

December 19, 2018

ADVISORY AS TO SPECIAL ACT 71-575 PROHIBITION OF QUALIFIED MOLD ASSESSOR/ REMEDIATOR ENGAGING IN BUSINESS WHILE EMPLOYED AS INSPECTOR, PLANS EXAMINEER OR BULIDING OFFICIAL

Issue

You have asked your attorney whether a person who is a CGC and also a qualified mold assessor or mold remediator, may engage in business as a mold remediator or mold assessor while employed as an inspector, plans examiner, or building official.

Rule

After review of the Special Act and Florida statutes, I refer your office to BORA's most recent request from the Attorney General for an opinion on the issue of whether an inspector may use their license to "engage in free enterprise thereby competing against persons or firms whose work he may also inspect, nor may he allow his Certificate of Competency to be used by another person or firm." *See* Attorney General Opinion, August 21, 2018.

In reviewing that opinion, the notes on page 2 of the Attorney General Opinion stated specifically:

Although ch.71-575(4)(b) refers generally to a "Certificate of Competency" that certain inspectors may be required to hold, **the provisions within the Code are what actually establish the need within each specialty for certain certificates of competency from any of multiple examining boards and entities.**

The Attorney General continued:

Opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law. **Instead such requests will usually be referred to the attorney for the local government in question.**

See Frequently Asked Questions About Attorney General Opinions, at <http://myfloridalegal.com/pages.nsf/Main/dd177569fSfbOf1aS5256cc6007b70ad>.

Analysis

Your attorney then provided further clarification in his Review of Attorney General Opinion dated August 23, 2018 where the forestated language was clarified. More specifically:

Simply stated, professional licenses are also properly called certificates of competency insofar as the application of Special Act 71-575. This is clear from the provisions within the Florida Building Code and the Opinion of the Attorney General which determines that it is not the name, “Certificate of Competency” which is of overriding consideration but rather that **the certificates of competency can be called a “license” or any other name without affecting the fact that it is nonetheless a certificate of competency, obtained from “any of multiple examining boards and entities”**, as determined by the Florida Building Code.

Based on the foregoing, the term Certificate of Competency does not require a four year course of professional study as in the strict meaning of professional adopted by the Florida courts.¹ It also means a (lower case) certificate of competency obtained from any of multiple examining boards and entities including the state of Florida, Department of Business and Professional Regulation.

In this case, the certificates are the mold remediation (MRS 0701) or mold assessor (MVL 003) certification issued by the state of Florida. Both of the certificates require education,

¹ See *Pierce vs. A.A.L Insurance*, 531 So. 2d 84 (Fla. 1988) (“We believe that a minimum of a four-year baccalaureate degree is required before any person can be called a professional in the field in which he or she completed their college degree.”)

training and a state administered examination so that the certification is unquestionably a certificate of competency by any other name. The MVL 003 and MRS 0701 certificates are thus necessarily within the purview and consideration of Special Act 71-575, Section 4(b).

Conclusion

It is the opinion of the General Counsel for the Broward County Board of Rules and Appeals that a licensed mold remediator or mold assessor, holding a state certification or qualification in mold remediation (MRS 0701) or mold assessor (MVL 003), is precluded from using either certificate to engage in free enterprise thereby competing against persons or firms whose work he may also inspect during the course and scope of their duties as a plans examiner, building inspector or building official. Nor may that person allow his/her qualification or certification to be used by another person or firm.)

Highest regards,

Charles M. Kramer, Esq.
BENSON, MUCCI & WEISS PL
General Counsel to the Broward County Board of Rules and Appeals
Florida Bar Board Certified Construction Lawyer
5561 University Drive, Suite 103
Coral Springs FL 33067
Phone 954.323.1023 | Direct 954.947.2523
ckramer@bmwlawyers.net |