

RECEIVED

James L. Keffer

OCT 19 2009

OPINION COMMITTEE



FILE # ML-46211-09

ID. # 46211

CAPITOL OFFICE:
P.O. Box 2910
AUSTIN, TEXAS 78768-2910
(512) 463-0656
FAX (512) 478-8805
(800) 586-4515

District 60
House of Representatives

COMMITTEES:
CHAIRMAN - ENERGY RESOURCES
BUSINESS & INDUSTRY
CALENDARS
REDISTRICTING

October 15, 2009

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711

RQ-0832-GA

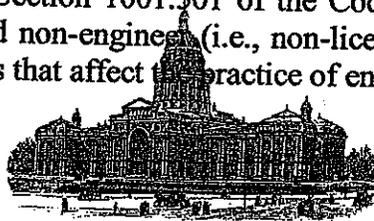
Re: Request for an Opinion

Dear General Abbott:

The Texas Board of Professional Engineers ("TBPE") has recently provided notice, by letter dated March 18, 2009, that it was considering the institution of an administrative penalty against the Office of Mayor for the City of Brownwood for an alleged violation by City of Brownwood staff of the Texas Engineering Practice Act (the "Act"), Chapter 1001.402, Texas Occupations Code. *Ex. 1 at 2.* Specifically, TBPE determined that the Honorable Bert V. Massey II, Mayor of the City of Brownwood ("Mayor"), in his official capacity as Mayor, was responsible for acceptance of a design plan for a certain phase of the construction of commercial property in Brownwood and that the subject plan was not properly sealed by a licensed engineer, although it was sealed by a licensed architect. As a result, TBPE has attempted to impose an administrative penalty against the Mayor and/or the City of Brownwood in an amount not to exceed \$3,000. *Id.*

Following receipt of the March 18, 2009 letter, the City of Brownwood scheduled an informal conference with the TBPE that was conducted on July 8, 2009. As a result of that informal conference, the TBPE has now, through its September 10, 2009 Agreed Board Order, attempted to make the City of Brownwood's City Manager, Bobby Rountree, both civilly and criminally liable for any future violations of the Act. *See Ex. 2 at 2.* Neither the Mayor nor the City Manager is an engineer.

The TBPE contends that the City of Brownwood and/or its Mayor or City Manager stands in violation of Section 1001.402 of the Texas Occupations Code for the actions described above. *Id.* TBPE further contends that Section 1001.501 of the Code confers TBPE the authority to regulate governmental entities and non-engineers (i.e., non-license holders) public officials who are "responsible for enforcing laws that affect the practice of engineering." *See Id.*



Conversely, the City of Brownwood's position is that, as a political subdivision of the state, it, and its public officials and/or employees, are not subject to the licensing board's disciplinary authority under Section 1001.501. The City further argues that it, and its public officials and/or employees, are not responsible for determining the scope of practice of an engineer, which is effectively the burden that TBPE is attempting to impose on the City, its public officials and employees. Rather, the City avers that the design professional should determine what is within his respective scope of expertise and, if found in breach of statutory or regulatory requirements, should be held accountable by its own professional licensing board.

As you are aware, the questions of what is engineering work and what is architectural work has been a source of controversy for some time. *See Tex. Att'y Gen. Op. No. GA-0391 (2006)*. In that opinion, your office opined that "whether a particular service or work may be adequately performed by one with the education, training, and experience of an engineer, but not that of architect, or vice versa, is intensely a question of fact, **generally requiring expert testimony.**" *See Tex. Att'y Gen. Op. No. GA-391 (2006) at 12 (emphasis added)*.

To impose the TBPE's interpretation of Section 1001.402 of the Act on Texas municipalities would effectively require cities to hire their own engineering experts for all building plans submitted to them for their review. This is a financial burden that cannot be borne by Texas cities.

