

VOLUME NO. 36

Opinion No. 52

PUBLIC BUILDINGS — “Public” defined; PUBLIC BUILDINGS—Seals of architect, engineer, or land surveyor required only for “public” buildings; Sections 66-2366, 69-2105 (13), Revised Codes of Montana 1947.

HELD: 1. “Public” in section 66-2366 refers only to the buildings of the state and its political subdivision.

2. Plans and specifications for the construction of privately owned buildings need not bear the seals of the professional persons specified in section 66-2366.

January 21, 1976

Mr. William A. Penttila, Chief
Fire Marshal Bureau
528 Sanders
Helena, Montana 59601

Dear Mr. Penttila:

This is in response to your request for my interpretation of the term "public" as employed in section 66-2366.

Section 66-2366 was newly enacted in 1975 as part of a general revision and updating of the laws relating to professional engineers and land surveyors. Section 11, Chapter 366, Laws of 1975. The second paragraph thereof states:

This state and its political subdivisions ... shall not accept plans and specifications for public buildings, water systems and storage facilities, sewerage systems, waste water disposal projects, swimming pools, recreational facilities, and similar type projects which may have a direct bearing on the public health and safety for approval unless they bear the seal of the professional engineer for engineering projects or the land surveyor for land surveying projects, or licensed architect for architectural projects, as provided for the practice of the respective professionals by this act. (Emphasis added)

You are wondering whether the requirements of this section are meant to be imposed upon commercial establishments.

From section 66-2366 alone the breadth of the word "public" is uncertain. On one hand, it may be legitimately argued that it refers only to the buildings and facilities of the state; on the other, that it also includes places where the public congregates in considerable numbers, such as department stores and theatres. The latter interpretation would be consistent with the definition of a "public place" in the state building code—"any place which a municipality or state maintains for the use of the public, or a place where the public has a right to go and be." Section 69-2105 (13). However, I think the reference copy of Senate Bill No. 334, which enacted section 66-2366, rules out such a broad construction. It provides:

This state and its political subdivisions ... shall not accept plans and specifications for PUBLIC BUILDINGS, WATER SYSTEMS, WASTE WATER DIS-FACILITIES, SEWERAGE SYSTEMS, WASTE WATER DISPOSAL PROJECTS, SWIMMING POOLS, RECREATIONAL FACILITIES, AND SIMILAR TYPE PROJECTS WHICH MAY HAVE A DIRECT BEARING ON THE PUBLIC HEALTH AND SAFETY for approval unless they bear the seal of the professional engineer for engineering projects or the land surveyor for land surveying projects, OR LICENSED

ARCHITECTS FOR ARCHITECTURAL PROJECTS, as provided for the practice of the respective professions by this act.

Given these changes, especially the deleted language, it is clear the legislature intended to confine application of section 66-2366 to those buildings and other projects built by governmental entities. Structures erected by private parties to house their own enterprise are not "public" in the sense here intended.

THEREFORE, IT IS MY OPINION:

1. "Public" in section 66-2366 refers only to the buildings of the state and its political subdivisions.
2. Plans and specifications for the construction of privately owned buildings need not bear the seals of the professional persons specified in section 66-2366.

Very truly yours,

ROBERT L. WOODAHL
Attorney General