.02. Although an agency in following these guidelines will in some cases do more than required by the Act, it should never fall short of the Act's requirements. Being over-cautious is certainly justified, however, in view of the serious consequences for violating the Act. For example, a decision made in a meeting for which defective notice was given may likely be declared null and void by reason of A.R.S. § 38-431.05.

A. *Statement to Secretary of State*

Each state agency which is a governing body as defined in A.R.S. § 38-431 must file a statement with the Secretary of State stating where notices of all its meetings and the meetings of its committees or subcommittees will be posted. See Appendix A for a sample statement. The purpose of the statement is to provide information to the public regarding the place where it can find notices of the governing body's meetings. Generally, a governing body will post notices of its meetings directly outside the door to its offices or on a bulletin board in the lobby of the building in which the governing body's offices are located. Governing bodies which hold regular meetings on the same day of each month may post notices of such meetings by providing the information under the body's name in the building directory. For example, the directory listing in the lobby of the building might look as follows:

Arizona Accountancy Board Room 202
(Regular meetings every 2nd Monday of each month)

B. *Regular Meetings*

Regular meetings are generally those required to be conducted on a regular basis by statute and the dates of which are set by statute, rule, ordinance, resolution or custom. For each regular meeting, the governing body must post a Notice of Regular Meeting at the place described in the statement filed with the Secretary of State as described above. See Appendix B for a sample Notice of Regular Meeting. The posting of this notice must be done as far in advance of the regular meeting as is reasonable and in no event less than 24 hours prior to the meeting. In addition, the governing body must give additional notice as is reasonable under the circumstances. Several types of additional notices which might be given are described in Paragraph F below.

C. *Special Meetings Other Than Emergency Meetings*

Special meetings are all meetings other than regular meetings. For each special meeting, the governing body must post a Notice of Special Meeting at the place described in the statement filed with the Secretary of State. See Appendix C for a sample Notice of Special Meeting. The governing body should also give such additional notice as is reasonable under the circumstances. See Paragraph F below. This additional notice must include notice both to the general public and each member of the governing body. The several notices given, including the Notice of Special Meeting posted as described above, must be accomplished at least 24 hours prior to the time of the special meeting, except in the case of an emergency meeting covered under Paragraph D below.

D. *Emergency Meetings*

Emergency meetings are those special meetings in which the governing body is unable to give the required 24 hours notice. In the case of an actual emergency, the special meeting may be held "upon such notice as is appropriate to the circumstances". The nature of the notice required in emergency cases is obviously subject to a case by case analysis and cannot be specified by general rules. However, any relaxation or deviation in the normal manner of providing notice of meetings, either to the general public or to members of the governing body, must be carefully scrutinized and can be justified only for compelling practical limitations on the ability of the governing body to follow its normal notice procedures.

E. *Executive Sessions*

An executive session is nothing more than a meeting (regular or special) wherein the governing body is allowed under the Open Meeting Act to discuss and deliberate on matters in secret. See A.R.S. § 38-431.03. Separate notice need not be given of an executive session if it is held in conjunction with a properly noticed regular or special meeting. However, where only an executive session will be held, all notices of the meeting must state the specific provision of law authorizing the executive session, including a reference to the appropriate paragraph of Subsection A of A.R.S. § 38-431.03. See Appendix D for a sample Notice of Executive Session.

F. *Additional Notice*

In deciding what types of notice shall be given in addition to posting, governing bodies should consider the following:

1. *Newspaper Publications*

In many cases, notice of meetings can be disseminated by providing press releases to newspapers published in the area in which notice is to be given. In addition, paid legal notices in such newspapers may be purchased by the governing body.

2. *Mailing List*

Some bodies may wish to provide a mailing list whereby persons desiring to obtain notices of meetings may ask to be placed on a mailing list. All notices of meetings issued will then be mailed to those appearing on the current mailing list.

3. *Articles or Notices in Professional or Business Publications*

In addition, the governing body may obtain publication of articles or notices in those professional and business publications relating to the agency's field of regulation.

It is not necessary that all of these types of notices be given. Indeed, merely providing notice through the use of a mailing list and by posting should be sufficient in most cases. Neither should the above listings be considered exclusive and, to the extent other forms of notice are reasonably available, they should be used.

REQUIREMENTS FOR TAKING WRITTEN MINUTES

The first requirement for taking written minutes of meetings of governing bodies was included in the Open Meeting Act by the Legislature in 1974. The 1974 amendment, however, provided very little detail as to what the minutes must include. The original minute taking requirement read as follows:

* * * B. Governing bodies, except for subcommittees, shall provide for the taking of written minutes of all their meetings. Such minutes shall be

properly and accurately recorded as to all legal action taken and open to public inspection except as otherwise specifically provided by statute.

A.R.S. § 38-431.01.

In its last regular session, the Legislature amended this section to read in part as follows:

* * *B. All governing bodies, except for subcommittees, shall provide for the taking of written minutes of all their official meetings. Such minutes shall include, but not be limited to: (1) the day, time and place of the meeting, (2) the numbers of the governing body recorded as either present or absent, (3) an accurate description of all matters proposed, discussed or decided, and the names of members who proposed and seconded each motion.

C. The minutes or recording shall be open to public inspection three working days after the meeting except as otherwise specifically provided by this article. * * *

A.R.S. § 38-431.01, as amended Laws 1975 (eff. 9/12/75).

You should note that this section requires that the minutes or recording be open to public inspection, except as otherwise specifically provided by this article. The specific exception referred to is the provision in A.R.S. § 38-431.03 which provides that minutes of executive sessions shall be kept confidential.

AN EVALUATION OF THE EXAMINATIONS ADMINISTERED
BY THE ARCHITECTS SECTION OF THE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND
SURVEYORS EXAMINING BOARD

Submitted to:

State of Wisconsin
Department of Regulations and Licensing
201 East Washington Avenue
Madison, Wisconsin 53702

Submitted by:

Glenn E. Tagatz
International Personnel Services, Inc.
166 North 93rd Street
Milwaukee, Wisconsin 53226)

February, 1976

INTRODUCTION

This report summarizes the result of an evaluation of the licensing examination procedures practiced by the Architects Section of the Architects, Professional Engineers, Designers and Land Surveyors Examining Board. Its content complies with the specifications of the September 28, 1976, contract for personal services between the State of Wisconsin, Department of Regulations and Licensing, and Glenn E. Tagatz.

The contract specifies that the evaluation of the examinations would include but not be limited to the following:

1. The criteria used in determining the content of the examinations. In connection with this, the study shall determine the extent to which architect job analyses were used as a basis for determining examination content.
2. The appropriateness of methods used in developing the two current national examinations prepared by the National Council of Architect Registration Boards and Educational Testing Service. The validation techniques employed by the above named groups shall also be reviewed and evaluated against standards for educational testing prepared by the American Psychological Association, Federal and State standards, and any other nationally accepted standards.
3. The manner in which examinations are scored and the basis used for determining passing grades on the various portions of the examinations.
4. The criteria used by the board in determining which examination applicants must take the "equivalency" examination and/or the professional examination. As part of this section of the study, the Consultant shall review and evaluate the "experience and educational equivalency table" used by the board in screening and qualifying examination applicants.

The evaluation addressed each of these specifications, the

results of which are reported herein in the following seven sections:

- 1) Rationale for the Evaluation, 2) Background, 3) Test Development,
- 4) Validation, 5) Administration, 6) Interpretation, and 7) Recommendations.

RATIONALE FOR THE EVALUATION

A license is required for individuals to work in various professions and occupations in order to protect the health, safety, and welfare of the general public. In the United States, each individual state is responsible for providing licensing which protects the general public. While the responsibility for licensing resides with each state, many state licensing boards use examinations prepared and administered nationally in order to facilitate reciprocity of licensing between their state and other states. Such is the case with the Architects Section of the Architects, Professional Engineers, Designers and Land Surveyors Examining Board (hereafter referred to as the Examining Board). The Examining Board has been using examinations prepared by the National Council of Architectural Registration Boards (NCARB), in collaboration with the NCARB's test consultants, Educational Testing Service (ETS), for a number of years. While the decision to use examination materials and procedures prescribed by NCARB is within the jurisdiction of the Examining Board, this decision does not alter the Examining Board's responsibility to protect Wisconsin citizens.

When a state makes a licensing decision that affects the welfare of its citizens, such as the Examining Board's decision to use NCARB

examination materials, certain special interest groups existing within the state often exert influences which are not always consonant with the welfare of the general public. Individuals within a profession often try to limit entry into their profession so as to limit the supply of available services, thereby assuring themselves of adequate compensation and an adequate amount of business. In view of their special interest, they attempt to obtain maximally restrictive standards as a basis for determining who will subsequently enter the profession. Conversely, individuals who aspire to be licensed in a profession or occupation view such restrictive standards as a curtailment to their own personal welfare. They advocate the implementation of minimal standards so as to assure their entry into the profession. Such special groups can increase the difficulty a licensing board, such as the Examining Board, faces in determining sound licensing practices.

A state can initiate sound licensing practices that maintain and protect the health, safety and welfare of its citizens when it decides to use proper testing procedures in determining who will and who will not become licensed. Further, the use of proper testing procedures assures that each special interest group will be protected in a fashion which does not violate the state's responsibility to protect the general welfare. Thus, the Examining Board can insure sound licensing practices by use of proper testing procedures.

Proper testing procedures are described in the 1974 Standards for Educational and Psychological Tests (APA Standards) and the Equal Employment Opportunity Commission's "Code of Federal Regulations" (EEOC Guidelines, 1970). Thus, these documents are relevant to the testing

procedures practiced by state licensing boards, such as the Examining Board. Additional relevancy may also be attached by state licensing boards to the testing procedures outlines in these particular documents if the new Uniform Guidelines on Employee Selection Procedures proposed by the Equal Employment Opportunity Coordinating Council (EEOCC) are adopted. These new regulations would specifically include licensing boards in the groups governed by federal equal employment requirements, and consequently enforce state licensing board compliance with proper testing procedures. Since the judicial branch of the United States government utilizes the APA Standards and the EEOC Guidelines in determining if tests comply with federal regulations, the appropriateness of these two documents for the licensing practices of boards such as the Examining Board is enhanced. Thus, these two documents are foundations upon which the evaluation of the present licensing examination procedures practiced by the Examining Board are based.

In conclusion, the Examining Board has the responsibility for proper licensing procedures. These procedures should protect all interest groups including licensed architects in Wisconsin, individuals aspiring to licensing as architects in the State of Wisconsin, and especially the general public. The Examining Board's responsibility can be met through proper test development techniques such as those described in the APA Standards and the EEOC Guidelines. In addition, use of proper test development procedures will insure State compliance with future guidelines that will affect them.