Because this is a matter of vital importance to the City of Brownwood and all other political subdivisions of the state, I respectfully request the Attorney General to issue an opinion as to:

- 1) whether a Texas Home-Rule municipality, or its Mayor and/or City Manager who are both non-engineers, are "responsible for enforcing laws that affect the practice of engineering" under Section 1001.402 of the Texas Occupations Code (*See also* TEX. OCC. CODE § 1051.551);
- 2) with regard to a Texas Home-Rule municipality, who is a public official "responsible for enforcing laws that affect the practice of engineering" under Section 1001.402 of the Texas Occupations Code;
- 3) whether the Texas Board of Professional Engineers has enforcement authority over a municipality, and its public officials and/or employees, under Section 1001.501 of the Texas Occupations Code;
- 4) whether a municipality and/or its public officials and/or employees are entitled to immunity from the penalty described above (*See* TEX. GOV'T CODE § 311.034); and
- 5) whether a public official who is "responsible for enforcing laws that affect the practice of engineering" is guilty of a crime if an employee erroneously accepts a plan, specification, or other related document that was not prepared by an engineer and did not bear an engineer's seal.

Please address any questions concerning this request to Tori Regas at (817)573-1947 or tori.regas@house.state.tx.us. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Keffer', with a long horizontal flourish extending to the right.

Tim Keffer
Chair, House Committee on Energy Resources

Attachments

EXHIBIT 1

G. KEMBLE BENNETT, Ph.D., P.E., CHAIR
COLLEGE STATION

EDWARD L. SUMMERS, Ph.D., TREASURER
AUSTIN

SHANNON K. McCLENDON, SECRETARY
DRIPPING SPRINGS

GARY W. RABA, D. Eng., P.E.
SAN ANTONIO

DANIEL WONG, Ph.D., P.E.
SUGAR LAND



JOSE F. CARDENAS, P.E., VICE-CHAIR
EL PASO

JAMES GREER, P.E.
KELLER

GOVIND NADKARNI, P.E.
CORPUS CHRISTI

ELVIRA REYNA
LITTLE ELM

DALE BEEBE FARROW, P.E.
EXECUTIVE DIRECTOR

TEXAS BOARD OF PROFESSIONAL ENGINEERS

March 18, 2009

Mr. William P. Chesser, Esq.
City Attorney
City of Brownwood
P.O. Box 1389
501 Center Avenue
Brownwood, TX 76804

City Attorney

MAR 20 2009

City of Brownwood

Dear Mr. Chesser:

RE: City of Brownwood
Our File G-30915

We have reviewed your responses dated January 20 and 27, 2009, to our December 3, 2008, letter (copy enclosed) regarding the Site Grading design plan that was prepared by an architect, David McDurmitt, AIA, of McDurmitt Partners, Ltd., San Angelo, Texas, that was submitted to and accepted by the City of Brownwood without bearing a seal of a Texas licensed professional engineer. Additionally, we revisited our April 6, 2006, agreement (copy enclosed) with the City of Brownwood which was signed on April 11, 2006, by The Honorable Bert V. Massey, II, Mayor of the City of Brownwood, and which stipulated that "...the City of Brownwood will not violate any provisions of the Act or Board rules on future activities within the City of Brownwood's control where engineering services are required. Failure to abide by this agreement will result in the initiation of an investigation by the Board and possible legal action against the City of Brownwood to the extent provided by law."

Based on the above, this letter will serve as notice that the Texas Board of Professional Engineers (Board) is considering the institution of an administrative penalty against the Office of the Mayor, the City of Brownwood (Respondent). The proceeding may include the scheduling of a formal public hearing to consider the matters outlined below. The potential charges against Respondent that will be presented by the Board to the State Office of Administrative Hearings (SOAH) if it is necessary to schedule a formal public hearing pursuant to Chapter 2001, Texas Government Code, consist of the following:

- The Honorable Bert V. Massey II, Mayor of the City of Brownwood, Respondent, in his official capacity as Mayor, is responsible for the acceptance of design plan sheets for the medical office building located at 110 South Park Drive, Brownwood, Texas, that were signed and sealed by an architect and subsequently issued a building permit. Based upon the size of this commercial structure which is a single story building having a total floor area of approximately 12,000 square feet, the engineering plans for this

Mr. William P. Chesser, Esq.

