




MEMORANDUM

DATE	April 30, 2013
TO	Trish Rodriguez Landscape Architects Technical Committee
FROM	 Don Chang Assistant Chief Counsel
SUBJECT	Section 5641 - Exceptions

Section 5641 of the Business and Professions Code¹ specifies landscape architectural activities which are exempt from the provisions of Chapter 3.5 (commencing with section 5615 - hereafter referred to as the "Landscape Architects Act" or "Act"), Division 3, of the Business and Professions Code. The Landscape Architects Technical Committee ("LATC") created a task force to review the section 5641 to determine if clarification of its provisions was necessary.

During the October 18, 2012 Task Force meeting, the discussion focused on the following phrase contained in section 5641:

"... Construction documents, details, or specification for the tangible objects or landscape features, and alterations of site requiring grading and drainage plans shall be prepared by a licensed professional *as required by law...*"

The question posed was whether the term "as required by law" meant that if there was no law that required the enumerated construction documents, details or specification to be prepared by licensed professionals would unlicensed persons be permitted to prepare such documents.

Conclusion

The preparation of construction documents, details or specifications for tangible objects or landscape features is a service required by the Landscape Architects Act to be performed by a licensed landscape architect. Accordingly, the provisions of section 5641 which require construction documents, details or specifications for tangible objects

¹ All section references are to that Code.

or landscape features to be prepared by a licensed professional as required by law do not permit an unlicensed person to provide or prepare such documents without being under the immediate and responsible direction of a landscape architect.

Analysis

Section 5615 defines "landscape architect" as follows:

"5615. As used in this chapter:

"Landscape architect" means a person who holds a license to practice landscape architecture in this state under the authority of this chapter. A person who practices landscape architecture within the meaning and intent of this article is a person who offers or *performs professional services, for the purpose of landscape preservation, development and enhancement, such as* consultation, investigation, reconnaissance, research, planning, *design, preparation of drawings, construction documents and specifications*, and responsible construction observation. Landscape preservation, development and enhancement is the dominant purpose of services provided by landscape architects. *Implementation of that purpose includes: (1) the preservation and aesthetic and functional enhancement of land uses and natural land features; (2) the location and construction of aesthetically pleasing and functional approaches and settings for structures and roadways; and, (3) design for trails and pedestrian walkway systems*, plantings, landscape irrigation, landscape lighting, landscape grading and landscape drainage.

Landscape architects perform professional work in planning and design of land for human use and enjoyment. Based on analyses of environmental physical and social characteristics, and economic considerations, they produce overall plans and landscape project designs for integrated land use.

The practice of a landscape architect may, for the purpose of landscape preservation, development and enhancement, include: investigation, selection, and allocation of land and water resources for appropriate uses; feasibility studies; formulation of graphic and written criteria to govern the planning and design of land construction programs; preparation review, and analysis of master plans for land use and development; production of overall site plans, landscape grading and landscape drainage plans, irrigation plans, planting plans, and construction details; specifications; cost estimates and reports for land development; collaboration in the design of roads, bridges, and structures with respect to the functional and aesthetic requirements of the areas on which they are to be placed; negotiation and arrangement for execution of land area projects; field observation and inspection of land area construction, restoration, and maintenance.

This practice shall include the location, arrangement, and design of those tangible objects and features as are incidental and necessary to the purposes outlined herein. Nothing herein shall preclude a duly licensed landscape architect from planning the development of land areas and elements used thereon or from performing any of the services described in this section in connection with the settings, approaches, or environment for buildings, structures, or facilities, in accordance with the accepted public standards of health, safety, and welfare. This chapter shall not empower a landscape architect, licensed under this chapter, to practice, or offer to practice, architecture or engineering in any of its various recognized branches.” (Emphasis added)

The definition of the scope of practice for a landscape architect is extensive. However, distilled to its essence, as it relates to the preparation of plans, specifications and construction details, a landscape architect performs professional services for the purpose of landscape preservation, development and enhancement, such as design, preparation of drawings, construction documents and specifications and construction observation. The implementation of landscape preservation, development and enhancement includes the design of pedestrian walkway systems, plantings, landscape irrigation, landscape lighting, landscape grading and landscape drainage plans, irrigation plans, planting plans. The practice of landscape architecture may include the production of overall site plans and construction details. The practice also includes the design of those tangible objects and features as are incidental and necessary to the purpose of landscape development and enhancement.

Section 5640 makes it a misdemeanor for any person who does not hold a current and valid license issued under the Act to engage in the practice of landscape architecture, to represent themselves as a landscape architect or any other title or words that would imply or indicate that he or she is a landscape architect.

The Act provides for various exemptions from the licensure requirements for specified activities, e.g., irrigation consultants, golf course designers,. Our attention is focused on section 5641 which provides exceptions to the prohibition contained in section 5640. It provides as follows:

“This chapter shall not be deemed to prohibit any person from preparing drawings for the conceptual design and placement of tangible objects and landscape features or plans, drawings, and specification for the selection, placement, or use of plants for a single family dwelling. Construction documents, details, or specifications for the tangible objects or landscape features, and alteration of site requiring grading and drainage plans shall be prepared by a licensed professional as required by law.”

The first sentence of section 5641 allows unlicensed persons to perform drawings for the conceptual design and placement of tangible objects and landscape feature and

planting plans. It defines the landscape architecture activities that may be performed by an unlicensed person. The second sentence of section 5641 provides that where required by law, construction documents, details or specifications must be prepared by a licensed professional. The second sentence is a limitation on the activities of an unlicensed person performing landscape architectural activities.

Generally exceptions to a statute are construed narrowly to cover only those circumstance which are within the words and reason of the exception. *All One God Faith, Inc. v. Organic and Sustainable Industry Standards, Inc.*, (2010) 107 Cal.Rptr. 3d 861. In the instant case, an unlicensed person may lawfully engage in the practice of landscape architecture to the extent that such activities are exempt.

At the LATC Task Force meeting, I stated that if a local ordinance required a licensed professional to design a landscape feature, such an ordinance would be considered a law which precluded an unlicensed person from preparing such instruments of services. Unfortunately, the discussion focused on local laws governing design and there may have been an erroneous impression that if there was no local law requiring that construction documents, details or specifications be prepared by a licensed professional, such documents could be prepared by an unlicensed person.

There is no universally accepted definition of the term "law." However, it appears clear that a law is a rule which is passed by a legislative governmental body. The law includes, state laws and regulations and local government codes and ordinances. For example, the Health and Safety Code authorizes the State to adopt building standards which it does by adopting regulations in Title 24 of the California Code of Regulations that govern the design and construction of buildings and associated facilities. Cities and counties are required by state law to enforce Title 24 and may adopt ordinances making more restrictive requirements than provided by Title 24 due to local climatic, geological or topographical conditions.

The Landscape Architects Act is a state law of general application. Section 5640 prohibits persons who do not hold a landscape architect's license or are exempt from the Practice Act from engaging or offering to provide landscape architectural services. As discussed above, the practice of landscape architecture includes the design of tangible objects and features that are incidental and necessary for the purpose of landscape development and enhancement. Accordingly, the preparation of construction documents, details or specifications for tangible objects or landscape feature are a function of the practice of landscape architecture and require licensure or an exemption to be lawfully performed. Section 5640 only permits an unlicensed person to provide conceptual design and placement of tangible objects and planting plans. It does not authorize an unlicensed person to prepare construction documents, details or specifications for tangible objects or landscape features.

We trust that the foregoing is responsive to your inquiry.