BACKGROUND

Before the present licensing examination procedures practiced by the Examining Board can be reviewed and evaluated, the practices which are considered tests must be identified. According to APA Standards:

a test is a special case of an assessment procedure . . . tests include standardized aptitude and achievement instruments, diagnostic and evaluative devices, interest inventories, personality inventories, projective instruments and related clinical techniques, and many kinds of personal history forms. (p. 2)

According to the EEOC Guidelines:

the term 'test' is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. . . the term 'test' includes all formal, scored, quantified or standardized techniques of assessing job suitability including . . . specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, . . . biographical information blanks . . . etc. (para. 1607.2)

According to these documents, the Examining Board's licensing practices include three tests: 1) the Equivalency Examination, 2) the Professional Examination, and 3) the Table of Equivalents for Education, Training and Experience (hereafter referred to as the Table of Equivalents).

The three tests used by the Examining Board for licensing should therefore be properly developed tests. A properly developed test provides the information needed by users. The APA Standards delineate what type of information is needed:

A test user needs information describing a test's rationale, development, technical characteristics, administration, and interpretation. (p. 9)

By the term rationale, the APA Standards mean the basis upon which the content of the test is determined. In clarifying this statement, the

APA Standards state that face validity is not a sufficient rationale.

So called 'face' validity, the mere appearance of validity, is not an acceptable basis for interpretive inferences from test scores. (p. 26)

Rather, content validity is needed for tests such as those used by the Examining Board.

Evidence of content validity is required when the test user wishes to estimate how an individual performs in the universe of situations the test is intended to represent . . . to demonstrate the content validity of a set of test scores, one must show that the behaviors demonstrated in testing constitute a representative sample of behaviors to be exhibited in a desired performance domain. Definitions of the performance domain, the users' objectives, and the method of sampling are critical to claims of content validity. (APA Standards, p. 28)

Content validity is needed in the Examining Board's tests because the Examining Board wishes to estimate how individuals will perform in the universe of situations composing the profession of architect.

For a test to demonstrate content validity, professionals in the area of testing (Cronbach, 1970; Anastasi, 1968) maintain that the content of the test must be based on a task analysis, which is a method of determining the important parts of a job. Judicial decisions such as the decision in the Albamarle Paper Company versus Joseph P. Moody case (1974) support this position. Thus, to obtain content validity for tests used by the Examining Board, task analyses should have been performed.

Task analyses also form the foundation for the other information needed by test users, i.e., information concerning "development, technical characteristics, administration, and interpretation" (APA Standards, p. 9). From a task analysis a test is constructed step-by-step. Professionals in the area of testing (Cronbach, 1970; Anastasi,

1968) list a task analysis as the first step in test development, followed by: 1) assembling a test to measure the traits identified in the task analysis, 2) validating the test against a criterion of job performance, and 3) formulating a strategy for interpreting test scores. Thus, there are four basic steps, a task analysis plus the three steps described above, that should have been followed in constructing the tests used by the Examining Board.

In conclusion, the examinations offered by the Examining Board obviously fit the definition of a test. Moreover, the "Table of Equivalents" which provides an underlying basis for determining which applicants take what examinations also fits the definition of a test. Therefore, these three tests should have been professionally developed following the four basic steps of: 1) a task analysis, 2) test items constructed from the task analysis, 3) validation, and 4) interpretative strategy formulated on the basis of psychometric characteristics.

TEST DEVELOPMENT

General Findings

There is no evidence of conformity between the content of 1) The Table of Equivalents, 2) the Equivalency Examination, and 3) the Professional Examination, and an analysis of the tasks performed by practicing architects. This conclusion is based upon several factors.

First, Mr. Peter Loret, Program Director for the NCARB project at ETS, has stated that¹

There has never been a task analysis [of the job of the architect]. In fact, he recommended to Mr. Samuel Balen, Director of Professional

Services for NCARB, that one be conducted about a year previous to the date of this report.

Second, in "The Manual of Information for the Committee Members" prepared by ETS for use by the test committee members, it is stated that item writers should

Select a concept or idea which is important for the examinee to know or understand. (p. 6)

In the same document, under recommended steps in reviewing tests, it is stated that reviewers should

Consider the test as a whole, reacting to . . . its coverage of subject matter (note any undesirable repetition of subject matter or concepts being tested or important topics that have been omitted or insufficiently emphasized). (p. 10)

This manual places the responsibility for specific test item content and overall test content on the subjective judgment of test writers rather than on the findings of an objective task analysis.

Third, an extensive review of the professional literature failed to disclose any task analysis performed on the position of architect.

Fourth, the content of NCARB examinations is based upon a general building code which is not used in the State of Wisconsin which has its own specific code.

Fifth, the 1973 pre-annual report of NCARB states that

The Equivalency Examination has been prepared to evaluate basic skills of candidates equivalent to those acquired by students in the accredited schools of architecture, thus qualifying them to take the Professional Examination as a prerequisite of professional registration. (p. 8)

Thus, the content of the Equivalency Examination is designed to be academic in nature, rather than predictive of performance as an architect, the job for which the examinee is seeking to be licensed.

Sixth, there is no evidence that the Equivalency Examination was based on a comprehensive analysis of the skills acquired by students while at accredited schools of architecture. Therefore, even content validity with respect to academic knowledge, skills, and abilities cannot be claimed, even though such a claim would not necessarily validate the Examining Board's use of the test to predict job performance.

Seventh, the Equivalency Examination is a condensed version of the seven-part examination used by NCARB during 1968 to 1973. There is no evidence which indicates that this seven-part examination was based on the findings of a formal task analysis.

In summary, the development of the Professional Examination, the Equivalency Examination, and the Table of Equivalents was based upon work performed by NCARB committees, such as the NCARB Professional Examination Consulting Committee, and not on the findings of a formal job analysis. Therefore, the route taken by the NCARB in developing these test instruments does not conform to APA Standards and EBOC Guidelines.

Specific Findings

The following are specific findings related to the Professional Examination, the Equivalency Examination, and the Table of Equivalents.

Professional Examination

The NCARB Professional Exam: Exam Writer's Guide (1974) (hereafter referred to as the Exam Writer's Guide) articulates the content of the Professional Exam. The examination consists of four parts: Environmental Analysis, Architectural Programming, Design and

Technology, and Construction. The content of each examination part is based upon a two-way test item specification matrix, where the abscissa represents problematic performance dimensions and the ordinate represents various featural considerations of a building project. Therefore, the column and row intersections within the matrix provide categories of specific problematic activities to be performed in regard to specific features of a building project. Each category is subsequently expanded upon and refined into an approximate test item format in the "Test Item Specification" section corresponding to each part of the examination.

The APA Standards state that

Definitions of the performance domain, the user's objectives, and the method of sampling are critical to claims of content validity . . . a definition of the performance domain of interest must always be provided by a test user so that the content of a test may be checked against an appropriate task universe. (p. 28)

The Exam Writer's Guide does attempt to define the performance domain and the user's objectives. However, because a task analysis has not been conducted there is no way of determining whether the performance domain defined by the content of the examination is adequately representative of the universe of tasks performed by architects. Consequently, the Exam Writer's Guide does not reveal the method by which the sample of behaviors to be demonstrated on the examination were drawn from the universe of tasks performed by architects in the practice of their profession. APA Standards further state that

An employer cannot justify an employment test on grounds of content validity if he cannot demonstrate that the content universe includes all, or nearly all, important parts of a job. (p. 29)

Hence, it appears that the examination demonstrates, at most, "face

validity" as previously described in this report.

The Exam Writer's Guide contains information which states:

While every effort has been made to provide a complete rational framework, it is expected that specifications and categories will be revised, expanded, and perhaps even restructured as the examination matures from year to year. (Preface)

Thus, it may be concluded that even the examination committee recognizes that a lack of conformity exists between test content and the universe of architectural activities.

Equivalency Examination

Circular Number Four, Subject Matter Outline: NCARB Equivalency Examination articulates the content of the Equivalency Examination. The examination consists of three parts: History and Theory of Architecture and Environmental Planning, Architectural Design, and Construction Theory and Practice. Circular Number Four reveals a less systematically planned examination, but one that also appears to test material relevant to the work of an architect. However, this examination has the same problem as the Professional Examination in that it is not based upon the findings of a formal task analysis. It, however, causes additional concern.

The additional concern arises from the fact that the stated purpose of the Equivalency Examination is to determine whether applicants without an accredited degree have acquired basic architectural skills that are comparable to those presumably acquired by applicants who have degrees accredited by the NAAB. NAAB accredits architectural schools on the basis of the mission statement prepared by the individual school. It does not require any specific course content to be included

in the curriculum. Therefore, without a common basis for discerning the quality of architectural skills, knowledge, and abilities of individual accredited-degree holders, an examination such as the Equivalency Examination cannot be used to make a comparison between the architectural skills, knowledge and abilities of accredited-degree holders and those of applicants without accredited degrees.

NCARB recognized that differences existed among the various schools of architecture and also that differences existed among the ways that a person could acquire the background and training necessary to become an architect.

We have attempted in the past to process all those entering the profession of architecture through the same examination, but we have now recognized that there are differences not only of schools but in the manner in which a man can acquire his background and training to become an architect. (Pre-Convention Report, 1971, p. 8)

However, while there might be differences in the manner in which individuals attain the background and training necessary to become an architect, the assumption that two separate examinations should be used is questionable. Rather, if all professional architects are expected to have acquired, minimally, a standard range and quality of architectural skills, knowledge, and abilities necessary to protect the general welfare of the public, then, regardless of the manner and context in which these proficiencies were acquired, all aspirants should be required to demonstrate that range and quality of architectural skills, knowledge, and abilities on the same standard examination(s).

Table of Equivalents for Education,
Training and Experience

The development of the 1975 edition of the Table of Equivalents

is characterized by the same deficiency underlying the development of the Professional and Equivalency Examinations in that its content is not based upon the findings of a formal task analysis. It is presumed that the activities performed under the various academic training and work experience categories provide a basis for developing the types of skills, knowledge, and abilities necessary to successfully perform the critical tasks comprising the job of professional architect. However, because those critical tasks have not been identified through conducting a formal task analysis, there is no way of determining whether the activities performed under the various categories are adequately representative of the universe of critical tasks performed by successful architects. It would, therefore, appear that the development of the Table of Equivalents also does not meet all the criteria necessary for substantiating claims of content validity.

