

442.03 History: 1935 c. 481; Stats. 1935 s. 135.03; 1969 c. 336 ss. 34, 175 (1); Stats. 1969 s. 442.03.

See note to sec. 1, art. I, on exercises of police power, citing *Wangerin v. Wisconsin State Board of Accountancy*, 223 W 179, 270 NW 57.

442.04 History: 1935 c. 481; Stats. 1935 s. 135.04; 1949 c. 127; 1963 c. 140; 1965 c. 252; 1969 c. 336 ss. 35, 175 (1); Stats. 1969 s. 442.04.

442.05 History: 1935 c. 481; Stats. 1935 s. 135.05; 1963 c. 140; 1969 c. 336 ss. 36, 175 (1); Stats. 1969 s. 442.05.

442.06 History: 1935 c. 481; Stats. 1935 s. 135.06; 1969 c. 336 s. 37; Stats. 1969 s. 442.06.

Persons entitled to be registered as public accountants on application by a designated date, and not claiming that they applied for or were denied registration, are not in a position to question the validity of the provisions of such statute as to standards, examinations, etc. Ch. 481, Laws 1935 (ch. 135, Stats. 1947), in regulating the practice of accountancy, deals solely with the relation of such practice to the public; it does not forbid others than public accountants or certified public accountants from working at the business of accountancy for more than one person, provided that there is no representation of being a public accountant or a certified public accountant and that the service rendered to the employers is not put before the public as work of a public accountant or a certified public accountant. *Wangerin v. Wisconsin State Board of Accountancy*, 223 W 179, 270 NW 57.

442.07 History: 1935 c. 481; Stats. 1935 s. 135.07; 1969 c. 336 s. 38; Stats. 1969 s. 442.07.

Under 135.04, Stats. 1933, use of the degree "Master of Accounting" is lawful. 21 Atty. Gen. 468.

442.08 History: 1935 c. 481; Stats. 1935 s. 135.08; 1969 c. 336 s. 39; Stats. 1969 s. 442.08.

442.09 History: 1935 c. 481; Stats. 1935 s. 135.09; 1959 c. 491; 1969 c. 336 s. 40; Stats. 1969 s. 442.09.

442.10 History: 1935 c. 481; Stats. 1935 s. 135.10; 1963 c. 140; 1969 c. 336 ss. 41, 175 (1); Stats. 1969 s. 442.10.

442.11 History: 1935 c. 481; Stats. 1935 s. 135.11; 1963 c. 140; 1969 c. 336 ss. 42, 175 (1); Stats. 1969 s. 442.11.

442.12 History: 1935 c. 481; Stats. 1935 s. 135.12; 1943 c. 375 s. 52; 1969 c. 276; 1969 c. 336 ss. 43, 175 (1); 1969 c. 392 s. 55e; Stats. 1969 s. 442.12.

442.13 History: 1963 c. 140; Stats. 1963 s. 135.13; 1969 c. 336 s. 44; Stats. 1969 s. 442.13.

442.14 History: 1935 c. 481; Stats. 1935 s. 135.13; 1951 c. 261 s. 10; 1963 c. 140; Stats. 1963 s. 135.14; 1969 c. 336 s. 45; Stats. 1969 s. 442.14.

CHAPTER 443.

Examining Board of Architects and Professional Engineers.

443.01 History: 1917 c. 644; Stats. 1917 s.

1636—215; 1919 c. 198 ss. 1, 3; Stats. 1919 s. 2394—97; Stats. 1923 s. 101.31; 1931 c. 486 s. 3; 1935 c. 437; 1943 c. 372; 1943 c. 375 s. 36; 1943 c. 387; 1945 c. 13, 33, 34; 1949 c. 510, 643; 1951 c. 261 s. 10; 1955 c. 10, 620; 1957 c. 528; 1959 c. 228 s. 61; 1959 c. 581; 1965 c. 570; 1967 c. 26, 131, 177, 249; 1969 c. 239; 1969 c. 276 ss. 380, 584 (1) (b), (2) (b); 1969 c. 336 ss. 7, 8, 175 (2); 1969 c. 392 ss. 69b, 69c; 1969 c. 446 ss. 2 to 8; Stats. 1969 s. 443.01.