March 18, 2009

Page Two

project were required to have been prepared by a Texas licensed professional engineer. However, the Site Grading Plan for this project was prepared by Mr. David McDurmitt, AIA, of McDurmitt Partners, Ltd, San Angelo, Texas. The Site Grading plan did not bear a seal or signature of a Texas licensed professional engineer; therefore, Respondent accepted an engineering design plan for this project which was not signed nor sealed by a licensed professional engineer. SECTION 1001.402 OF THE ACT.

Such acts constitute a violation of the Act, Chapter 1001, Texas Occupations Code, and Board Rules. Please refer to Sections 1001.004, 1001.201, 1001.202, 1001.301, 1001.402, and Subchapters K and L of the Act and Board Rules 137.71, 137.77, 139.1, 139.31, 139.33 and 139.35(a), (c) and (e) in the enclosed pamphlet. As you will note, the Board has jurisdiction to proceed against non-license holders under Section 1001.501 of the Board's Act.

The range of penalties available to the Board for violations of its Act include:

- (1) An administrative penalty not to exceed \$3,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. (Sections 1001.502 of the Board's Act);
- (2) An injunctive action filed in Travis County, Texas, against a non-license holder violating any provision of the Board's Act (Section 1001.551); and/or
- (3) Seeking the prosecution of a class A misdemeanor criminal offense against a non-license holder for practicing or offering to practice engineering in Texas without licensure by the Board (Section 1001.552 of the Act).

Should an administrative penalty be ordered by the Board after proper proceedings under Chapter 2001, Texas Government Code, such penalty order, if not paid within 30 days after the Order is accepted by the Board, will be referred to the Attorney General's Office for collection if not stayed by Section 1001.503(b) of the Board's Act.

Your client is also advised that, in addition to the right to have a formal public hearing before an administrative law judge, it has the right pursuant to Section 2001.054(c) of the Texas Government Code, to contact this office to show at an informal conference that it has not violated the above-cited statute and rules. Alternatively, your client may desire to settle this matter by way of a Consent Order, authorized by Section 2001.056 of Texas Government Code, without the convening of an informal conference.

The following is a specific outline of the alternatives available to you and your client regarding this matter:

- (A) If your client fails to respond to this letter in any manner or declines to schedule an informal conference, Notice of Public Hearing and specific charges will be served on the City of Brownwood. As an alternative, however, see paragraph (D) below.
- (B) If you or your client requests the scheduling of an informal conference, the conference will be held in the Board's office. The informal conference is conducted as follows:
 - (1) You and your client will meet with an Informal Conference Review Committee composed of one Board Member, the Executive Director, legal counsel, and appropriate staff personnel.

- (2) The Executive Director will:
 - (a) Explain the purpose of the informal conference,
 - (b) Discuss the specific charges that would be presented by the Board to SOAH if it were necessary to schedule a formal public hearing, and
 - (c) Present evidence in the Board's possession that would be introduced in a public hearing to substantiate the charges.
 - (3) You and your client will be given the opportunity to review and discuss the Board's evidence and to show that your client has not violated the law.
 - (a) If compliance with the law can be shown, no further action is taken by the Board concerning this matter and the case is dismissed.
 - (b) If compliance cannot be shown, you and your client will be presented an opportunity to discuss informal disposition. Should your client wish to discuss informal disposition, the Committee will draft a proposed Agreed Board Order that the Committee is prepared to present to the Board. If accepted, the Agreed Board Order will preclude further formal administrative action on the allegations covered in the Order.
 - (c) Your client may either accept or reject the Committee's proposed recommendation for informal settlement.
 - (i) Should your client accept the Committee's recommendation, the proposed Agreed Board Order will be drafted signed by the Honorable Bert V. Massey, II, as the Mayor for the City of Brownwood and/or you as the city's attorney and a member of the Committee, and presented to the Board for the Board's approval or rejection. If the proposed Agreed Board Order is entered by the Board, the matter is settled. If the proposed Order is rejected by the Board, the matter is scheduled for a formal public hearing.
 - (ii) Should your client reject the recommendation of the Committee, Notice of Hearing and specific charges will be served to the City of Brownwood and a formal public hearing will be scheduled.
- (C) Your client should understand that:
- (1) It is your client's choice to schedule an informal conference with the Review Committee. Although the City of Brownwood is not legally required to schedule such a conference, failure to do so will result in the scheduling of a formal public hearing to consider the charges against the City of Brownwood;
 - (2) It is your client's choice to accept or reject the Committee's recommendation proposed at the informal conference;
 - (3) It is the decision of the Board itself whether to accept and enter or reject any proposed Agreed Board Order;
 - (4) The Committee only has authority to recommend a proposed Agreed Board Order; the Committee may not settle a case;
 - (5) Your client has the right to terminate the informal conference at any time and the right to appear in a formal public hearing called for the purpose of adjudicating any violation of the law; and
 - (6) The results of any informal disposition (Agreed Board Order) or formal disposition (Board Order entered as a result of a public