Another significant feature of the Table of Equivalents is that differential importance for the development of architectural skills, knowledge, and abilities is attached to the various academic training and work experience categories via the different "Maximum Credit Allowed" limitations assigned to them. It must, therefore, be assumed that functionally different job-related activities of greater and lesser importance are performed under the different categories. However, since a formal task analysis has never been conducted for the occupation of professional architect (which ordinarily would specify the job-related activities of greater and lesser importance), it appears that the differentiations presumed to hold in the Table of Equivalents are largely based upon the conjecture of committee

discussion as opposed to empirical evidence.

In summary, the development of the three examinations, i.e., the Professional Examination, the Equivalency Examination, and the Table of Equivalents, is not based on a formal task analysis. Therefore, the individual test items cannot be specifically related to the tasks performed by architects and the tests as developed and presently used do not demonstrate content validity as described in the APA Standards.

VALIDATION

In addition to content validity, the APA Standards recommend that construct validity and criterion-related validity be established when appropriate.

Construct validity is implied when one evaluates a test or other set of operations in light of the specified construct. (APA Standards, p. 29)

A psychological construct is an idea developed or 'constructed' as a work of informed, scientific imagination: that is, it is a theoretical idea developed to explain and to organize some aspects of existing knowledge. (APA Standards, p. 29)

Construct validity appears inappropriate with respect to the Examining Board's use of the NCARB tests because their purpose is to predict performance for purposes of licensing, not to refine theoretical knowledge.

Criterion-related validity appears appropriate to the Examining Board's use of the NCARB tests because of their concern with performance:

Criterion-related validities apply when one wishes to infer from a test score an individual's most probable standing on some other variable called a criterion. Statements of predictive validity indicate the extent to which an individual's future level on the

criterion can be predicted from a knowledge of prior test performance; statements of concurrent validity indicate the extent to which the test may be used to estimate an individual's present standing on the criterion. The distinction is important. Predictive validity involves a time interval during which something may happen (e.g., people are trained, or gain experience, or are subject to some treatment). Concurrent validity reflects only the status quo at a particular time. (APA Standards, p. 26)

Either the concurrent type or predictive type of criterion-related validity would meet the Examining Board's purpose of predicting how examinees would perform as architects.

For purposes of analyzing its claim that experiential factors in addition to academic background are needed for adequate performance as an architect, the Examining Board might establish both concurrent and predictive validity for examinees taking the Professional Examination without experience. A comparison of the concurrent validity measure computed prior to experience, with the predictive validity measure computed after experience, would clarify the relationships among experience, academic background, and job performance.

In considering which types of validity are appropriate and necessary for adequate test development, the EEOC Guidelines state:

Empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity. . . . Evidence of content or construct validity . . . may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency test) or the construct (in the case of trait measures). (para. 1607.5a)

Since content validity is appropriate, the Examining Board could claim validity of its tests by demonstrating this type of validity. As indicated in the previous section of this report, the tests used by the

Examining Board do not demonstrate content validity. The Examining Board could also claim validity of its tests through construct validity. As explained in this section of the report, construct validity is an inappropriate type of validity for the Examining Board's purpose. Finally, the Examining Board could claim validity of its tests through criterion-related validity. As previously explained, criterion-related validity is an appropriate type of validity for the Examining Board's purpose. Criterion-related validity is also feasible with respect to the number of examinees tested by the Examining Board. Thus, the Examining Board's tests may be valid if criterion-related validity has been established.

One additional factor concerning the validity of the Examining Board's tests should be considered. Differential validity between minority groups as defined by Title VII of the Civil Rights Act of 1964 and the unprotected majority may become necessary if the proposed EEOCC Uniform Guidelines on Employee Selection Procedures are adopted. The APA Standards which also recommend differential validation define it as

An investigation of possible differences in criterion-related validity for ethnic, sex or other subsamples. . . . Evidence of differential validity is developed by comparing, for example, correlation coefficients, regression equations, and means and variances for each variable. (p. 43)

Thus, differential validity is another type of validity which should be examined with respect to the Examining Board's tests.

Findings

There is no evidence that criterion-related validity has been established for any of the three NCARB tests. Therefore, no claims of

criterion-related validity can be made for the Professional Examination, the Equivalency Examination, or the Table of Equivalents. Some evidence of criterion-related validity was available for the old seven-part examination (A Study of the Relationship of NCARB Test Scores to Ratings of the Candidates Made by Professional Architects Who Were Their Employers, 1969). However, even though the Equivalency Examination is based on the old seven-part examination, the changes in content and item arrangement preclude any possibility of inferring validity for the Equivalency Examination from the old seven-part examination.

The only differential validity data were collected by NCARB on females who took the Equivalency Examination and the Professional Examination. Using these data, ETS did statistical analyses of the differential pass rates for males and females. They found that females did not have a higher failure rate than males, and, in some instances, the females actually demonstrated statistically significantly higher passing rates than males. These results, however, are suspect because of the lack of control over factors of internal validity in the experimental design. (See Campbell and Stanley, 1963.) No other efforts at differential validation were made for females or for other minority groups on the three tests used by the Examining Board.

In summary, the Professional Examination, the Equivalency Examination, and the Table of Equivalents do not demonstrate content validity (see Test Development section) or criterion-related validity. Also, differential validation of these tests has been limited to a cursory examination of female passing rates. Thus, the three examinations do not meet the specifications of the EEOC Guidelines, the APA Standards,

nor the EEOCC Uniform Standards.

TEST ADMINISTRATION

The Examining Board's administration of tests is an important step in insuring that fair licensing decisions are made for all examinees. The basic principle of proper test administration is standardization of procedures. Standardization of procedures is based on the premise that

When decisions are based on test scores, the decision for each individual should be based on data obtained under circumstances that are essentially alike for all. (APA Standards, p. 64)

Standardization of tests is obtained by following the practices delineated in the APA Standards:

The directions for administration should be presented in the test manual with sufficient clarity and emphasis so that the test user can duplicate, and will be encouraged to duplicate, the administrative conditions under which the norms and the data on reliability and validity were obtained. (p. 18)

A test user must fully understand the administrative procedures to be followed. . . . The test user should be fully trained to do whatever is required for competent administration of the test. (p. 64)

A test user is expected to follow carefully the standardized procedures described in the manual for administering a test. (p. 64)

It may in rare cases be necessary to modify procedures. . . . Modifications may be standardized for specific purposes. (p. 64)

A test user should maintain consistent conditions for testing. . . . In general, testing conditions should minimize variations in the testing procedure. (p. 64)

A test user should make periodic checks on material, equipment, and procedures to maintain standardization. (p. 64)

The test administrator is responsible for establishing conditions, consistent with the principle of standardization, that enable each examinee to do his best. (p. 65)

The test user shares with the developer or distributor a responsibility for maintaining test security. (p. 65)

In general a test user should try to choose or to develop an assessment technique in which 'tester-effect' is minimized, or in which reliability of assessment across testers can be assured. (p. 63)

The directions published in the test manual should be complete enough that persons tested will understand the task and the author intended. (p. 18)

The directions should clearly point out such critical matters as instructions on guessing, time limits, and procedures for marking answer sheets. (p. 18)

The directions to the test administrator should include guidance for dealing with questions from examinees. (p. 18)

Instructions should prepare the examinee for the examination. (p. 18)

Findings

Professional Examination and Equivalency Examination

In general, administration of the Professional Examination and the Equivalency Examination appear to conform to standardized test administration procedures. However, several deviations from point number five,

A test user should maintain consistent conditions for testing. . . . In general, testing conditions should minimize variations in the testing procedure. (APA Standards, p. 64)

and point number seven,

The test administrator is responsible for establishing conditions, consistent with the principle of standardization, that enable each examinee to do his best. (APA Standards, p. 65)

occurred during the December 1975 administration of the Professional Examination. The Professional Examination was administered in two

locations (a building located at State Fair Park in Milwaukee and a building located at the University of Wisconsin Extension campus), which were quite different in the physical conditions present at the time of testing. The physical conditions at the University of Wisconsin Extension were adequate. However, it was reported that the physical conditions at the State Fair building were characterized by:

1. A temperature between 55 and 60 degrees,
2. Lighting which may not have been adequate for reading test items and scrutinizing graphical documents,
3. Distracting noise at the rear of the testing room, and
4. An insufficient number of proctors for disseminating examination materials.

This was confirmed in a telephone conversation with the examiner at the State Fair location, Professor John T. Snedeker, of the University of Wisconsin Extension.

Such conditions may have caused the examinees who took the Professional Examination at the State Fair building to have scored lower than they would have under better testing conditions, because of physical discomfort, poor test item visibility, distractions interrupting their concentration, deviations in allotted time, and other concomitant factors such as increased anxiety. With respect to physical conditions and variations in allotted time due to an insufficient number of proctors, the APA Standards state:

Situational variables should be reasonably controlled. For example, there should be no great variation in temperature or humidity; noises and other distractions should be as nearly eliminated as possible. . . . In general, testing conditions should minimize variations in the testing procedure. (p. 64)

The December 1975 administration of the Professional Examination at the

State Fair Park location appears not to have met these recommended standards.

Table of Equivalentents

Because the Table of Equivalentents is not the same type of test as the Professional Examination and the Equivalency Examination, nor is it administered in a manner similar to that of either of these examinations, all of the standardized administration procedures listed in the APA Standards are not applicable to its administration. However, the general principle of standardization is still applicable in that it is essential that there be a high degree of consistency in the decisions made by administrators over time and across different administrators regarding how applicants' years of academic training and work experience are assigned to the academic training and work experience categories listed in the Table of Equivalentents.

The decisions made by the Examining Board rest heavily on the "Experience Descriptions" for each category articulated in the Table of Equivalentents. The descriptions of the academic training categories appear to be relatively clear and precise. Although it is apparent that the developers of the Table of Equivalentents attempted to provide equally clear and precise descriptions of the work experience categories, it is still evident that some degree of subjectivity is required of administrators in order for decisions to be made regarding the specific categories under which an applicant's various work experiences will be assigned. Therefore, the administrator of the Table of Equivalentents frequently does have a direct influence on the total years

of credit granted to an applicant, which is a practice contrary to the principle of standardization in that it tends to attenuate the reliability of such decisions. However, this departure from standardization does not affect decisions regarding applicant eligibility for admission to the Professional Exam in the State of Wisconsin for those applicants who do have an accredited degree in architecture because work experience is not an eligibility prerequisite for admission to this examination in this state. This practice is also not likely to be a significant factor in determining applicant eligibility for admission to the Equivalency Examination in the State of Wisconsin in that only four years of academic training and/or work experience are required for admission to this examination in this state. However, this practice may have a detrimental effect on the reliability of decisions made regarding the granting of a license in architecture in that seven years of academic training and/or work experience are required of those applicants who have previously passed the Professional Exam.

