



NOTES FROM THE LEGISLATIVE COMMITTEE

Did you know?

Are you thinking about hiring yourself out directly as an independent Construction Manager directly to an Owner to provide OAR, (Owner Authorized Representative), services? If so, congratulations on becoming your own boss. However, is the Owner you will be working for a public agency? Are you a licensed architect, engineer or general contractor? IF NOT, BE CAREFULL. YOU MAY BE BREAKING THE LAW! Please read below for more details.

The actual law states:

(e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of [Section 4529.5](#) for management and supervision of work performed on state construction projects. Govt Code 4525

Any individual or firm proposing to provide construction project management services pursuant to this chapter shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

What this means is that Construction Managers on public works projects must be a licensed architect, engineer or contractor. (NOTE: There is NO such license requirement for private works).

These comments are based on new Case Law (***See Fifth Day v. Bolotin 2009, Court of Appeals, 2nd District***). With this Case, the California courts have given some guidance on the question of whether Construction Managers need to be licensed. The ruling is somewhat confusing since it WAS NOT directed specifically at the issue of a requirement that Construction Managers be licensed. The Appellate Court stated in dictum that the Legislature provided that Construction Managers must be licensed, (on public works projects), citing Government Code Section 4525(e). The licensing comments were included in the Appellate Court's justification for it's finding for the plaintiff in this Case, (a CM v. a private owner), reversing the Trial Court's ruling that the CM being unlicensed was barred from bringing suite by the Business and Professional Code, Section 7031 stating there is no such licensing requirement for private

projects. **The Appellate Court DID NOT disagree with the ruling that CM licensing is required. It only stated that the licensing is not required on private projects.**

Per Aspen Publishers publication, “**California Construction Law, Sixteenth Edition, 2010 Cumulative Supplement**”, edited by Gordon Hunt & Kenneth Gibbs, Section 1.37, a Petition for Hearing in the California Supreme Court has been filed on the Appellate Court’s ruling because it raises an important issue with regard to construction law that has not yet been addressed by the courts in California.

This information was supplied by Ms. Marion Hack, Esq., Partner, Gibbs, Giden, Locher, Turner & Senet, Attorneys at Law in Los Angeles (mhack@gglts.com) (Marion also sits on the CMAA National Legal Advisory Committee).

by D. Gordon Follett, P.E.

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