Mr. William P. Chesser, Esq.

March 18, 2009

Page Four

hearing) is public information, will appear in the Board's Newsletter and will be sent to the National Council of Examiners for Engineering and Surveying (NCEES).

- (D) As an alternative to a formal public hearing or to an informal conference, your client may wish to end these proceedings as soon as possible by means of an informal disposition, authorized by Section 2001.056 of the Texas Government Code and Board Rule 139.33(1). Therefore, a probable-cause evaluation was made of the City of Brownwood's file, and a proposed Consent Order is enclosed for your client's consideration to sign and return to this office. If it represents your client's desire, this Order will be treated in the same manner as the proposed Agreed Board Order indicated in paragraph (B)(3)(c)(i) above, except that it will not have been arrived at by your client's participation in an Informal Conference Review meeting. Should your client prefer not to accept the proposed Consent Order, then you must respond to this letter as indicated in paragraph (A) above, and by the deadline established in the following paragraph.

Should you, as your client's attorney, or The Honorable Bert V. Massey, II, mayor, City of Brownwood, desire to discuss this matter or wish to dispense with this matter by a Consent Order, you and/or the mayor may contact Mr. C. W. Clark, P.E., Director of Compliance & Enforcement, by mail or telephone (512) 440-7723, no later than April 13, 2009. If you and/or the mayor elect to sign and return the Consent Order and it assesses an administrative penalty, DO NOT remit payment for the administrative penalty at this time. Should the City of Brownwood fail to respond to this letter, further action may be taken against the City of Brownwood.

Sincerely,



Dale Beebe Farrow, P.E.
Executive Director

DBF:RV:dpt

Enclosures: Information Pamphlet dated December 21, 2008.
Copies of the April 6, 2006 and December 3, 2008 Letters
Copy of Consent Order

CONSENT ORDER

IN THE MATTER OF

BEFORE THE TEXAS

OFFICE OF THE MAYOR
CITY OF BROWNWOOD, BROWNWOOD, TEXAS

BOARD OF

FILE NO.: G-30915

PROFESSIONAL ENGINEERS

On this day came to be considered by the Texas Board of Professional Engineers (Board), the matter of City of Brownwood, Brownwood, Texas, hereafter known as "Respondent", 501 Center Avenue, Brownwood, Texas 76801.