An architect not registered and licensed cannot recover on quantum meruit for services rendered, and the defense need not be pleaded. If the work is performed jointly by 2 architects, one of whom only is licensed, neither may recover. *Hickey v. Sutton*, 191 W 313, 210 NW 704.

The plaintiff who was not registered and who did not represent himself as an architect, but who drew plans for a dwelling for the defendant, could recover for his services. *Fischer v. Landisch*, 203 W 254, 234 NW 498.

An agreement of building contractors to furnish architectural services was not an agreement to perform such services, and the contractors did not thereby impliedly represent themselves to be architects, so as to preclude recovery for such services because they were not registered architects. (*Hickey v. Sutton*, 191 W 313, 210 NW 704, distinguished; *Fischer v. Landisch*, 203 W 254, 234 NW 498, followed.) *Adams v. Feiges*, 206 W 183, 239 NW 446.

Sec. 101.31, Stats. 1931, defining the practice of architecture as embracing "responsible supervision of the construction, enlargement or alteration of public or private buildings" for others and prohibiting such practice without an architect's license, refers to the sort of supervision which an architect ordinarily gives, and does not forbid all supervision except by a licensed architect; and the supervision necessary to performance is not the supervision that is ordinarily rendered by an architect. That the plaintiff may have violated the architect-licensing statute by holding himself out as an architect to others without possessing an architect's license constituted no defense against recovery for his services rendered to the defendants. *Wahlstrom v. Hill*, 213 W 533, 252 NW 339.

If the plaintiff agreed to furnish architectural services, handled the business end of the transaction while leaving the architectural part to a registered architect, and acted as a builder, and the plans were actually prepared by a registered architect in his employ, and the defendant was sufficiently advised of the relation existing between all concerned, the plaintiff would not be precluded from recovering for the services because he was not a registered architect. *Lytle v. Godfirron*, 241 W 533, 6 NW (2d) 652.

Evidence as to the nature of an architect's mistakes in plans for a building, and as to impractical and improper construction, delay in construction, failure to secure a building permit, misplacement of the building in reference to the lot line, and as to his actions in securing the owner's indorsement of payment on certificates after he had knowledge of the misplacement of the building, warranted the registration board's finding that he was guilty of gross negligence, incompetence and miscon-

duct in the practice of architecture. *Kuehnel v. Registration Board of Architects*, 243 W 188, 9 NW (2d) 630.

The right of a licensed professional engineer to recover compensation for the preparation of plans and specifications for a building was not affected by the fact that unlicensed persons rendered services to him in connection therewith, where they merely worked under him in such capacities that, under 101.31, Stats. 1945, they were not required to be licensed. *Kuenzi v. Radloff*, 253 W 575, 34 NW (2d) 798.

Where the registered architect, in a firm consisting of himself and a person not so registered, was not the majority proprietor of the firm, as required by 101.31 (7) (b) for such firm to engage in practice of architecture, and plans and specifications for a building prepared for a school district did not carry the signature of the registered architect as required by 101.31 (7) (a), the firm's unregistered member could not collect fees for such services, and the school district could not recover an amount it had already paid to him. *Kempf v. Joint School Dist.* 6 W (2d) 95, 94 NW (2d) 172.

101.31 does not prohibit a nonstock, non-profit corporation from entering into a contract to furnish architectural services to be rendered by a licensed architect. *Madison v. Frank Lloyd Wright Foundation*, 20 W (2d) 361, 122 NW (2d) 409.

101.31 (14) provides for a criminal penalty and must be strictly construed. The fact that an injunction is sought under 101.31 (15) rather than a criminal penalty does not change the construction. Doing business under the name "T. V. Engineers" does not violate the statute where no professional engineering service was offered or performed. *State ex rel. Wis. R. Bd. of A. & P. E. v. T. V. Eng.* 30 W (2d) 434, 141 NW (2d) 235.

Under agreement by a manufacturer with an engineer engaged in the sales service business, where services of the engineer are merely incidental to his selling and related only to advice as to the kind of machinery to be used, the engineer was not required to secure a license as an engineer in Wisconsin in order to perform such services. *Keller v. Baumgartner*, 153 F (2d) 474.

The board of examiners of architects has no power to grant temporary permission to practice, to persons who have been licensed in other states, without requiring them to secure a certificate of registration as prescribed by sec. 2394-97, Stats. 1923. 12 Atty. Gen. 232.

A contractor who alters plans for a house is not thereby representing himself to be an architect. 13 Atty. Gen. 544.

