

Appeals Court Upholds Board Action
Placing Architect on Three-Year Probation

by

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In June 2015, the Missouri Board of Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects placed architect Donald Dustin Curtis on probation for three years for violations of a previous probation order. On May 23, 2017, Missouri's Court of Appeals for the Western District upheld this decision.

The case is *Curtis v. Missouri Board of Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects*, 2017 WL 2241516 (W.D. Mo. 2017). This is the first appellate case to decide when an architect can safely engage in some electrical and mechanical design work as part of his or her overall architectural work.

Curtis is an architect based in Arizona who is licensed in Missouri and other states. In June 2014, the Missouri Board placed his license on probation for one year for failing to inform the Board when he renewed his license that he had been subject to discipline in Nevada.

As part of that probation, he was required to submit plans for his Missouri projects to the Board for its review. Two of those projects became the subject of the Western District's opinion.

One was a project in Florissant that involved plans for the renovation of a free-standing Burger King restaurant. The other was a project in Bridgeton involving the construction of a Burger King restaurant inside an existing Wal Mart store.

Curtis included in the plans for the Florissant project changes to plumbing and lighting without using the services of a licensed mechanical or electrical engineer. On the Bridgeton project the plans were sealed in the title block by a professional engineer, but they failed to include the engineer's contact information as required by Missouri law.

Curtis appealed the decision of the Board in 2015 for the three-year probation, as well as the decision at the trial court level that affirmed the Board's decision.

Curtis argued that the engineering service he provided on the Florissant project was “incidental practice and necessary to the completion of professional services lawfully being performed by such architect.” Curtis cited Section 327.191(4) of the Revised Statutes of Missouri. Subsection 9 defines “incidental practice” as the performance by an architect of professional services of others where such service is secondary and substantially less in scope and magnitude when compared to the architect’s primary services. The architect must be qualified by education, training and experience as determined by the Board to perform such incidental professional services.

The Board had determined that the question of whether certain work is an “incidental practice” of electrical or mechanical engineering is “uniquely within the Board’s area of qualification.”

This is the first appellate court to decide what “incidental practice” means. The Western District rejected the implication that the courts are ill equipped to determine what conduct falls within the definition of “incidental practice.”

However, the Western District decided that there was substantial evidence to support the Board’s conclusion that Curtis exceeded the scope of engineering incidental to his architectural work by the lighting and plumbing work that he performed.

More specifically, Curtis performed design work to replace, relocate and reconnect toilets and sinks for accessibility purposes. He also performed design work to replace lighting to increase efficiency and added outlets in the dining area for customers to use their phones and computers.

The Board concluded that Curtis had sufficient education, training and experience to do some electrical and plumbing design work. He had taken course work in mechanical, plumbing and electrical engineering as part of his architectural studies and through continuing education courses.

The Board’s concern was whether Curtis had safely and competently performed the work without jeopardizing health, safety and welfare. At the Board hearing, when asked if he considered adequate uniformity throughout the space by conducting proper calculations, Curtis replied that this particular job did not require lighting uniformity calculations. He testified he was not familiar with the Illuminating Engineering Society or its standards for lighting requirements in a retail restaurant space.

He further testified that he did not know what arc flash calculations meant. He did not calculate whether the electrical service was adequately sized for the added receptacles. He admitted that he did not perform any calculations to determine whether a previous engineer had correctly determined if the existing sewer was adequately sized for the Florissant project.

Regarding the title block issue on the Bridgeton project, Curtis hired a licensed engineer of record. But the title block failed to comply with the requirements of 20 CSR 2030-2.050. The title block did not set forth the engineer's address and phone number. It did not provide the name of any engineering company with a certificate of authority to practice professional engineering in Missouri. Curtis admitted to these deficiencies.

The appellate court concluded that Curtis enabled an engineer to violate the law and thus breached his own professional duty of confidence and trust by not ensuring that the engineer's title block was complete.

Curtis stated his company had done 54 similar projects in four months in 2014 based on prototypes developed by his company and engineering firms in Texas and Arizona. "I know I missed some details here and there," he testified.

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