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TO: Robert S. McCormick, Chairman
Florida Board of Building Code Administrators and Inspectors

RE: Ability of Engineers and Architects to Serve as Building Code Inspector
or Plans Examiner

MEMORANDUM

This correspondence is in response to our discussion at the last Board meeting during which you posed essentially the following question:

May an architect licensed pursuant to Chapter 481, F.S. or an engineer licensed pursuant to Chapter 471 F. S. serve as a full time regular employee of a local government performing the tasks of a plans examiner or building code inspector as those terms are defined in Chapter 468 Part XII, F.S.?

Upon review of the matter I must answer the question posed in the negative.

Analysis:

It should be initially noted that this question is one of first impression as no case law is available to address this issue. Nevertheless, a plain reading of the applicable statutes when taken in concert with one another lead to the conclusion stated above.

Sections 471.045 and 481.222 Florida Statutes relate to the question posed concerning Engineers and Architects respectively. Both statutory sections are identical save for professional designation and provide the following:

Notwithstanding any other provision of law, a person who is currently licensed under this chapter to practice as a [professional engineer / architect] may provide building code inspection services described in s. 468.603(6) and (7) to a local government or state agency upon its

request, without being certified by the Florida Building Code Administrators and Inspectors Board under part XII of chapter 468. When performing these building code inspection services, the [professional engineer / architect] is subject to the disciplinary guidelines of this chapter and s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of a [professional engineer's / architect's] performing building code inspection services shall be conducted by the Board of [Professional Engineers / Architecture and Interior Design] rather than the Florida Building Code Administrators and Inspectors Board. A [professional engineer / architect] may not perform plans review as an employee of a local government upon any job that the [professional engineer / architect] or the [professional engineer's / architect's] company designed. (emphasis added)

Section 468.603 provides the following definitions in pertinent part:

(2) "Building code inspector" means any of those employees of local governments or state agencies with building construction regulation responsibilities who themselves conduct inspections of building construction, erection, repair, addition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance. (emphasis added)

(6) "Categories of building code inspectors" include the following:

(a) "Building inspector" means a person who is qualified to inspect and determine that buildings and structures are constructed in accordance with the provisions of the governing building codes and state accessibility laws.

(7) "Plans examiner" means a person who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes.

When read in concert, the language above is clear; engineers and architects retained by a local governmental entity to perform specific building inspections or plans reviews are not required to obtain licensure from the Board of Building Code Administrators and Inspectors. However, an engineer or architect who performs such services is subject to the regulations set forth in Chapter 468 part XII; although any disciplinary actions brought forth for a violation of said section shall be taken by the professional's respective licensing board. This being the case, the opposite must therefore be true; any individual licensed as an engineer or architect who wishes to become a building code inspector or plans examiner must be a full time employee of a governmental entity and possess licensure from the Board of Building Code Administrators and Inspectors corresponding with the activity performed.

This reading is reinforced when one reviews the staff analysis which accompanied the legislation which gave rise to the law under review. The genesis of the existing provisions is House Bill 4439 which became Chapter 98-419 Laws of Florida. A review of the accompanying staff analysis issued on April 21, 1998 reveals the following commentary:

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Architects - Chapter 481, F.S.

(Section 20)

Architects are often asked to perform plans review or building inspection duties by local jurisdictions who are experiencing a temporary shortage of inspectors or plans reviewers. They had, in the past, performed these duties - by contract - without being forced to obtain licensure as a building inspector. Now that such an activity requires licensure, architects wish to be able to continue to perform these services without having to seek licensure as a building inspector. (emphasis added)

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Architects - Chapter 481, F.S.

(Section 20)

The bill provides that an architect may, upon request from the local building department -- perform building inspection duties without having to obtain licensure as a building inspector; also provides that he architect may not act as a plans examiner on a building he designed.

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Amendment 9

Creates section 471.026, allowing engineers to, upon the request of the local building department, perform building code inspection and plans review duties without having to be licensed as building code inspectors or plans reviewers. This provision tracks an essentially identical provision already in the bill allowing architects to perform these same tasks.

The staff analysis clearly confirms the proposition that the statutory provisions under review allow architects and engineers, when acting as architects and engineers, may perform the functions of a building code inspector or plans examiner with the ultimate regulatory control resting with their respective regulatory boards. However, any individual who wishes to serve a governmental authority on a full time basis as a salaried employee subject to the direct control of the agency must be licensed by the Board of Building Code Administrators and Inspectors.

Conclusion:

Architects and engineers may perform the services of a building code inspector or plans examiner for a governmental entity on a contractual basis only when there exist the exigent need for manpower or when said architect or engineer possesses a knowledge or skill that is required for a certain project.

Respectfully,

Clark R. Johnson