The Examining Board has reported that, when decisions regarding assignment of an applicant's work experience to the various work experience categories takes the form of "guesswork," due to the ambiguity of his or her experience record, the applicant is required to provide to the Examining Board more detailed information. This administrative procedure does conform to APA Standards:

When there is any deviation from standard practice, it should be duly noted. . . . Modifications may be standardized for specific purposes. (p. 64)

The Examining Board has also reported that once a sufficient amount of information has been provided by an applicant, "it is not difficult to

assign categories to candidates based on their training statements."²

TEST INTERPRETATION

Tests are generally interpreted on the basis of their psychometric characteristics. The two psychometric characteristics needed for all other psychometric characteristics to have meaning are test validity and test reliability. The validity of the tests used by the Examining Board has already been examined in previous sections of this report. This section of the report will begin with an examination of the reliability of the tests used by the Examining Board, followed by an examination of other psychometric characteristics which are pertinent to test interpretation including: 1) descriptive statistics, 2) item analysis, 3) pass-fail criterion, and 4) objectivity of scoring.

Reliability

Reliability refers to the degree to which the results of testing are attributable to systematic sources of variance. Classical methods of estimating reliability coefficients call for correlating at least two sets of similar measurements. (APA Standards, p. 48)

Different methods of estimating reliability take account of different sources of error. (APA Standards, p. 49)

From the computation of different types of reliability, the sources of inconsistency or error can be identified. These sources may include:

inconsistency in responses of the subject; inconsistency or heterogeneity within the sample of test content (such as the stimulus items, questions, and situations); inconsistencies in administration of the test; inconsistency among scorers, raters, or units of apparatus; and mechanical errors of scoring. (APA Standards, p. 50)

Reliability estimates for the 1973 and 1974 administrations of

the Equivalency Examination and for the 1973, 1974, and 1975 administrations of the Professional Examination are reported for each administration in booklets published by ETS entitled Test Analysis. The reliability estimates for these examinations fall within the range generally obtained for professionally developed and published tests. However, ETS does not report reliability for the Architectural Design subtest of the Equivalency Examination, due to the fact that this subtest is not graded by them, but by "prejuries" located in the various geographical regions. In order to assess the reliability of this subtest, a correlation was computed on the December 1973 data and an interjudge reliability estimate of .4 was obtained. This reliability estimate is lower than the reliability estimates considered desirable for professionally developed and administered tests.

There is no evidence that reliability estimates have ever been computed for the Table of Equivalents. However, the constant modification of the Table of Equivalents from year to year would result in a lack of reliability across time.

In considering the reliability estimates reported for the Examining Board's test, the nature of reliability must be considered.

Reliability is a necessary but not a sufficient condition of validity. Reliability coefficients are pertinent to validity in the negative sense that unreliable scores cannot be valid; but reliable scores are by no means ipso facto valid. (APA Standards, p. 69)

Therefore, even though adequate reliabilities are reported for the Professional Examination and two of the three Equivalency subtests, these reliability estimates have no meaning until these tests are demonstrated to be valid measures of job performance.

In conclusion, with the exception of the Architectural Design subtest, the reliability estimates of the Professional Examination and the Equivalency Examination subtests appear to be adequate. However, these estimates cannot be considered relevant until the tests are demonstrated to be valid. With regard to the Table of Equivalency, no systematic effort has been undertaken to determine its reliability across applicants or across time.

Descriptive Statistics

Descriptive statistics summarize the test scores of the examined group. The APA Standards state that descriptive statistics are essential for proper understanding of test results.

Measures of central tendency and variability always should be reported. (p. 22)

The descriptive statistics for each administration of the Professional Examination and the Equivalency Examination are also reported by ETS in booklets entitled Test Analysis. These descriptive statistics appear to be adequate.

Item Analysis

A quantitative item analysis includes principally the measurement of item difficulty and item discrimination. Item difficulty is determined by the percentage of individuals who answer the item correctly. The easier the item, the larger will be this percentage value. Item discrimination is frequently determined by computing a bi-serial correlation, which measures the relationship between pass-fail on the item

and high to low performance on the test as a whole. Generally, only those items yielding a significant bi-serial correlation coefficient are retained in a test.

The results of an item analysis have been reported for each administration of the Professional Examination and the Equivalency Examination in the ETS booklets entitled Test Analysis. It appears that the item analyses were conducted in accordance with accepted psychometric practices. However, a substantial number of examination items have a bi-serial correlation value which falls below the preferred value of .35, and yet these items have been retained in the examinations. These findings indicate that subsequent refinement of the items in the examinations could improve the quality of the examinations. Aside from these findings, the item analyses appear generally satisfactory.

Pass-Fail Criteria

Suggested pass-fail criteria for the subtests of the Equivalency Examination and the total test are established by ETS through a process of score equating, i.e., using equator items from a previous examination. This conforms with proper testing practice.

There was no score equating for the first two administrations of the Professional Examination, but it has been stated by Mr. Samuel Balen of NCARB that equator items are now being used. This statement conflicts with the information received from ETS. Furthermore, it may not be possible to construct adequate equator items for an examination such as the Professional Examination where the basic project underlying

the examination changes from year to year.

Through score equating, descriptive statistics, and frequency distributions, ETS arrives at a suggested cut-off score for each subtest and test. NCARB then makes the final decision whether to follow this proposed cut-off, or arbitrarily decides upon a different cut-off point. Concerning this practice, the APA Standards state

If specific cutting scores are to be used as a basis for decisions, a test user should have a rationale, justification, or explanation of the cutting scores adopted. (p. 66)

Normally this is done in relationship to a criterion such as job performance where the quality of criterion performance determines satisfactory or unsatisfactory test performance. It can also be done on the basis of some decision theory principle. ETS then computes scores of pass or fail for the subtests and total examinations, with advisory scores of strong, average, and weak attached to all failing subtest scores. These scores on the various subtests are reported by ETS to NCARB and to the various states. It is unknown which states pass individuals who are close to the division between passing and failing performance, but it has been suggested that this practice does exist in some states, and that it is often practiced on the Architectural Design subtest.

It is possible, according to the NCARB Professional Examination Score Interpretation Card, for an examinee to pass all four subtests of the Professional Examination and still fail the Examination because the total of the four passing subtest scores is below the minimum passing score for the total examination. The use of weighted regression equations which take into account the validity and variability of each

subtest, instead of the practice of four independent cut-off scores plus a total score cut-off, would be a more customary practice for making this type of decision.

In conclusion, the rationale used by NCARB in making the final determination of pass-fail criteria for both the Equivalency Examination and the Professional Examination is obscure, and does not conform with APA Standards. Also, the practice of allowing individual states to change the criterion for passing does not conform with proper test procedures. Finally, the method used to compute the applicants' pass or fail on the total Professional Examination does not conform with customary testing practices.

Scoring

Scoring of examinations is done objectively by ETS for all parts of both examinations with the exception of the Architectural Design subtest. On the Architectural Design subtest of the Equivalency Examination, a subjective judgment is made by the prejury of the region, which is subject to modification by the individual state. In the 1969 validation of the old seven-part examination, it was recommended by ETS to NCARB that the subtest corresponding to the Equivalency Examination's Architectural Design subtest be made objective. This recommendation was never implemented. The rationale behind the recommendation for the seven-part examination subtest remains essentially the same for the Architectural Design subtest of the Equivalency Examination.

Scoring of the Table of Equivalents involves a substantial amount

of subjective judgment on behalf of the scorer with respect to the educational and experiential background of applicants. The effects of the scorer's subjective judgments are discussed in the test administration section of this report.

In conclusion, scoring is adequate for the Professional Examination and the Equivalency Examination with the exception of the Architectural Design subtest. The subjective judgments involved in scoring the Table of Equivalents suggest that other means of testing in this area may be more appropriate.

RECOMMENDATIONS

This section of the report will consist of two parts: 1) recommendations to the legislature concerning modification of the Rules and Regulations of the Examining Board, and 2) recommendations specific to the Examining Board.

Recommendations to the Legislature

It is recommended that the legislature:

- 1) Require that a single examination be given to all individuals who apply for licensure as architects in the State of Wisconsin.
- 2) Monitor the activities of the Examining Board to assure that the recommendations to them are followed.

Recommendations to the Examining Board

The recommendations to the Examining Board consist of both recommendations concerning present activities and practices, and

recommendations concerning future activities and practices.

It is recommended at the present time that the Examining Board:

- 1) Require all applicants for licensure as architects in the State of Wisconsin to demonstrate the same degree of proficiency, regardless of academic background and/or work experience. This should be done through a single examination which assesses the knowledge, skills, and abilities necessary for architects to possess in order to protect the health, safety, and general welfare of the public.
- 2) Use the Equivalency Examination (without the Architectural Design subtest) and the Professional Examination as an interim means of assessing applicants for licensure in the absence of a valid test which was based upon a task analysis of the position of architect.
- 3) Make available the Architectural Design subtest for the purpose of reciprocity, but not use this subtest score in the determination of licensing for Wisconsin architects.
- 4) Petition NCARB to construct one valid test for architects which would include a task analysis, a criterion-related validation study, and meet the specifications of the APA Standards and the EEOC Guidelines.
- 5) Develop their own examination using proper test development techniques if their petition to NCARB is not successful. If this becomes necessary, the licensing fees could be adjusted to cover the necessary costs.
- 6) Obtain continuing professional testing assistance for purposes of insuring that proper testing procedures are followed by ETS, NCARB, and the Examining Board.
- 7) Request that complete test results be returned to the State. Such results should include both the test and subtest scores, and copies of the corrected tests. Such data are necessary for the Examining Board to adequately interpret test results and to perform research on the examination.

It is recommended that, within a period of 18 to 30 months, the

Examining Board:

- 1) Acquire and use a validated test based on a task analysis for purposes of architectural licensing. This test should meet the specifications of the EEOC Guidelines and APA Standards, and also the EEOCC Uniform Guidelines if they become law.

- 2) Undertake research to validate the educational and experiential requirements of the Table of Equivalents, both in terms of content validity and criterion-related validity, if they wish to continue its use. The validation procedure for the Table of Equivalents should be designed to allow determination of the relevance of each requirement and their respective sub-categories.
- 3) Rectify all specific shortcomings in test administration and test interpretation which have been delineated in this report. These practices should be brought into conformity with the APA Standards.
- 4) Secure demographic information on all examinees so that the requirements of local differential validation on Wisconsin licensing applicants can be met.
- 5) Provide retesting for all applicants who failed to obtain licensure under present unvalidated examination practices. Each of these applicants should be informed of their opportunity to be retested.
- 6) Develop a retesting practice which allows applicants to be re-examined after obtaining further experience or education. This practice should include information to all examinees concerning their areas of weakness on the prior examination, and the requirements to be met to qualify for retesting.