Persons not registered as architects in Wisconsin may not employ the titles "architectural engineer," "architectural designer" or "bachelor of architecture" in connection with the business of making plans and specifications and supervising construction of buildings. 15 Atty. Gen. 449.

Five years' experience in designing and constructing buildings for others creates a prima facie qualification for registration, but the board may require evidence of competence of an applicant to design and construct buildings not within exemption. An application

must show experience in designing or construction for others in a contractual relationship and not as an employe of another. The term "engaged in" means employment occupying time, attention and labor of person. 21 Atty. Gen. 95.

Architectural services performed by the partner or by an officer of a corporation may be included as experience in designing and construction of buildings for others. 21 Atty. Gen. 590.

The word "corporation" does not include municipal corporations. 22 Atty. Gen. 126.

Supervision of construction of a dam of considerable size constitutes the practice of civil engineering. 24 Atty. Gen. 12.

While a person need not be a registered professional engineer to hold the office of city engineer, he must be so registered if his duties require him to do any of the engineering work mentioned. 25 Atty. Gen. 194.

Persons permitted to make plans and supervise erection of buildings used for private residential or farm purposes may use the title "designer," "house designer," or "building designer." 25 Atty. Gen. 346.

The use of the title "architractor" with intent to practice the profession of architecture falls within 101.31 (1). 26 Atty. Gen. 384.

Designing and constructing a grandstand or stadium on school grounds should be done by a licensed architect. 26 Atty. Gen. 417.

The use of the title "professional engineering employe" for the purpose of classifying employes of professional engineers for collective bargaining purposes does not tend to convey the impression that the persons so classified are professional engineers, contrary to 101.31 (2). 33 Atty. Gen. 55.

The public service commission may not deny approval of a satisfactory map, profile and plans for a dam under 31.12, Stats. 1945, on the grounds that the same were not prepared by a registered professional engineer. Possible violations of 101.31 should be referred to the board. 35 Atty. Gen. 351.

Firms owned in majority by registered architects or registered professional engineers may practice architecture, professional engineering, or both such professions. 36 Atty. Gen. 50.

The board is not required to look behind a national reciprocal registration certificate in granting state registration pursuant to 101.31 (11) to ascertain what requirements the applicant met in obtaining such national certificate. The board must ascertain whether or not the requirements for obtaining a certificate from that other jurisdiction are—as of the time of the application and decision—at least as high as those of Wisconsin. Whether or not the applicant could have met the Wisconsin requirements at the time of his initial registration in the other jurisdiction is immaterial. 41 Atty. Gen. 130.

An engineer not registered, exempted, or the holder of a permit to practice professional engineering as defined in 101.31 (2) (d), who advertises himself as qualified to perform services in the design and supervision of construction of buildings wherein the public welfare and safeguarding of life, health, or property is involved, and who prepares construc-

tion plans for additions and alterations to buildings, where such buildings are not of the class described by 101.31 (10) violates 101.31 (1) (b) and (1) (c). 41 Atty. Gen. 336.

Interpretations of 101.31 (2) (b), (2) (d), and (10) (b), published by the registration board under authority of 101.31 (4) (d), and properly filed as required by 227.03 are valid. The interpretations are rules under 227.01 (2). Approval of the attorney general is not required to make them effective. 41 Atty. Gen. 392.

101.31 (14) (b) does not refer to officials of the industrial commission. 44 Atty. Gen. 126.

Under 101.31 (7) (a), plans, sheets of design and specifications furnished by a corporation engaged in the practice of architecture must bear the signature of the registered architect in responsible charge, and under Rule A-E 1.04 of the board there must also be affixed the seal or rubber stamp of such architect. 45 Atty. Gen. 163.

The board has no authority to make United States citizenship a prerequisite for registration as an architect. 45 Atty. Gen. 284.

Survey of structures for civil defense under contract requires the services of a registered professional engineer or architect. 48 Atty. Gen. 73.

The registration board of architects has the duty to see that proper investigation is made and to institute criminal proceedings in proper cases. No personal liability would occur if proper action was taken. 49 Atty. Gen. 43.

For discussion of 101.31 (2) (b) and (d) regarding professional services and licensing see 50 Atty. Gen. 69.

