

STATE OF TENNESSEE

OFFICE OF THE
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NASHVILLE, TENNESSEE 37243-0485

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Opinion No. 98-020

Contractors Licensing Act, Tenn. Code Ann. §§ 62-6-101 *et seq.*

QUESTIONS

1. Does it constitute a violation of Tenn. Code Ann. § 62-6-103(a)(1) for a licensed Contractor (as hereinafter defined) to bid on or perform work in a construction classification in which the contractor is not licensed?

2. Does the penalty set forth in Tenn. Code Ann. § 62-6-120(a)(2) apply when a licensed Contractor bids on or performs work in a construction classification in which the Contractor is not licensed?

OPINIONS

1. Yes. A Contractor is prohibited from performing work in a classification for which he is unlicensed under Tenn. Code Ann. § 62-6-103 unless an exception is applicable.

2. Yes. The penalty set forth Tenn. Code Ann. § 62-6-120(a)(2) would apply. The provision directs the Board to withhold awarding a license to a Contractor who has violated Tenn. Code Ann. § 62-6-103 until six (6) months after the Board for Licensing Contractors determines that a violation has occurred. The provision further prohibits the Contractor from being awarded any work on the project on which the Contractor illegally bid or worked.

ANALYSIS

The licensing requirements proscribed for Contractors in Tennessee are codified at Tenn. Code Ann. §§ 62-6-101 *et seq.* (hereinafter called the "Contractors Licensing Act" or the "Act"). The issues you present concern the applicability of Sections 62-6-103 and 120 to the situation where a licensed Contractor bids on or engages in work in a construction classification other than one for which the Contractor is licensed. For example, would it constitute a violation under Tenn. Code Ann. § 62-6-103 if a Contractor with a valid Building Construction (BC) license bids on or engages in work that requires a Contractor with a Mechanical Contracting (MC) license? If this scenario constitutes a violation of Tenn. Code Ann. § 62-6-103, do the penalties of Tenn. Code Ann. § 62-6-120(a)(2) apply?

The customary rules of statutory construction are important in addressing these issues. First, the meaning of a statute is ordinarily derived from the general purpose sought to be achieved by the legislature.¹ Further, statutes forming a system should be construed so as to make that system consistent in all its parts and uniform in operation.²

Applicability of Tenn. Code Ann. § 62-6-103

Tenn. Code Ann. § 62-6-103 sets forth the general licensing requirement for Contractors. The statute reads in pertinent part:

(a)(1) Any person, firm or corporation engaged in contracting in this state shall be required to submit evidence of qualification to engage in contracting, and shall be licensed as hereinafter provided. It is unlawful for any person, firm or corporation to engage in or offer to engage in contracting in the state, unless such person, firm or corporation has been duly licensed under the provisions of this chapter, as hereinafter provided. . . . (Emphasis added)

Thus, the statute provides that "duly licensed" shall have the meaning "hereinafter provided".

The terms "Contracting" and "Contractor" are defined in Tenn. Code Ann. § 62-6-102 to encompass virtually any type of construction work that exceeds \$25,000 in cost. The statute provides in relevant part as follows:

(2) "Contracting" means any person or entity who performs or causes to be performed any of the activities defined in subdivision (3)(A);

(3)(A) "Contractor" means any person or entity who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement, or any other construction undertaking for which the total cost of the same is twenty-five thousand dollars (\$25,000) or more. . . .

Tenn. Code Ann. § 62-6-111 governs the contractor licensing application process. This statute aids in explaining the scope of Tenn. Code Ann. § 62-6-103's prohibition on contracting without being "duly licensed". To become licensed, an applicant must submit an affidavit stating

¹*City of Lenoir City v. State ex. Rel. City of Loudon*, 571 S.W.2d 297 (Tenn. 1978).

²*Davis v. Beeler*, 185 Tenn. 638, 207 S.W.2d 343(1947), *app. dismissed* 333 U.S. 859, 68 S. Ct. 745, 92 L. Ed. 2d 1138 (1948).

that the applicant has not offered to and is not currently performing any construction work where the amount of the applicant's contract exceeds \$25,000. The applicant also must submit information to be used by the Board in assessing the classification(s) under which to license the Contractor and in setting the Contractor's monetary limitation for each classification. This information includes a letter of reference from a past client or employer and a financial statement.³ Tenn. Code Ann. § 62-6-112 lists the nine major construction classifications in which a Contractor may receive certification. The classifications include: (1) Commercial building construction; (2) Industrial construction; (3) Heavy construction; (4) Highway, railroad and airport construction; (5) Municipal and utility construction; (6) Mechanical construction; (7) Electrical construction; (8) Environmental and special construction; and (9) Residential construction.⁴ It is clearly contemplated in Tenn. Code Ann. § 62-6-112 that licenses are to be granted by classification.

After making application to the Board for Licensing Contractors, the applicant then takes an examination. If the applicant performs satisfactorily on the exam, the Board grants a license which states the construction classifications in which the applicant is qualified. For each classification, the license lists monetary limitations for work to be performed by the Contractor.⁵

Tenn. Code Ann. § 62-6-111 also addresses the extent to which a Contractor may perform work in a classification for which he is not specifically licensed. Subsections (c) and (d) indicate that a Contractor must be licensed separately in each major classification to perform work valued at \$25,000 or more in the particular classification. These subsections read:

(c) The issuance by the board of a certificate of license authorizing the licensee to engage in any major construction classifications of contracting shall not authorize the licensee to engage in \$25,000 or more of any other major construction classification or specialty classification thereunder unless the licensee is additionally licensed in such other major construction classification or specialty classification thereunder.