FOOTNOTES

¹Personal communication with Mr. Peter Loret, 16 December 1975.

²Quoted from a written communication received from Mr. Robert Yarbrow, Chairman of the Architects Section of the Wisconsin Examining Board, 11 December 1975.

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APPENDIX A

Individuals Interviewed

Mr. Samuel Balen
Director of Professional Services
NCARB
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Mr. Hayden Mims
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Professor John T. Snedeker
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Mr. Cass Hure, Executive Secretary
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Mr. Douglas Johnson
Legislative Aide
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Ms. Lillian Leenhouts
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§ 32-101. Purpose; definitions

A. The purpose of this chapter is to provide for the safety, health and welfare of the public through the promulgation and enforcement of standards of qualification for those individuals licensed and seeking licenses pursuant to this chapter.

B. In this chapter, unless the context otherwise requires:

1. "Architect" means a person who, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural engineering acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture as attested by his registration as an architect.

2. "Architect-in-training" means a candidate for registration as a professional architect who is a graduate of a school approved by the board as of satisfactory standing or who has experience as outlined in the current standards of the national council of architectural registration boards in architectural work of a character satisfactory to the board. In addition, the candidate shall have successfully passed the examination in the basic architectural subjects. Upon completion of the requisite years of training and experience in the field of architecture under the supervision of a professional architect satisfactory to the board, the architect-in-training shall be eligible for the second stage of the prescribed examination for registration as a professional architect.

3. "Architectural practice" means any service or creative work requiring architectural education, training and experience, and the application of the mathematical and physical sciences and the principles of architecture and architectural engineering to such professional services or creative work as consultation, evaluation, design and review of construction for conformance with contract documents and design, in connection with any building, planning or site development. A person shall be deemed to practice or offer to practice architecture who in any manner represents himself to be an architect, or holds himself out as able to perform any architectural service or other services recognized by educational authorities as architecture.

4. "Assayer" means a person who analyzes metals, ores, minerals, or alloys in order to ascertain the quantity of gold or silver or any other substance present in them.

5. "Board" means the state board of technical registration.

6. "Engineer" means a professional engineer who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education or practical experience, is qualified to practice engineering as attested by his registration as a professional engineer.

7. "Engineering practice" means any professional service or creative work requiring engineering education, training and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, research investigation, evaluation, planning, surveying, design, location, development, and review of construction for conformance with contract documents and design, in connection with any public or private utility, structure, building, machine, equipment, process, work or project. Such services and work include plans and designs relating to the location, development, mining and treatment of ore and other minerals. A person shall be deemed to be practicing or offering to practice engineering if he practices any branch of the profession of engineering, or by verbal claim, sign, advertisement, letterhead, card or any other manner represents himself to be a professional engineer, or holds himself out as able to perform or does perform any engineering service or other service or recognized by educational authorities as engineering. A person employed on a full time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be deemed to be practicing engineering for the purposes of this chapter if he engages in the practice of engineering exclusively for and as an employee of such employer and does not hold himself out and is not held out as available to perform any engineering services for persons other than his employer.

8. "Engineer-in-training" means a candidate for registration as a professional engineer who is a graduate in an approved engineering curriculum of four years or more of a school approved by the board as of satisfactory standing, or who has had four years or more of experience in engineering work of a character satisfactory to the board, and, in addition, has successfully passed the examination in the basic engineering subjects, and who, upon completion of the requisite years of training and experience in engineering under the supervision of a professional engineer satisfactory to the board, is eligible for the second stage of the prescribed examination for registration as a professional engineer.

9. "Geological practice" means any professional service or work requiring geological education, training, and experience, and the application of special knowledge of the earth sciences to such professional services as consultation, evaluation of mining properties, petroleum properties, and ground water resources, professional supervision of exploration for mineral natural resources including metallic and nonmetallic ores, petroleum, and ground water, and the geological phases of engineering investigations.

10. "Geologist" means a person, not of necessity an engineer, who by reason of his special knowledge of the earth sciences and the principles and methods of search for and appraisal of mineral or other natural resources acquired by professional education and practical experience is qualified to practice geology as attested by his registration as a professional geologist. A person employed on a full time basis as a geologist by an employer engaged in the business of developing, mining or treating ores and other minerals shall not be deemed to be engaged in "geological practice" for the purposes of this chapter if he engages in geological practice exclusively for and as an employee of such employer and does not hold himself out and is not held out as available to perform any geological services for persons other than his employer.

§ 32-101

11. "Geologist-in-training" means a candidate for registration as a professional geologist who is a graduate of a school approved by the board as of satisfactory standing or who has had four years or more of experience in geological work of a character satisfactory to the board. In addition, the candidate shall have successfully passed the examination in the basic geology subjects. Upon completion of the requisite years of training and experience in the field of geology under the supervision of a professional geologist satisfactory to the board, the geologist-in-training shall be eligible for the second stage of the prescribed examination for registration as a professional geologist.

12. "Landscape architect" means a person who, by reason of his professional education, practical experience, or both, is qualified to engage in the practice of landscape architecture as attested by his registration as a landscape architect.

13. "Landscape architect-in-training" means a candidate for registration as a professional landscape architect who is a graduate of a school approved by the board as of satisfactory standing or who has had four years or more of experience in landscape architectural work of a character satisfactory to the board. In addition, the candidate shall have successfully passed the examination in the basic landscape architectural subjects. Upon completion of the requisite years of training and experience in the field of landscape architecture under the supervision of a professional landscape architect satisfactory to the board, the landscape architect-in-training shall be eligible for the second stage of the prescribed examination for registration as a professional landscape architect.

14. "Landscape architectural practice" means the performance of professional services such as consultations, investigation, reconnaissance, research, planning, design, or responsible supervision in connection with the development of land and incidental water areas where, and to the extent that the dominant purpose of such services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and esthetic values, the settings and approaches to buildings, structures, facilities, or other improvements, natural drainage and the consideration and the determination of inherent problems of the land relating to erosion, wear and tear, light or other hazards. This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this paragraph, but shall not include the design of structures or facilities with separate and self-contained purposes for habitation or industry, such as are ordinarily included in the practice of engineering or architecture; and shall not include the making of cadastral surveys or final land plats for official recording or approval, nor mandatorially include planning for governmental subdivisions.

15. "Land surveyor" means a person who engages in the practice of surveying tracts of land for the determination of their correct locations, areas, boundaries, and description, for the purpose of conveying and recording, or for establishment or re-establishment of boundaries and plotting of lands and subdivisions.

§ 32-102. Board of technical registration

A. There shall be a state board of technical registration. The board shall consist of nine appointive members, who shall be appointed by the governor. Three of the appointive members shall be architects, five shall be professional engineers and the remaining member shall be an assayer, landscape architect, geologist or surveyor.

B. Upon the expiration of any of the terms a successor, qualified pursuant to subsection A of this section, shall be appointed for a full term of three years. The governor may remove an appointive member of the board for misconduct, incapacity or neglect of duty. Appointment to fill a vacancy caused other than by expiration of term shall be for the unexpired portion of the term.

§ 32-103. Qualifications of members

Appointive members of the board shall:

1. Be at least thirty-five years of age.
2. Have been a resident of the state for at least three years immediately preceding his appointment.
3. Have had at least ten years active experience as attested by registration under this chapter, except that years of practice in the state may be substituted for years of registration if a profession or occupation to be represented on the board has come under the provisions of this chapter within the ten-year period immediately preceding such appointment.

§ 32-104. Compensation

A. Members of the board shall receive no compensation for their services.

B. The certificate of registration of board members shall be renewed without payment of the renewal fee.

§ 32-105. Organization

The board shall annually elect from its membership a chairman, vice-chairman and secretary. It shall hold at least two regular meetings each year and such special or called meetings as the by-laws provide. Not less than five members, of whom at least two shall be architects and three engineers, shall constitute a quorum for the transaction of business.

§ 32-106. Powers and duties

A. The board shall:

1. Adopt by-laws and rules for the conduct of its meetings and performance of duties imposed upon it by law.
2. Adopt an official seal for attestation of certificates of registration and other official papers and documents.
3. Consider and pass upon applications for registration.
4. Hear and pass upon complaints or charges.
5. Compel attendance of witnesses, administer oaths and take testimony concerning all matters coming within its jurisdiction.
6. Keep a record of its proceedings.
7. Keep a register which shall show the date of each application for registration, the name, age, qualifications and place of business of the applicant, and the disposition of the application.
8. Do other things necessary to carry out the purposes of this chapter.

B. The board shall specify on the certificate of registration and annual renewal card issued to each registered engineer the branch of engineering in which he has demonstrated proficiency, and authorize him to use the title of registered professional engineer. The board shall decide what branches of engineering shall be thus recognized.

C. The board may hold membership in and be represented at national councils or organizations of proficiencies registered under this chapter and may pay the appropriate membership fees. The board may conduct standard examinations on behalf of national councils, and may establish fees therefor.

D. The board is authorized to employ and pay on a fee basis persons, including full time employees of a state institution, bureau or department, to prepare and grade examinations given to applicants for registration and to fix the fee to be paid for such services. Such employees are authorized to prepare, grade and monitor examinations and perform other services the board authorizes, and to receive payment therefor from the technical registration fund.

E. The board is authorized to rent necessary office space and pay the cost thereof from the technical registration fund.

§ 32-106.01. Petition for injunction

A. The superior court may issue an injunction forthwith upon a petition filed as provided in this section to enjoin the practice of architecture, assaying, engineering, geology, landscape architecture and land surveying by any person not registered to practice such occupations or exempt pursuant to § 32-144 from registration requirements.

B. In a petition for injunction pursuant to subsection A, it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of architecture, assaying, engineering, geology, landscape architecture¹ or land surveying without a registration and without being exempt pursuant to § 32-144 from registration requirements. No showing of damage or injury shall be required.

C. Such petition shall be filed in the name of the state by the board or at the request of the board by the attorney general or any county attorney in any county where the respondent resides or may be found.

D. Issuance of an injunction shall not relieve respondent from being subject to any proceedings pursuant to § 32-145, or otherwise. Any violation of an injunction shall be punished as contempt of court.

E. In all other respects, injunction proceedings pursuant to this section shall be governed by title 12, chapter 10, article 1.²

§ 32-107. Board secretary; duties; compensation

A. The secretary shall be the custodian of the records of the board, receive applications for registration and lay them before the board, file complaints with the proper officials against violators of any provision of this chapter, assist in the prosecution of such cases and perform other duties the board prescribes.

B. The secretary shall receive compensation as determined pursuant to § 38-611.

§ 32-108. Annual report; filing copies of lists of registrants

In January of each year the board shall make a report to the governor which shall be accompanied by a copy of the list of registrants. A copy of the list shall also be filed with the secretary of state, and with the clerk of the board of supervisors of each county.