By letter dated March 18, 2009, the Board gave preliminary notice to Respondent of its intent to impose an administrative penalty against it as a result of an official inquiry. The inquiry produced evidence indicating that Respondent may have violated the Texas Engineering Practice Act (Act), Chapter 1001, Texas Occupations Code. The allegations against Respondent include the following:

- The Honorable Bert V. Massey, II, Mayor of the City of Brownwood, Respondent, in his capacity as Mayor, was responsible for the acceptance of design plan sheets for the medical office building located at 110 South Park Drive, Brownwood, Texas, that were signed and sealed by an architect and subsequently issued a building permit. Based upon the size of this commercial structure which is a single story building having a total floor area of approximately 12,000 square feet, the engineering plans for this project were required to have been prepared by a Texas licensed professional engineer. However, the Site Grading Plan for this project was prepared by Mr. David McDurmitt, AIA, of McDurmitt Partners, Ltd, San Angelo, Texas. The Site Grading plan did not bear a seal or signature of a Texas licensed professional engineer; therefore, Respondent accepted an engineering design plan for this project which was not signed nor sealed by a licensed professional engineer, in violation of SECTION 1001.402 OF THE ACT.

Respondent has been notified of its options for having the above allegations processed, including the scheduling of a formal public hearing, where the allegations would be presented before the State Office of Administrative Hearings. Wishing to dispense with the need for further formal administrative action and to conclude the instant proceeding without further delay and expense, for the purpose of this proceeding only, Respondent does hereby enter in this Consent Order of its own free will; it has been advised of the right to employ an attorney of its own choosing; and it has been afforded all administrative remedies due it under the law. While Respondent neither admits nor denies the truth of the allegations previously set forth in this Order, it acknowledges and agrees that this Order will be considered by the Board as an administrative action for purposes of Board Rule 139.35(e). Therefore, in consideration of the foregoing and by the signature of Mayor Bert V. Massey II, Mayor of the City of Brownwood on this Order, Respondent does hereby waive its right to Notice of Hearing and to a hearing before the State Office of Administrative Hearings and/or Texas Board of Professional Engineers, and judicial review of this Order, all of which are rights granted it under the provisions of the Administrative Procedure Act, Sections 2001.001 - 2001.902 Texas Government Code, and/or Sections 2003.001 - 2003.046, Texas Government Code.

Respondent herein consents to the issuance of an Order against it by the Board to immediately cease and desist from accepting engineering plans for all projects requiring engineering that do not bear a Texas licensed professional engineer seal, signature, and date. Respondent understands that failure to do so will result in referral by the Board to the appropriate authority for civil and/or criminal action. Respondent also agrees to pay an administrative penalty in the amount of \$2,500.00 to be paid to the Board within 30 days from the date the Order is accepted by the Board. Failure to pay the administrative penalty within the 30 day period will result in this matter being referred to the Texas Attorney General for collection.

WAIVER, CONSENT, and AGREEMENT dated this _____ day of _____, 2009.

City of Brownwood
BY:

Bert V. Massey II
Mayor, City of Brownwood

William P. Chesser, Esq.
Counsel for City of Brownwood

State of Texas

County of _____

This instrument was acknowledged before me on _____, 2009, by Bert V. Massey II, Mayor of The City of Brownwood, on behalf of said city.

Notary Public in and for the State of Texas

My commission expires: _____

ORDER

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Professional Engineers does hereby issue an Order against the City of Brownwood, Brownwood, Texas for conduct alleged in the foregoing Consent Order.

Respondent is ordered to immediately cease and desist from accepting engineering plans for all projects requiring engineering offering to perform or the actual performance of engineering services that do not bear a Texas licensed professional engineer seal, signature and date. Respondent understands that failure to do so will result in referral by the Board to the appropriate authority for civil and/or criminal action. Respondent is ordered to pay an administrative penalty in the amount of \$2,500.00 to be paid to the Board within 30 days from the date the Order is accepted by the Board. Failure to pay the administrative penalty within the 30 day period will result in this matter being referred to the Texas Attorney General for collection.

And it is so ordered.

SIGNED and DATED this _____ day of _____, 2009.

FOR THE BOARD:

Dale Beebe Farrow, P.E.
Executive Director

APPROVED AS TO FORM:

Jeb Boyt
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that I have this _____ day of _____, 2009, served copies of the foregoing Consent Order to all parties to this proceeding by Certified Mail No. _____.