(d) A contractor may bid on a contract requiring work in a classification(s) other than the one in which the contractor is licensed if and only if the contractor has a commercial building contractor's license or if such contractor's license will permit the contractor to

³Tenn. Code Ann. § 62-6-111(a).

⁴Tenn. Code Ann. § 62-6-112(a). Section 62-6-112(b) authorizes the Board to create specialty classifications within the major classifications.

⁵Tenn. Code Ann. § 62-6-111(a)(3). The regulations for the Tennessee Board for Licensing General Contractors provide that in order to determine the specialty classification(s) in which the licensee is qualified to engage the Board is to consider whether or not the applicant: (1) has adequate experience in the classifications requested; (2) has an established plant (office; warehouse; equipment areas) from which his business is conducted; and (3) has (or has the ability to acquire) the necessary equipment for the classifications requested, and the experience to operate such equipment. . . ." Official Compilation, Rules and Regulations of the State of Tennessee, 0680-1-12.

perform at least 60% of the bid amount or price of the work for the project being bid or priced. However, such contractor may not actually perform any work in excess of twenty-five thousand dollars (\$25,000) in any classification unless the contractor has a license to perform work in such classification. (Emphasis added).

Both of these subsections limit the extent to which a licensed Contractor may perform work in a classification in which he is not specifically licensed. They require that a Contractor, who desires to perform over \$25,000 of work in a major construction classification other than the classification in which the Contractor is licensed, must apply for an additional license that certifies the Contractor to perform the work.

In sum, the Act effectively requires separate licensure for each major classification. Consequently, if a Contractor performs work covered by the Act in a classification other than one for which he is licensed, the Contractor is contracting without a license as prohibited under Tenn. Code Ann. § 62-6-103. Therefore, for example, it would constitute a violation under Tenn. Code Ann. § 62-6-103 if (a) a Contractor with a valid Building Construction license bids on or engages in work that requires a Contractor with a Mechanical Contracting license and (b) the value of the work requiring a Contractor with a Mechanical Contracting license exceeds \$25,000.

Penalty for Violating Tenn. Code Ann. § 62-6-103.

Tenn. Code Ann. § 62-6-120 sets forth the penalties for violating Tenn. Code Ann. § 62-6-103. The statute provides in relevant part:

(a) (1) Any person, firm or corporation who engages or offers to engage in contracting without a license as required by § 62-6-103, or who violates the terms and conditions of any license or renewal granted by the board pursuant to this chapter, commits a Class A misdemeanor. The penalties imposed by this subdivision shall not apply to a person who engages a contractor without a license for the purpose of constructing a residence for the use of such person.

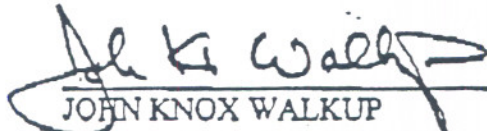
(2) Any person, firm or corporation who engages or offers to engage in contracting without a license as required by § 62-6-103 is ineligible to receive such license until six (6) months after a determination by the board that a violation has occurred. Additionally, no such person, firm or corporation shall be awarded any contract for the project upon which it engaged in contracting without a license or permitted to participate in any rebidding of such project.

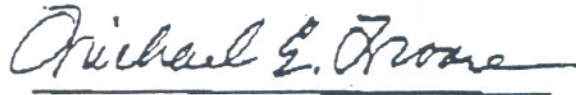
(b) Any person, firm or corporation who accepts a bid in excess of twenty-five thousand dollars (\$25,000) from a contractor who is not

licensed, with appropriate classifications and sufficient monetary limitations, in accordance with the provisions of this chapter, commits a Class A misdemeanor.

Thus, subsection (a)(1) makes it a Class A misdemeanor if someone violates Tenn. Code Ann. § 62-6-103 or otherwise violates the terms and conditions of a license. Subsection (a)(2) further penalizes someone who violates § 62-6-103 by making him ineligible to receive a license for six months after the Board for Licensing Contractors determines the violation has occurred.⁶ Further, the violator must stop work on the project for which he does not have the proper license.⁷

Turning to your question, if a Contractor violates Tenn. Code Ann. § 62-6-103 by performing construction work in a classification in which he has not been licensed, then Tenn. Code Ann. § 62-6-120 would be applicable. The Contractor would be temporarily prohibited from becoming certified in the additional classification and could not proceed with the project. The Board is charged with the enforcement of the Act and empowered to seek an injunction against anyone violating the provisions thereof.⁸


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⁶Subsections (a)(1) and (a)(2) make a distinction between a Contractor violating Tenn. Code Ann. § 62-6-103 and a Contractor violating the terms and conditions of the Contractor's license. For purposes of the issue addressed in this opinion, the distinction is not determinative, because the Act treats a Contractor as being unlicensed, and not merely in violation of its existing license, if the Contractor performs work in one of the nine major construction classifications for which the Contractor has not been licensed separately. The Board has the authority to depart from classification systems in appropriate cases. Rule 0680-1-.12. For example, a Contractor with a Building Construction license that limits the Contractor to roofing work would exceed the terms and conditions of his license if he performed demolition work.

⁷Tenn. Code Ann. § 62-6-120 also imposes penalties on State officials who issue a permit or work order to any bidder not holding a proper license.

⁸Tenn. Code Ann. §§ 62-6-121, -122. Furthermore, a Contractor is subject to revocation of his license and civil penalties for violating the terms of his license. Tenn. Code Ann. § 62-6-118.

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