§ 32-109. Technical registration fund

A. The secretary shall transmit to the state treasurer all fees or other revenues received by the board. The treasurer shall place ten per cent of all fees and revenues in the general fund to assist in defraying the cost of maintaining the state government and shall place the remainder in a separate fund known as the technical registration fund, to be used only in defraying expenses of the board and in prosecuting violations of this chapter.

B. Monies deposited in the technical registration fund shall be subject to the provisions of § 35-143.01. As amended Laws 1977, Ch. 92, § 6, eff. May 23, 1977.

ARTICLE 2. REGISTRATION

§ 32-121. Certificate required for practice of architecture, assaying, engineering, geology, landscape architecture, or land surveying

A person desiring to practice the profession of architecture, assaying, engineering, geology, landscape architecture, or land surveying shall first secure a certificate of registration and shall comply with all the conditions prescribed in this chapter.

§ 32-122. Qualifications of applicant

A. An applicant for registration as an architect, engineer, geologist or landscape architect shall be of good moral character and repute, and shall have engaged actively for at least eight years in architectural, engineering, geological or landscape architectural work of a character satisfactory to the board, but each year of teaching architectural, engineering, geological, or landscape architectural subjects or of study satisfactorily completed in an architectural, engineering, geological, or landscape architectural school approved by the board up to a maximum of five years, may be considered equivalent to one year of active engagement.

B. An applicant for registration as an assayer or a land surveyor shall have engaged actively for at least four years in assaying or land surveying work of a character satisfactory to the board, but each year of teaching assaying or land surveying or of study satisfactorily completed in a school approved by the board, up to a maximum of two years may be considered equivalent to one year of active engagement.

§ 32-123. Application for registration

A. A person desiring to practice architecture, assaying, engineering, geology, landscape architecture, or land surveying shall make application for registration on a form prescribed by the board, subscribed under oath and accompanied by the registration fee. If the evidence submitted satisfies the board that the applicant is fully qualified to practice the profession for which registration is asked, it shall give him a certificate of registration, signed by the chairman and secretary and attested by the official seal.

B. If in the judgment of the board the applicant has not furnished satisfactory evidence of qualifications for registration, it may require additional data, or may require the applicant to submit to an oral or written examination.

C. If the application is denied, the registration fee shall be returned, less the cost of considering the application, as determined by the board.

§ 32-124. Registration, examination and miscellaneous fees

The board shall publish in its rules a schedule of fees for applications, examinations, and such other miscellaneous fees for services rendered as required which shall not exceed one hundred dollars.

§ 32-125. Seals for registrants

A. The board shall adopt and prescribe seals for use of registrants who hold valid certificates. Each seal shall bear the name of the registrant, shall state the vocation and, in the case of engineering, the branch or branches thereof he is permitted to practice, and other data the board deems pertinent.

B. Plans, specifications, plats or reports prepared by a registrant or his bona fide employee, shall be issued under his seal.

C. It is unlawful for a registrant whose certificate has expired or has been revoked or suspended to use the seal, or for a registrant to sign, stamp or seal any document not prepared by him or his bona fide employee.

D. It shall be unlawful for any nonregistrant to cause or permit the illegal use of a registrant's seal, signature or stamp on any document prepared by the nonregistrant.

§ 32-126. Registration without examination

The board may register without examination an applicant who holds a valid and subsisting certificate of registration issued by another state or foreign country which has requirements for registration satisfactory to the board, or who holds a certificate of qualification issued by a national bureau of registration or certification.

§ 32-127. Renewal of certificates; delinquency penalty; renewal fees

A. Certificates of registration shall expire on December 31 of each year, and shall be invalid after that date unless renewed by payment of the required renewal fee. If the renewal fee is not paid prior to the expiration date, it shall be accompanied by a penalty of ten per cent for each month or fraction of a month of delinquency.

B. If a registration has lapsed for three years, a new application, accompanied by the proper fee, shall be required, but time spent by a registrant in any branch of the armed forces of the United States since 1939 shall not be included in computing the three year period.

C. The board shall establish the annual renewal fees for each proficiency registered under this chapter which shall not exceed twenty-five dollars.

§ 32-128. Revocation of certificate; hearing; notice of findings

A. The board may take disciplinary action against the holder of a certificate under this chapter, charged with the commission of any of the following acts:

1. Fraud or misrepresentation in obtaining a certificate of qualification, whether in the application or qualification examination.

2. Gross negligence, incompetence, bribery, or other misconduct in the practice of his profession.

3. Aiding or abetting an unregistered person to evade the provisions of this chapter or knowingly combining or conspiring with an unregistered person, or allowing one's registration to be used by an unregistered person or acting as agent, partner, associate or otherwise, of an unregistered person with intent to evade provisions of this chapter.

B. The board shall have authority to make investigations, employ investigators, and conduct hearings to determine whether a license issued under this chapter should be revoked or suspended upon a complaint in writing, under oath, or when the board, after receiving an oral or written complaint not under oath, makes an investigation into such complaint and determines that there is sufficient evidence to warrant a hearing, on its own motion may direct the secretary to file a verified complaint charging a possessor of a certificate under this chapter, with commission of an offense subject to disciplinary action and give notice of hearing. The secretary shall then serve upon the accused, by registered mail, a copy of the complaint together with notice setting forth the charge or charges to be heard and the time and place of hearing, which shall not be less than thirty days succeeding the mailing of notice.

C. The accused may appear personally or by his attorney at the hearing and present witnesses and evidence in his defense and he may cross-examine witnesses against him.

D. If five or more members of the board find the accused guilty, his certificate shall be suspended or revoked, but may be reissued upon the affirmative vote of five or more members of the board. Should the certificate of a registrant who is a principal of a firm or executive officer of a corporation be suspended or revoked for cause attributable to the firm or corporation, said revocation may be deemed just cause for revocation of the certificates of all or any other principals or officers of the firm or corporation.

E. The board shall immediately notify the secretary of state and clerk of the board of supervisors of each county in the state of the revocation of a certificate or of the reissuance of a revoked certificate.

§ 32-141. Firm or corporate practice

No firm or corporation shall engage in the practice of architecture, assaying, geology, engineering, landscape architecture, or land surveying unless the work is under the full authority and responsible charge of a registrant, who is also a principal of the firm or officer of the corporation. The name of said registrant shall appear whenever the firm name is used in the professional practice of the firm or corporation.

§ 32-142. Public works

A. Drawings, plans, specifications and estimates for public works of the state or a political subdivision thereof involving architecture, engineering, assaying, geology, landscape architecture or land surveying, shall be prepared by or under the personal direction of, and the construction of such works shall be executed under the direct supervision of a qualified registrant within the category involved.

B. Surveys, maps or assays required in connection with public land surveying or assaying shall be made by or under the personal direction of a qualified registrant.

§ 32-143. Exceptions

Registrants under this chapter may engage in practice in another category regulated pursuant to this chapter only to the extent that such person is qualified and as such work may be necessary and incidental to the work of his profession on a specific project.

§ 32-144. Exemptions and limitations

A. Architecture, engineering, geology, assaying, landscape architecture or land surveying may be practiced without compliance with the requirements of this chapter by:

1. An officer or employee of the United States, practicing as such.

2. A consulting associate of a registrant, if he is a nonresident with no established place of business in this state and is qualified to practice in the state or country where he resides.

3. An employee of a registrant or of a person exempt from registration, if such employment does not involve direct responsibility for design, inspection or supervision.

§ 32-144

4. A nonregistrant who designs a building or structure, the cost of which does not exceed fifty thousand dollars, or who designs alterations to any one single story building, the cost of which does not exceed fifteen thousand dollars, or who designs a single family dwelling or additions or alterations thereto.

5. A nonregistrant who designs buildings or structures to be erected on property owned or leased by him or by a person, firm or corporation, including a utility, telephone, mining or railroad company, which employs such nonregistrant on a fulltime basis, if the buildings or structures are intended solely for the use of the owner or lessee of the property and are not for sale, rental or use by the public.

B. The requirements of this chapter shall not apply to work done by any communications common carrier or its affiliates or any public service corporation or by full-time employees of any of them, provided such work is in connection with or incidental to the products, systems or non-engineering services of such communications common carrier or its affiliates or public service corporation, and provided that the engineering work is not offered directly to the public.

§ 32-145. Violations; classification

Any person who commits any of the following acts is guilty of a class 2 misdemeanor:

1. Practices, offers to practice or by any implication holds himself out as qualified to practice as an architect, assayer, engineer, geologist, landscape architect, or land surveyor, who is not registered as provided by this chapter.

2. Advertises or displays a card, sign or other device which may indicate to the public that he is an architect, assayer, engineer, geologist, landscape architect, or land surveyor, or is qualified to practice as such, who is not registered as provided by this chapter.

3. Assumes the title of engineer, architect, geologist, assayer, landscape architect, or land surveyor, or uses a certificate of registration of another, or uses or revoked certificate of registration.

4. Presents false evidence to the board with the intent to obtain a certificate of registration.

5. Otherwise violating any provision of this chapter. As amended Laws 1978, Ch. 201, § 529, eff. Oct. 1, 1978.

§ 32-146. Present landscape architecture requirements

At any time within one year after the effective date of this article, the board may certify for registration, any applicant who submits proof acceptable to the board that the applicant has had at least seven years of practice in landscape architecture, as defined in § 32-101 as a principal livelihood, of which at least one year shall be represented by such practice in the state of Arizona, as a resident.

APPENDIX XIII

R4-30-01 COMMERCE, PROFESSIONS, AND OCCUPATIONS

Title 4

ARTICLE 6. CERTIFICATIONS

R4-30-66. Certificates of Registration.

ARTICLE 7. REVISIONS

R4-30-76. Revisions in the Rules and Regulations.

ARTICLE 1. GENERAL PROVISIONS

R4-30-01. Applications, general

A. The Board meets regularly in March, June, September, and December to consider applications for registration. Prior to consideration by the Board each applicant will be required to appear before an Evaluation Committee of the Board at a time and place established by the committee. The applicant will at this time complete the personal audience requirements, outlined in Article 2, R4-30-17.

B. No application will be evaluated by the committee nor presented to the Board for consideration until all of the required information, including transcripts, concerning the application has been received. This includes a standard application form completely filled out, including required signatures on application, photograph, affidavit, and authorization and release.

C. Architectural applicants required to submit a treatise on seismic forces will not be scheduled for evaluation until the treatise has been submitted, satisfactorily graded and accepted by the Evaluation Committee.