An architect or professional engineer who has held a registration subsequent to 1931, which has expired, may have it renewed by paying the required fee and penalty and need not qualify as a new applicant. 52 Atty. Gen. 268.

As to violations or possible violations by a corporation which uses the word "engineering" or "engineer" in its corporate name without complying with 101.31 (7) (b), Stats. 1963, see 53 Atty. Gen. 81.

For discussion of the rules and regulations governing the issuance of certificates of registration to architects on the basis of reciprocity see 54 Atty. Gen. 181.

A nonregistered person who testifies before a court or administrative agency as an expert witness on a subject within the field of professional engineering does not thereby violate the provisions of 101.31, Stats. 1967. 57 Atty. Gen. 8.

See note to 101.09, citing 57 Atty. Gen. 15.
See note to 15.405, citing 57 Atty. Gen. 160.

443.02 History: 1955 c. 547; Stats. 1955 s. 101.315; 1959 c. 581; 1963 c. 6; 1965 c. 198; 1969 c. 276 s. 584 (1) (b); 1969 c. 336 ss. 9, 10; 1969 c. 392 s. 69e; Stats. 1969 s. 443.02.

A land surveyor, previously registered and whose registration has expired for more than 2 years, may renew his registration by paying a fee of \$30 and does not have to qualify as a new applicant. 52 Atty. Gen. 271.

A corporation or partnership can practice or offer to practice land surveying through persons duly registered with the state regis-

tration board, even though such corporation or partnership cannot be registered. 53 Atty. Gen. 35.

CHAPTER 444.

Athletic Examining Board.

444.01 History: 1969 c. 336 s. 162; Stats. 1969 s. 444.01.

444.02 History: 1915 c. 272; Stats. 1915 s. 1636—241 sub. 2 (a-2); 1923 c. 291 s. 3; Stats. 1923 s. 169.01 (5); 1945 c. 401; Stats. 1945 s. 169.05; 1969 c. 336 ss. 140, 175 (3); Stats. 1969 s. 444.02.

Boxing exhibitions conducted under sec. 1636-241, Stats. 1913, do not differ in legal status from any other lawful entertainment but are private enterprises conducted for profit and controlled by the proprietor, except for statutory regulation. The sheriff has no right to demand free admission at such an exhibition for himself and a large number of his deputies for the mere purpose of witnessing the exhibition, and in doing so acts outside his official authority. 3 Atty. Gen. 809.

Gross receipts from the sale of tickets at a boxing exhibition do not include the amount received for federal tax. 9 Atty. Gen. 563.

A performance that merely reproduces by illustration blows delivered in an actual boxing or sparring match is not a violation of law. 10 Atty. Gen. 717.

The state athletic commission when performing a governmental function is not liable for torts of its officers or members of the commission. A contestant in a boxing contest cannot recover damages for injuries under the terms of the contract submitted unless a club violates the rules of the commission governing place, equipment, etc. 24 Atty. Gen. 685.

A contest described as "wrestling with gloves" can be considered a form of "boxing" or "prize fighting" depending on whether a prize is or is not offered based upon the outcome. Insofar as such a contest constitutes "boxing," it cannot lawfully be held in the state except pursuant to authority granted by the state athletic commission as provided in ch. 169. In event such a contest is held and it further appears that the participants have agreed in advance that it be for the possession of any prize, belt or other evidence of championship, it would also be in violation of 347.11. 36 Atty. Gen. 171.

Boxing or sparring for training purposes does not constitute a boxing or sparring exhibition within the sense of those terms as used in ch. 169, and is not subject to the regulatory powers of the state athletic commission. 44 Atty. Gen. 336.

444.03 History: 1913 c. 632; 1913 c. 773 s. 85; Stats. 1913 s. 1636—241 sub. 2a; 1915 c. 272; 1923 c. 291 s. 3; Stats. 1923 s. 169.01 (7); 1925 c. 365; 1935 c. 512; 1945 c. 401; Stats. 1945 s. 169.07; 1969 c. 336 s. 141; Stats. 1969 s. 444.03.

444.04 History: 1913 c. 632; Stats. 1913 s. 1636—241 sub. 3; 1915 c. 272; 1923 c. 291 s. 3; Stats. 1923 s. 169.01 (8); 1945 c. 401; Stats. 1945 s. 169.08; 1953 c. 628; 1965 c. 243; 1969 c. 336 s. 142; Stats. 1969 s. 444.04.