Dale Beebe Farrow, P.E.
Executive Director

G. EMMETT BLUNN III, Ph.D., P.E., C.A.S.
PRESIDENT

W. C. COLEMAN, P.E., VICE-CHAIR
VICE-CHAIR

EDWARD L. CHAMBERS, P.E., TREASURER
TREASURER

AMAL SINGH, P.E.
VICE-CHAIR

SHANNON K. MCCLINDOR, P.E., SECRETARY
SECRETARY

GEORGE NADKARNI, P.E.
VICE-CHAIR

GARY W. HABA, D. Eng., P.E.
VICE-CHAIR

CLYDE REYNA
VICE-CHAIR

DANIEL WONG, Ph.D., P.E.
VICE-CHAIR

DALL BEERY FARROW, P.E.
EXECUTIVE DIRECTOR

TEXAS BOARD OF PROFESSIONAL ENGINEERS

December 3, 2008

The Honorable Bert V. Massey II
Brownwood City Mayor
501 Center Ave.
Brownwood, TX 76801

Dear Mayor Massey:

RE: Brownwood Renal Care Center (BRCC)
100 South Park Drive
Brownwood, Texas
Our File G-30915

We are in receipt of information from Mr. Stephen P. Kelly, M.D., BRCC, 100 South Park Drive, Brownwood, Texas, which indicated that the City of Brownwood recently approved a construction permit for the BRCC project whose square footage was approximately 12,000 square feet. We were also informed that Texas licensed professional engineers may not have been engaged by the contractor or the building owner to prepare the site grading engineering design plans. If this information is correct, the City of Brownwood may be in violation of Section 1001.402 of the Texas Engineering Practice Act (Act) (copy enclosed), since it appears the city accepted the site grading plan bearing the seal of Mr. David McDurmitt, an architect.

Section 1001.402 of the Act requires any public official of the state or of a political subdivision of the state who is responsible for enforcing laws that offer the practice of engineering may accept a plan, specification, or other related document only if the plan, specification, or other document was prepared by and engineer, as evidenced by the engineer's seal.

If our information is incorrect, we request that you provide us with the name(s) of the Texas licensed professional engineer(s) who prepared the Site Grading design plans needed to construct the BRCC, and the identity of the Texas licensed professional engineer who was responsible for the project. We also request that you provide us with a copy of the site grading engineering design plan for this project bearing an engineer seal and signature.

If, however, our information is correct and Texas licensed professional engineers were not involved in designing the Site Grading plans, as we have been led to believe, we request that you provide information as to why the city accepted this engineering design plan without the seal of a Texas licensed professional engineer.

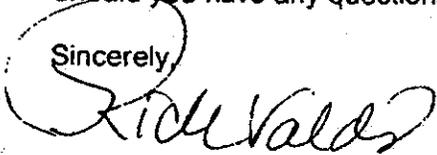
The Honorable Bert V. Massey II
December 3, 2008
Page Two

Also, you are reminded that on April 11, 2006, the City of Brownwood signed an agreement with our Board not to violate the Act and Board rules. A copy of the signed agreement is enclosed for your references.

We will anticipate receiving a written response to our above-mentioned requests and copies of the requested documentation and/or reports within 30 days from the date of this letter. If there will be charges associated with copying the documentation we have requested, please call me prior to making the copies so I can get approval and arrange payment. You may expect further correspondence from our office after we have reviewed your response.

Should you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in cursive script that reads "Rick Valdes". The signature is written in dark ink and is positioned below the word "Sincerely,".

