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STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

----- : #142-378

STEPHEN M. PLAYTER,

Petitioner,

vs.

MEMORANDUM DECISION

EXAMINING BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS
AND LAND SURVEYORS OF THE STATE
OF WISCONSIN (Architects Section),

Respondent.

This is a Chapter 227 proceeding to review an order of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, which suspended for 90 days the certificate of registration as an architect of Stephen M. Playter, the petitioner herein.

It appears from the record transmitted to this court that Playter was retained in September, 1973, as an architect to submit to the state for review and approval plans and specifications for an indoor swimming pool to be located at the Mogasheen Resort, Cable, Wisconsin, owned by a William Sykes. Initially, Sykes had submitted plans for a pool made and sold as a "package" by Aquarius Swimming Pool Company, Inc., of Rosemount, Minnesota. They were returned because they were not prepared, signed and sealed by a Wisconsin registered architect or engineer as required by code. Playter then proceeded to review these plans at Syke's request, particularly the design, materials, method of construction and construction details. At the conclusion of his examination, he affixed his seal to the drawings, and they were resubmitted for approval. The reviewing state department rejected them because they lacked sufficient detail to determine code compliance. Thereafter, he submitted revised plans which he signed and sealed, and they were similarly rejected as being deficient in detail. The staff attorney for the respondent board then became involved. After an investigation and report to the board, it was determined to proceed with a disciplinary hearing. The board concluded that petitioner's actions violated sec. 443.01(1)(f), Stats., by signing and sealing documents not prepared by him or under his direction and control.

The petitioner has argued three separate points. The essence of his argument on one point is that the pool plans and specifications

identify competent work and enforce the prohibition against unlicensed practice. Thus, when an architect prepares plans, he must take an active role in producing the work product which he signs and seals.

Another point raised by the petitioner challenges the disciplinary procedure utilized by the board as lacking in due process. This argument is based on a claim that the board could not decide to hold a hearing after considering the memorandum presented by its counsel without first giving him notice of and an opportunity to be heard on this decision. It is further claimed that the procedure permitting the board on its own motion to make charges does not comport with due process requirements because it has already made the determination that misconduct warranting further hearings had occurred.

The thrust of these arguments is that the board was acting as both prosecutor and judge and that these functions cannot constitutionally be vested in the same agency. There have been many recent attacks on the same or similar administrative procedures, and from them there has surfaced the rule that an agency can have the power to investigate and adjudicate if these functions are separately maintained. We are satisfied that the procedure employed in the present case as disclosed by the record is free of any constitutional infirmity. The members of the board did not, prior to the hearing it conducted, make any investigation of the charges against petitioner, and there is nothing to indicate they had prejudged the matter or were merely engaged in reviewing a decision that had already been made. We are satisfied that the board's role in the proceedings was that of an independent, neutral and detached decision-maker and constitutionally, antiseptically clean.

Lastly, the petitioner contends the board was required to decide whether the pool was a "public pool" in order to make Sec. H-71.03, Wisconsin Administrative Code, applicable. We cannot agree. This was never at issue. All of the evidence in the record indicates that the pool was to be a public one as defined in the code. It was implicit in the fact that state approval was sought. Furthermore, the findings made by the board determined that the code applied. This amounts to a finding that it was a public pool.

It would be our opinion that the discipline administered is rather harsh for the violation, but that is the prerogative of the board and not this reviewing court.