

additional obligations that such contractor shall promptly make payments to all persons supplying him labor, material, and supplies, used directly or indirectly by the said contractor or subcontractors in the prosecution of the work provided for in said contract

As noted in *City of Fort Lauderdale v. Hardrives Company*, 167 So.2d 339 (2 D.C.A. Fla., 1964), this statute was patterned after the federal Miller Act, 40 U.S.C.A. §§270a *et seq.*, and has for its purpose "the protection of materialmen, laborers and the like, whose labor and materials are put into public works projects, upon which they can acquire no lien, by substituting a penal bond for the lien allowed by other statutes on private construction projects." *Accord: State v. Clutter Construction Corporation*, 132 So.2d 21 (3 D.C.A. Fla., 1961), *aff'd*, 139 So.2d 426 (Fla. 1962).

In light of the purpose of §255.05, *supra*, to fill the void resulting from the inapplicability of the Mechanics' Lien Law to public works contracts, it seems clear that it is not applicable to a professional contract for the supplying of architectural or engineering services to a public agency. The services performed by such a professional person are personal and nondelegable; and the only lien provided by our Mechanics' Lien Law for such services is in favor of the professional person himself for preparing the plans and specifications or drawings used in carrying out his contract or in supervising the construction of the building in accordance with such plans and specifications. His employees have no lien for their services in assisting him in performing his contract. *See* §713.03, F. S. As the bond which the general contractor is required to execute under §255.05, *supra*, serves as a substitute for the liens which the contractor's laborers and materialmen (and subcontractors) could have acquired against the improved property under a private construction contract, it necessarily follows that the purpose for such a bond would fail in the case of a contract for engineering or other professional services. It must be assumed that the legislature intended a legislative act to serve a useful purpose. *Arnold v. Shumpert*, 217 So.2d 116 (Fla. 1968). As no useful purpose would be served, it must be concluded that the legislature did not intend to require an engineer or other similar professional person to execute the penal bond referred to in §255.05, *supra*.

Accordingly, your questions are answered in the negative.

073-135—April 25, 1973

RECORDED INSTRUMENTS

ELEMENTS TO BE ENDORSED OR STAMPED THEREON

To: *Sal Geraci, Clerk, Circuit Court, Fort Myers*

Prepared by: *Henry George White, Assistant Attorney General*

QUESTION:

What essential elements must be endorsed or stamped on an instrument presented to a circuit court clerk for recording?

SUMMARY:

The essential elements which must be endorsed or stamped on an instrument presented to the clerk of a circuit court for recording are the official register number of the instrument, the date and time of filing, the words "record verified," and the manual signature of the authorized official who actually verified the proper recording of the instrument.

At the outset I note that I have been unable to discover any statute which requires that an official seal, whether impressed or imprinted, be affixed on the

original of an instrument which is filed for record. Of course, there is likewise no statute which prohibits the use of an official seal in this situation; but it is not an essential requirement.

Section 28.17, F. S., requires that a circuit court clerk carefully compare the original of any document filed for record with the record of such document as made on the record book under his charge. Once the comparison of the original document with the record is complete, and necessary corrections made, the clerk is required to endorse upon the original document the words "record verified" and sign his name thereto. Section 28.19, F. S., provides that the service charge for recording any written instrument shall not be payable to the officer who records it until the officer has verified and endorsed the original document as required in §28.17. Based on the foregoing statutes, it appears that two of the essential elements which must be endorsed on a document filed for record are the words "record verified," and the signature of the officer who has made the verification.

In reference to the use of a facsimile signature to satisfy the requirements of §28.17, *supra*, I direct your attention to AGO 055-66 wherein it was noted that the term "signature" has been held to include any name, mark, or sign, including a facsimile signature, which is employed with the intention of authenticating a written document. "Where the name required has been placed by rubber stamp by one having authority to do it and with intent to endorse the instrument, the authorities hold that this is a valid endorsement." *Id.* Nonetheless, that opinion concluded that where some form of facsimile signature is to be used for the above-described purposes, the better and safer practice would be to authenticate the facsimile signature with the manual signature of the duly authorized deputy who actually does the verification. I am aware of no circumstances which require or justify modification of the views expressed in AGO 055-66.

There are two other statutes which also prescribe the items which must be entered on a document which has been filed for record. Under the terms of §28.222, F. S., the clerk of the circuit court is the recorder of all instruments which are authorized or required by law to be recorded. He is required to record all documents in a general series of books called "Official Records," and to keep a register in which he must enter, among other things, the filing number in each instrument and the date and hour of filing. And §695.11, F. S., provides that all instruments which are authorized or required to be filed among the official records of any county are to be deemed officially accepted and recorded at the time the recording officer affixes thereon the consecutive official register numbers which are required by §28.222. The sequence of these official numbers determines the priority of recordation.

When the provisions of §§28.222 and 695.11, *supra*, are read together, it is apparent that the filing number should be endorsed on each document which is filed for record. Although neither of these statutes expressly requires that the date and time of filing be endorsed on the original document, as a practical matter this must be done in order to enable the clerk to enter this information in the register for the "Official Records," as required by §28.222. Otherwise, the clerk must be prepared to make these entries into the register at the time the document is presented for filing. Inasmuch as there is no statute prescribing the endorsement of the date and time on a document filed for record, there appears to be no obstacle to the use of a mechanical date-time stamp, should a clerk choose to use one at all.