D. It is the applicant's responsibility to secure transcripts of his records from all colleges attended. The applicant must arrange to have these transcripts sent directly from the college registrar to the office of the Board. The applicant's sole responsibility regarding references is that of furnishing a suitable list. The office of the Board will request such information as it deems necessary from the references submitted by the applicant. References submitted by an applicant should include at least three persons registered in the same general field of experience as the applicant and two references who are now, or have been, the applicant's immediate supervisors. Other persons will be evaluated as references only if their responsibility and their ability to evaluate the technical competence of the applicant can be established by the Board.

E. Engineers desiring registration in more than one branch must submit a separate application for each branch and pay the regular fee with each application. Registration in engineering will be granted in the major branches of engineering included in the college curricula approved by the Board. Major branches of engineering presently recognized by the Board are: Aeronautical, Agricultural, Chemical, Civil, Electrical, Geological, Geophysical, Highway, Industrial, Mechanical, Metallurgical, Mining, Nuclear, Petroleum, Sanitary and Structural.

F. The Board does not grant registration to residents of other States, except under unusual circumstances, unless they hold registration in the State of their legal residence.

G. When an application for registration is denied or withdrawn, the applicant will be so notified of the Board's action. No re-application will be accepted until one year has elapsed from the date of the formal Board action denying the original application. When applications for registration are denied on initial Board action, excluding withdrawals, the refunds will be as per the schedule under Article 3.

H. Applicants whose applications for registration are denied subsequent to initial Board action will receive no refund of their application fees.

I. No application made on any other than a printed form issued by the Board will be accepted or considered by the Board, except that, in the event any printed form issued by the Board does not contain sufficient space for the necessary evidence to be submitted, the applicant may attach additional sheets to said form to any desired extent, but such attached sheets must be of the same size as the printed form and shall be securely attached thereto.

J. An applicant may withdraw his application for registration by written request to the Board for approval of such withdrawal. An approved withdrawal is deemed by the Board to be a denial of an application for registration with neither prejudice nor refund of the application fee to be made.

K. An applicant for any of the in-training programs shall, in order to be admitted to the in-training examinations, submit an application to the Board on the prescribed form for approval by the Board. It will be necessary for an applicant to pay the application fee required under Article 3 for registration as an architect-in-training, engineer-in-training, geologist-in-training, or landscape architect-in-training, as well as the examination fees stated in Article 3.

Historical Note

Amended eff. Oct. 21, 1975 (Supp. 75-1). Amended eff. May 3, 1976 (Supp. 76-3).

R4-30-02. Reconsideration of initial Board action

Applicants when notified of initial Board action on their application may request reconsideration of same by written petition at least thirty days prior to the subsequent meeting date shown in Article 1, R4-30-01 (A). At the time of the petition the applicant should indicate whether or not he desires a personal appearance before the Board.

R4-30-03. Experience

Qualifying experience, other than time allowed for education, shall in general be limited to that time in which an applicant has been directly employed in a responsible position of a character satisfactory to the Board.

R4-30-04. Rehearing or review of decision

A. Except as provided in Subsection G, any party in a contested case before the State Board of Technical Registration who is aggrieved by a decision rendered in such case may file with the Board, not later than ten (10) days after service of

the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this Subsection a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.

B. A motion for rehearing under this Rule may be amended at any time before it is ruled upon by the Board. A response may be filed within ten (10) days after service of such motion or amended motion by any other party. The board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;

2. Misconduct of the Board or its hearing officer or the prevailing party;

3. Accident or surprise which could not have been prevented by ordinary prudence;

4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;

5. Excessive or insufficient penalties;

6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;

7. That the decision is not justified by the evidence or is contrary to law.

D. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in Subsection C. An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.

E. Not later than ten (10) days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting such a rehearing shall specify the grounds therefor.

F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within ten (10) days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

G. If in a particular decision the Board makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the

decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

H. For purposes of this Section the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

I. To the extent that the provisions of this Rule are in conflict with the provisions of any statute providing for rehearing of decisions of the State Board of Technical Registration such statutory provisions shall govern.

Historical Note

Adopted eff. Oct. 24, 1977 (Supp. 77-5).

ARTICLE 2. EXAMINATIONS

R4-30-13. Examination rules

A. Applicants for registration are permitted to take written examinations only by action of the Board. This action entitles them to take examinations on the first date for which the examinations are scheduled. If applicants fail to achieve a passing grade they may be re-examined on the next scheduled examination date. Applicants who are unable to take examinations or re-examinations on the first date for which they are scheduled may apply for a postponement as provided by Paragraph D of this Rule.

B. The Board shall select and publish the examination dates and locations at least sixty days prior to the date selected. Each applicant will be notified in writing when the Board has determined that he is eligible to take the first scheduled examination or re-examination. The notification will state the date by which the examination fee must be received.

C. Notification of the time and place for the examination will be sent to the applicant after receiving the fee. The fee will be forfeited if the applicant does not take the first scheduled examination or re-examination unless an extension has been granted.

D. When an applicant has paid the proper fee, but is unable to take the first scheduled examination or re-examination, he may request by letter prior to the examination date, that he be permitted to take the next scheduled examination. A request for an extension beyond the next scheduled examination will not be considered except for drastic personal reasons such as substantiated serious illness.

E. The following items are included as reasons for which an application for registration may be denied by the Board.

1. If the examination or re-examination fee is not received on or before the specified date.

B. Applicants for Engineer-in-Training, Geologist-in-Training and Landscape Architect-in-Training will be permitted to take the in-training examination prior to graduation, but in no event will their probationary period start until they have completed the requirements for graduation. Applicants without college degrees desiring to enter the in-training program will be permitted to take the examination prior to the completion of four years of satisfactory experience by submitting an application bearing the approval of a registered engineer, geologist, or landscape architect, respectively, but their probationary period will not begin until the four years of experience satisfactory to the Board requirement has been met. The in-training applicant who is a student pursuing a curricula which will lead to an engineering, geology or landscape architect degree shall have his application blank certified by his dean or faculty advisor.

C. Applicants for Architect-in-Training will be permitted to take the Architect-in-Training examination after graduation from an accredited architectural school. The graduates from an accredited architectural school must obtain the signature of the Dean of the College of Architecture on their Architect-in-Training application form. Applicants without college degrees from an accredited architectural school desiring to enter the Architect-in-Training program will be permitted to apply after five years of architectural training under a registered architect by submitting an application to the Board bearing the approval and signature of the current employer. Permission to enter the in-training program, upon application, will be granted by the Architectural Evaluation Committee after review to determine that the applicant has the experience as outlined in the current standards of the National Council of Architectural Registration Boards in architectural work of a character satisfactory to the Board.

D. Architect-in-Training examinations will be given at a time and place designated by the Board. Application for the in-training examination and certification from graduates of an accredited architectural school must be received in the office of the Board at least thirty days prior to the scheduled date of the examination. Application for the in-training examination and certification from non-graduates requesting examination and certification under Article 2, R4-30-14(C) must be received in the office of the Board at least sixty days prior to the date of the scheduled examination.

E. If an Engineer-in-Training passes the in-training examination, credit for Fundamentals of Engineering will be given him towards his full professional examination, but if he fails the in-training examination, no credit will be given.

F. If a Geologist-in-Training passes the in-training examination, credit for Basic Geology will be given him towards his full professional examination, but if he fails the in-training examination, no credit will be given.

G. All in-training certificates shall expire eight years after issuance.

2. If the applicant does not appear for the first scheduled examination or re-examination unless an extension has been granted.

3. If the applicant does not appear for the examination or for the re-examination to which he was granted an extension.

F. An applicant who fails to achieve a passing grade on a re-examination may repeat the re-examination under this Rule.

G. Applicants desiring reconsideration of their failing examination grade shall file a petition with the Board at least thirty days prior to the regular meeting subsequent to certification of grades by the Board. At the time of the petition the applicant should indicate whether or not he desires a personal appearance before the Board.

Historical Note

Former Section R4-30-13 repealed, new Section R4-30-13 adopted eff. Oct. 21, 1975 (Supp. 75-1).

R4-30-14. General rules, applicants for architect-in-training, engineer-in-training, geologist-in-training, landscape architect-in-training

A. Engineer-in-Training, Geologist-in-Training and Landscape Architect-in-Training examinations will be given twice annually, at a time and place designated by the Board, and concurrently with the written examinations for professional registration. Applications for in-training examinations and certification must be received in the office of the Board at least thirty days prior to the scheduled date of examination.

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R4-30-15. Context of written examinations

A. All examinations may contain questions covering the Code of the State Board of Technical Registration and its published Code of Ethics.

B. Architect-in-Training – The requirements for written examination will be determined by the Board at least 60 days prior to the examination date.

C. Architecture – The requirements for written examination will be determined by the Board at least 60 days prior to the examination date.

D. Assaying – This will be a one-part, 8-hour examination, and the Board may, at its discretion, divide the examination into two indivisible subsections which will be given on the same day. The examination will include questions on sampling and fire assaying; gravimetric and volumetric chemical analyses; the theory and use of emission spectograph, atomic absorption spectograph; and colorimetric methods of assaying minerals and mineral products for the more important metals. A passing grade of 70% will be required on the examination.

E. Engineer-in-Training – This is a one-part examination of 8 hours duration which will include questions on fundamentals of engineering. A passing grade of 70% will be required on the examination. The Board may, at its discretion, divide the examination into two individual subsections which will be given on the same day.

F. Professional Engineering:

1. The complete professional engineering examination will consist of four parts with the exception of Structural Engineering, which will consist of six parts. Each part of the examination will be of four hours duration and requires a passing grade of 70% on each part of the examination.

2. All professional engineering examinations are open book and the applicant may bring any text or reference desired.

3. The parts of the professional engineering examinations are defined as follows:

Part 1 Fundamentals of Engineering

Part 2 Fundamentals of Engineering

Part 3 Engineering Analysis

Part 4 Engineering Design

Part 5 Comprehensive Engineering Design

Part 6 Structural Engineering Design

G. Geologist-in-Training – This will be a one-part, 8-hour examination, on which a passing grade of 70% is required. The Board may, at its discretion, divide the examination into two indivisible subsections which will be given on the same day. The examination will consist of questions covering the principles of physical, historical, and structural geology and mineralogy, as well as problems in structural geology.

H. Geology – The complete professional examination for geology is of 16-hours duration, consisting of four parts, on which a passing grade of 70% will be required for each part. The parts of the professional geology examination are as follows:

- Part 1 Basic Geology
- Part 2 Basic Geology
- Part 3 Applied Geology
- Part 4 Geological Problems

I. Landscape Architect-in-Training , – The requirements for written examinations will be determined by the Board at least 60 days prior to the examination date.

J. Landscape Architecture – The requirements for written examinations will be determined by the Board at least 60 days prior to the examination date.

