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OPINION	:	No. 81-107
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of	:	<u>MAY 7, 1981</u>
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Is the Registrar of Contractors of the Contractors' State License Board bound by an initial determination of the amount of a penalty bond imposed under Business and Professions Code section 7071.8 if the suspended contractor does not reapply for his license until after the Legislature has raised the amount of such bond?

CONCLUSION

The Registrar of Contractors of the Contractors' State License Board is not bound by an initial determination of the amount of a penalty bond imposed under Business and Professions Code section 7071.8 if the suspended contractor does not reapply for his license until after the Legislature has raised the amount of such bond.

## ANALYSIS

In January 1977, the Registrar of Contractors (hereafter Registrar) of the Contractors' State License Board, pursuant to a disciplinary action, suspended a contractor's license. The suspended contractor was informed that should he desire to reapply for his license under section 7071.8 of the Business and Professions Code,<sup>1</sup> a bond or cash deposit in the amount of \$12,500 must be posted as a condition precedent for removal of suspension and reinstating the license. The contractor did not reapply for his license and in October 1980, the Registrar informed the contractor that the bond or cash deposit had been raised to \$25,000 in order for the license to be reissued. We are asked about the legality of the action in increasing the bond requirement.

Section 7071.8 provides:

"If application for a license, or for restoration of a license, is made by

"(1) Any person whose license has been suspended or revoked as a result of disciplinary action for violation of this chapter,

"(2) Any person who was an officer, director, member, partner or qualifying individual for a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of said licensee's license and who had knowledge of or participated in the act or omission which was the cause for such disciplinary action for violation of this chapter.

"(3) Any partnership, corporation, firm or association of which any officer, director, member, partner or qualifying person has had his license suspended or revoked as a result of disciplinary action for violation of this chapter, or

"(4) Any partnership, corporation, firm or association of which any officer, director, member, partner or qualifying person was a member, officer, director, partner or qualifying person of a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of said license, and who had knowledge of or participated in the act or omission which was the cause for such disciplinary action for violation of this chapter, *the board shall require as a condition precedent to the issuance, reissuance or restoration of a license to such applicant, or removal*

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<sup>1</sup> All unidentified section references will be to the Business and Professions Code.

*of suspension, that such applicant file or have on file a contractor's bond or cash deposit in a sum to be fixed by the registrar based upon the seriousness of the violation, but which sum shall not be less than three times nor more than 10 times that amount required by Section 7071.6.*

“Such bond shall remain on file or in lieu thereof cash deposit be posted with the registrar for a period of at least two years and for such additional time as the registrar may determine.

“Each applicant or licensee shall be required to file only one contractor's bond of the type described in this section.

“Nothing contained in this section shall apply to a person or firm whose license has been suspended or revoked for a failure to comply with Section 7083.” (Emphasis added.)

Under the terms of this section, the registrar must fix an amount which reflects the seriousness of the violation but which cannot be less than three times nor more than ten times the amount required by section 7071.6. When the suspension in question occurred, January 1977, section 7071.6 provided for a bond of \$2,500. Thus, the Registrar had to fix the bond at an amount between \$7,500 and \$25,000. Considering the seriousness of the violation the Registrar fixed the bond at five times the amount specified in section 7071.6 or \$12,500.

However, section 7071.6 has undergone considerable revision since 1977. Chapter 747, Statutes 1979, amended section 7071.6 by increasing the bond for a swimming pool contractor to \$10,000. This bill did not affect the bond of other contractors. Also, in the 1979–1980 session of the Legislature, chapter 1013, Statutes 1979, amended section 7071.6 by increasing the amount of the bond for all other contractors from \$2,500 to \$5,000. Because there was some uncertainty and confusion over the effective dates of these bills and over the correct amendments to section 7071.6, the Legislature passed Assembly Bill No. 670, chapter 27, Statutes 1980. This bill was an urgency statute becoming effective on March 5, 1980.

Chapter 27, Statutes 1980, provides in pertinent part:

“Section 1. The Legislature hereby declares that, in enacting chapters 1013, 747, and 1138 of the Statutes of 1979, it intended and does now intend that the protections therein contained for the benefit of workers, labor unions, consumers, and the public become operative on the effective date of such legislation, unless specifically otherwise therein stated. The Legislature

further declares that it was and is its specific intent that sections 11 5 and 12 of chapter 1013, and section 1 of chapter 747, of the Statutes of 1979, which generally increase the face amount of various contractors' license bonds, become operative as to all licensed contractors on January 1, 1980, *so that such contractors shall be required as a condition to the continued maintenance of their licenses, to file or have on file on and after January 1, 1980, bonds in the increased face amounts required by these statutes.*

“ . . . . .

“Sec. 2. Section 7071.6 of the Business and Professions Code, as amended by chapter 1013 of the Statutes of 1979, is amended to read:

“707 1.6.

“(a) Except as otherwise provided in section 7071.8 and subdivision (b), the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license, that the applicant file or have on file a contractor s bond in the sum of *five thousand dollars* (\$5,000), or in lieu thereof, a cash deposit in the sum of five thousand dollars (\$5,000). No bond or cash deposit shall be required of a holder of an inactive license during the period his license is inactive.

“(c) Notwithstanding any other provision of law to the contrary, the board shall require, as a condition to the continued maintenance of any active license, *that the holder of a license file, or have on file, on and after January 1, 1980, a contractor's bond in the sum of five thousand dollars (\$5,000) or, an hen thereof a cash deposit in the sum of five thousand dollars (\$5,000);* provided that the holder of a license for the classification of swimming pool contractor file, or have on file, a contractor's bond in the sum of ten thousand dollars (\$10,000) or, in lieu thereof, a cash deposit in the sum of ten thousand dollars (\$10,000).’ (Emphases added.)

It is clear that under these statutes the Registrar must require a bond in the proper amount after January 1, 1980. Under section 7071.8 the bond must be between three and ten times the amount specified in section 7071.6. Thus, after January 1, 1980, the bond must be between \$15,000 and \$50,000.<sup>2</sup> As can be easily seen, the \$12,500 bond required

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<sup>2</sup> Unless the exercise of the power is arbitrary, the amount of a bond is one of economics for the Legislature and not subject to court review. (*More v. Webb* (1933) 219 Cal. 304, 309; *In re Cardinal* (1915) 170 Cal. 519, 526-527.)

in 1977 does not meet the minimum limits under the 1980 legislation.

Section 7071.8 requires as a condition precedent to the reissuance of a license the posting of the bond or cash deposit in the requisite amount. Even though the Registrar has notified the disciplined party of the amount of the bond to be posted upon reinstatement of the license, that notification becomes invalid on the effective date of a new statute requiring a different bond amount. Under these circumstances, the amount of the bond in the first notification is no longer authorized by law and the Registrar is compelled by the new law to require the current bond amount when reinstatement is sought. Section 7071.8 clearly requires the increased amount of bond when an application for reinstatement is made after January 1, 1980. We conclude, therefore, that the change in the statute nullified the Registrar's prior notification of the bond amount when that amount has not been posted in an application for reinstatement.

In this case we are concerned only with a contractor who had not acted upon a prior determination by the Registrar and where a change in the law occurred prior to the contractor's application for reinstatement. We do not address the question whether the Registrar can change the amount of a penalty bond after he makes the initial determination in other situations.

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