Rick Valdes
Investigator

RV:dpt

Enclosures: Copy of Information Pamphlet
Copy of April 11, 2006 Agreement

JAMES R. NICHOLS, P.E., CHAIR
FORT WORTH

GOVIND MADKARN, P.E., VICE-CHAIR
CORPUS CHRISTI

VICKI T. RAVENBURG, CPA, SECRETARY
SAN ANTONIO

JOSE F. CARDENAS, P.E.
EL PASO

ELSIE ALLEN
FORT WORTH



DANIEL WONG, Ph.D., P.E.
SUGAR LAND

SHANNON K. McCLENDON
DRIPPING SPRINGS

GERRY E. PATE, P.E.
HOUSTON

ROBERT M. SWEAZY, Ph.D., P.E.
LUBBOCK

DALE BEEBE FARRON
EXECUTIVE DIRECTOR

TEXAS BOARD OF PROFESSIONAL ENGINEERS

April 6, 2006

RECEIVED BY PP
APR 14 2006
TBPE
City Attorney

APR 10 2006

City of Brownwood

Mr. William P. Chesser, Esq.
City of Brownwood
P.O. Box 1389
Brownwood, TX 76804

Dear Mr. Chesser:

RE: City of Brownwood
Our File G-28465

The Texas Board of Professional Engineers (Board) has concluded its inquiry into the above-referenced matter based upon the City of Brownwood's stated willingness to voluntarily comply with the provisions of the Texas Engineering Practice Act (Act). The inquiry produced evidence that the City of Brownwood did not initially comply with the provisions of Section 1001.402 of the Act in the enclosed pamphlet by accepting engineering design plan sheets that did not bear the seal of a Texas licensed professional engineer for a single story building having a total floor area of approximately 7,080 square feet that was required by law to be designed, sealed, and signed by a Texas Professional licensed engineer in the enclosed pamphlet.

Recognizing your legal obligation to comply with the laws of this state, we ask that The Honorable Bert V. Massey II, Mayor of the City of Brownwood, sign an agreement that the City of Brownwood will not violate any provisions of the Act or Board rules on future activities within the City of Brownwood's control where engineering services are required. Failure to abide by this agreement will result in the initiation of an investigation by the Board and possible legal action against the City of Brownwood to the extent provided by law.

RECEIVED By PP

APR 14 2006

TBPE

Mr. William P. Chesser, Esq.
April 6, 2006
Page Two

Please return a signed copy of this correspondence to me within 15 days of the date of this letter indicating the City of Brownwood's agreement as above provided.

Sincerely,



Dale Beebe Farrow, P.E.
Executive Director

DBF:VBM:dpt

Enclosure: Information Pamphlet

AGREED AND ACCEPTED this 11th day of April, 2006

Signature: Bert V. Massey II

Printed Name: Bert V. Massey, II

Title: Mayor

EXHIBIT 2

G. KEMBLE BENNETT, Ph.D., P.E., CHAIR
COLLEGE STATION

SHANNON K. McCLENDON, SECRETARY
DRIPPING SPRINGS

JAMES GREER, P.E.
KELLER

GARY W. RABA, D. Eng., P.E.
SAN ANTONIO

DANIEL WONG, Ph.D., P.E.
SUGAR LAND



JOSE F. CARDENAS, P.E., VICE-CHAIR
EL PASO

EDWARD L. SUMMERS, Ph.D., TREASURER
AUSTIN

GOVIND NADKARNI, P.E.
CORPUS CHRISTI

ELVIRA REYNA
LITTLE ELM

DALE BEEBE FARROW, P.E.
EXECUTIVE DIRECTOR

TEXAS BOARD OF PROFESSIONAL ENGINEERS

September 10, 2009

CITY MANAGER

SEP 14 2009

CERTIFIED MAIL NO.: 7006 2760 0001 9444 1858
RETURN RECEIPT REQUESTED

CITY OF BROWNWOOD, TX

Mr. Bobby Rountree, City Manager
City of Brownwood
P.O. Box 1389
501 Center Avenue
Brownwood, TX 76804

Dear Mr. Rountree:

RE: City of Brownwood
Our File G-30915

Enclosed are the original and one copy of the Agreed Board Order (Order) resulting from the Informal Conference held in the office of the Texas Board of Professional Engineers (Board) on July 8, 2009. This proposed Order represents an informal disposition of the alleged violations of sections of the Texas Engineering Practice Act or Board rules as cited in the Order.