K. Land Surveying – The land surveying examination will be of 16-hours duration and will consist of four parts which will include questions to determine knowledge of the techniques of land surveying, also knowledge of rules and regulations of land surveying, and laws pertaining to the type of work described in A.R.S. § 32-101 (15). A passing grade of 70% will be required on each part of the examination.

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L. Examination Rules – The Board will publish prior to each examination the rules under which the examination will be held for each specific part. and, at the time of the examination will provide the examinee with the questions of the examination and a workbook for all of his submittal.

Historical Note

Adopted eff. Apr. 2, 1976 (Supp. 76-2).

R4-30-16. Comprehensive oral examination

The applicant for professional registration who has received a waiver of the written examination and a comprehensive oral examination substituted therefor by the appropriate Evaluation Committee, shall personally appear at a time and place indicated by the Board for oral demonstration of his proficiency in the area for which professional registration is applied. The oral examination held by the Board shall be of such duration as necessary to demonstrate the applicant's proficiency.

R4-30-17. Personal audience

A. A personal audience will be required of all applicants in order to complete professional registration. The personal audience will consist of an oral and/or written examination of 15 to 30 minutes duration and will include questions covering the Code and Rules of the State Board of Technical Registration. The personal audience will be given at a time and place convenient to the Evaluation Committee of the Board.

B. No applicant will be granted registration until he has fully satisfied the committee as to his comprehension of the Arizona Revised Statutes and Board Regulations.

C. An applicant who has been given two opportunities to appear for a personal audience before the Evaluation Committee and fails to do so shall have his application denied unless this rule is waived by the Board for good cause shown.

ARTICLE 3. FEES

The Board pursuant to A.R.S. §§ 32-124 and 32-127.C has adopted the following fees for applications, examinations, renewals, refunds and such other miscellaneous fees for services:

R4-30-27. Application fees

The following fees shall accompany an application for registration for a certificate:

1. For an architect, assayer, engineer, geologist, landscape architect and land surveyor, who is a bona fide resident of Arizona, twenty-five dollars.

2. For an architect, assayer, engineer, geologist, landscape architect and land surveyor, who is a legal resident of another state, territory or foreign country, fifty dollars.

3. Architect-in-Training, Engineer-in-Training, Geologist-in-Training and Landscape Architect-in-Training, ten dollars.

R4-30-28. Examination fees

The fees, payable in advance for taking or retaking the examinations, over and above and exclusive of fees required with the application for registration, shall be as follows:

1. In-Training Examinations

Fees for architect-in-training, engineer-in-training, geologist-in-training, or landscape architect-in-training, shall be equal to the sum of fees for applicable parts of the appropriate professional examination.

2. Architect Examinations

Equivalency Examination:

Construction Theory & Practice	\$25.00
Architectural Theory	5.00
Architectural Design & Site Planning	30.00
Professional Examination	60.00

3. Examinations Conducted for N.C.A.R.B.

Senior Examination	\$25.00
Personal Audience to complete NCARB certification on basis of written examination	15.00
Treatise on lateral forces	25.00
Resubmittal of treatise on lateral forces	25.00

4. Professional Engineer Examinations

Part 1 - Fundamentals of Engineering	\$10.00
Part 2 - Fundamentals of Engineering	10.00
Part 3 - Engineering Analysis	10.00
Part 4 - Engineering Design	10.00
Part 5 - Comprehensive Engineering Design	10.00
Part 6 - Structural Engineering Design	10.00

5. Geologist Examinations

Part 1 - Basic Geology	\$10.00
Part 2 - Basic Geology	10.00
Part 3 - Applied Geology	10.00
Part 4 - Geological Problems	10.00

6. Landscape Architect Examinations

Part 1 - History	\$10.00
Part 2 - Professional Practice	10.00
Part 3 - Design	30.00
Part 4 - Design Implementation	30.00

7. Land Surveyor Examinations

Part 1 - Surveying Techniques	\$10.00
Part 2 - Computations	10.00
Part 3 - Rules and Regulations	10.00

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R4-30-28 **COMMERCE, PROFESSIONS, AND OCCUPATIONS**

Title 4

Part 4 - Legal Principles	10.00
8. Assayer Examination	\$20.00
9. Comprehensive Oral Examination	\$50.00
10. Personal Audience	None

Historical Note

Amended eff. Oct. 21, 1975 (Supp. 75-1). Amended eff. Apr. 2, 1976 (Supp. 76-2).

R4-30-29. Renewal fees

For renewal of a certificate of registration, if received prior to December 31st of each year (a certificate of registration not renewed prior to December 31st of each year will accrue a penalty of 10 per cent of each month or fraction of month delinquency), the following fees will be required:

1. Renewal as an Architect, Assayer, Engineer, Geologist, Landscape Architect, or Land Surveyor, ten dollars; except that persons age 70 or older shall be exempt from the registration fee provided they have been registered in Arizona for ten consecutive years immediately prior to attaining the age of 70 or older.
2. In-Training certificates, none.

Historical Note

Amended eff. Oct. 21, 1975 (Supp. 75-1).

R4-30-30. Miscellaneous fees for services

Annual Report	\$1.00
New Certificates	3.00
Photostatic copies25 a page

R4-30-31. Refunds

An application for professional registration which has been denied by initial Board action will receive the following refunds:

1. For an architect, assayer, engineer, geologist, landscape architect and land surveyor, who is a bona fide resident of Arizona, ten dollars.
2. For an architect, assayer, engineer, geologist, landscape architect and land surveyor, who is a legal resident of another state, territory, or foreign country, twenty-five dollars.

ARTICLE 4. PROFESSIONAL PRACTICE

R4-30-41. Definitions

A. The Board pursuant to A.R.S. § 32-106 has adopted the following definition of terms used in this Chapter.

B. The definitions enumerated in this Rule shall have full force and effect upon the professional practice of each registrant of this Board.

C. The definitions shall be used to determine if a violation exists under A.R.S. § 32-128 upon which the Board shall take disciplinary action.

R4-30-42. A.R.S. § 32-101

A. The professional practice of registrants under this Chapter shall be in accordance with the custom and tradition of the registrant's certificate of

registration as defined in A.R.S. § 32-101 and as limited by A.R.S. § 32-143.

B. Except when otherwise provided by law, the client shall have the prerogative to select and designate the prime professional and to approve the collaborating professionals selected for his project.

R4-30-43. A.R.S. § 32-141

A. The term "responsible charge of a registrant" within the section defining "firm or corporate practice" stating that "no firm or corporation shall engage in the practice of architecture, assaying, geology, engineering, landscape architecture or land surveying unless the work is under the full authority and responsible charge of a registrant, who is also a principal of the firm or officer of the corporation. The name of said registrant shall appear whensoever the firm name is used in the professional practice of the firm or corporation" shall mean that the principal of the firm or officer of the corporation shall reside in Arizona when such firm or corporation maintains an Arizona office or mailing address.

B. The term "the name of said registrant shall appear" within the section defining "firm or corporate practice" stating that "no firm or corporation shall engage in the practice of architecture, assaying, geology, engineering, landscape architecture, or land surveying unless the work is under the full authority and responsible charge of a registrant, who is also a principal of the firm or officer of the corporation. The name of said registrant shall appear whensoever the firm name is used in the professional practice of the firm or corporation" shall mean that the name of said registrant be imprinted on all firm or corporate stationery used in the professional practice of the firm or corporation.

C. The principal of the firm or officer of the corporation residing in Arizona (Article 4, R4-30-42 A) shall be assigned to the principal Arizona office of the firm or corporation. This principal may, at his discretion, operate other Arizona offices of the firm or corporation provided, however, that each office has in it a person registered under this Chapter. This regulation shall be interpreted to exempt only offices established to observe construction for conformance with contract documents and design.

ARTICLE 5. SEALS AND IDENTIFYING MARKERS FOR REGISTRANTS

R4-30-52. Description of seals

Each person registered under this law must secure and use a rubber stamp, one and one-half (1½) inches in diameter, consisting of two concentric circles, the inner circle to be one and one-eighth (1-1/8) inches in diameter. The upper portion of the annular space between the two circles shall bear whichever of the following phrases is applicable to the registrant: "Registered Architect," "Registered Professional Engineer" together with the branch of engineering in which registered, "Registered Geologist," "Registered Landscape Architect," "Registered Land Surveyor," or "Registered Assayer." At the bottom of the annular space between the two circles shall appear the inscription "Arizona, U.S.A." The inner circle shall contain the name of the registrant, his registration number, and the words "Date signed."

R4-30-53. Use of seals

An imprint of the registrant's valid seal shall appear on each and every sheet of drawings, on the cover and index page of each set of specifications, on the cover and index page of details bound in book form and prepared specifically to supplement project drawings, on the cover and index page of reports and/or other professional documents prepared by a registrant or his bona fide employee. Superimposed over the imprint of the seal shall be the original signature of the registrant and the date indicated when the seal imprint was signed.

R4-30-54. Seals, securing

The registrant shall order his seal through the office of the Board of Technical Registration by paying the cost of manufacturing said seal, and signing an imprint of the seal and affidavit regarding its use for the records of the Board. Seals secured by registrants under prior rules established by the Board shall remain valid. Engineers registered in more than one branch shall secure and use a seal for each branch of engineering in which registration has been granted.

R4-30-55. Identifying markers, securing

Registered Land Surveyors and registered Professional Engineers, when engaged in land surveying, shall secure at their own expense metal rods, pipes, tags, caps or embossed nails which shall show the registrant's Arizona Registration Number as issued by the State Board of Technical Registration and each registration number shall be prefixed by the letters L.S. or P.E., respectively, as the case may be.

R4-30-56. Use of identifying markers

Registered Land Surveyors and registered Professional Engineers, when engaged in land surveying, shall securely attach one identifying marker to every permanent survey point set during the practice of surveying tracts of land for the determination of their correct locations.

ARTICLE 6. CERTIFICATIONS**R4-30-66. Certificates of registration**

A certificate of registration of such size and form as the Board may approve shall be given to each registrant. Each registrant shall also receive a card on which shall be set forth all of the data that appears on the registrant's certificate of registration. Certificates of registration shall expire on December 31st of each year, and shall be invalid after that date unless renewed by payment of the required renewal fee as established in Article 3. Receipt by the registrant of a renewal card for the current year shall be evidence that the certificate of registration is valid.

ARTICLE 7. REVISIONS

R4-30-76. Revisions in the rules and regulations

Any revisions in the Rules and Regulations adopted by the Board pursuant to the authority of Arizona Revised Statutes of January, 1956, as amended, shall be proposed and discussed at a meeting and, if approved, publication shall be made and a hearing shall be called as required by law for the next regular meeting of the Board, at which time action will be taken.

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