If acceptable, please sign and return the original Order within 15 days from your receipt of this letter. The Order will be presented to the Board at its scheduled meeting on November 19, 2009, for acceptance or rejection as stipulated in Board Rule 139.33(2)(B). You will be notified of the Board's action. Should you elect not to sign the Order, we will consider this matter as a contested case and will schedule a formal hearing with the State Office of Administrative Hearings as prescribed in Board Rules 139.33(3) and 139.61.

If you have any questions or would like to discuss the Order, please contact Mr. C.W. Clark, P.E. Director of Compliance and Enforcement, at (512) 440-7723.

Sincerely,

Dale Beebe Farrow, P.E.
Executive Director

DBF:RV:dpt

Enclosure: Agreed Board Order

AGREED BOARD ORDER

IN THE MATTER OF

BEFORE THE TEXAS

BOBBY ROUNTREE, CITY MANAGER
CITY OF BROWNWOOD, TEXAS

BOARD OF

FILE: G-30915

PROFESSIONAL ENGINEERS

On this day came to be considered by the Texas Board of Professional Engineers (Board), the matter of Mr. Bobby Rountree, City Manager, City of Brownwood, Texas, hereafter known as "Respondent", P.O. Box 1389, 501 Center Avenue, Brownwood, Texas 76804.

By letter dated March 18, 2009, the Board gave preliminary notice to Respondent's employer, The City of Brownwood, of its intentions to impose an administrative penalty against it as a result of an official inquiry. The inquiry produced evidence indicating actions by Respondent's staff may have violated the Texas Engineering Practice Act (Act), Chapter 1001 Texas Occupations Code.

An Informal Conference was requested by the City of Brownwood staff pursuant to Board Rule 139.33. The Informal Conference was held at the Board Office, 1917 IH 35 South, Austin, Texas, on July 8, 2009, with the City of Brownwood representatives accompanied by attorney, Mr. William P. Chesser, Esq., Attorney for the City of Brownwood; Mr. Bobby Rountree, City Manager (Respondent); The Honorable Bert V. Massey, City Mayor; Mr. Don Hatcher, P.E., City Engineer; Mr. Jim Keffer, State Representative; and Representative Keffer's assistants Ms. Toya and Ms. Bernice; in conjunction with Ms. Elvira Reyna, Board Member; Ms. Dale Beebe Farrow, P.E., Executive Director; Mr. Jeb Boyt, Assistant Attorney General; Mr. C. W. Clark, P.E., Director of Compliance & Enforcement, Mr. Clif Bond, Supervising Investigator; and Rick Valdes, Investigator. The allegations determined by the Informal Conference Committee against Respondent include the following:

- The City of Brownwood staff employees under the Development Services Department and Public Works Department and the City Manager, were responsible for the acceptance of design plan sheets for the medical office building located at 110 South Park Drive, Brownwood, Texas, that were signed and sealed by an architect and subsequently issued a building permit. Based upon the size of this commercial structure which is a single story building having a total floor area of approximately 12,000 square feet, the engineering plans for this project were required to have been prepared by a Texas licensed professional engineer. However, the Site Grading Plan for this project was prepared by Mr. David McDurmitt, AIA, of McDurmitt Partners, Ltd, San Angelo, Texas. The Site Grading plan did not bear a seal or signature of a Texas licensed professional engineer; therefore, the acceptance by the City of Brownwood staff of the engineering design plan for this project, was not signed nor sealed by a licensed professional engineer, in violation of SECTION 1001.402 OF THE ACT.

By the signature of the Respondent, City Manager, on this Order, Respondent does hereby waive his right to Notice of Hearing before the State Office of Administrative Hearings and/or the Texas Board of Professional Engineers, and judicial review of this Order, all of which are rights granted him under the

provisions of the Administrative Procedure Act, Sections 2001.001-2001.902 Texas Government Code and/or Sections 2003.001-2003.046, Texas Government Code.

After discussion of the matters previously outlined in this Order relative to this inquiry, Respondent agreed to the entry of a Board Order dispensing with the need for further administrative action in this matter. While Respondent neither admits nor denies the truth of the allegations previously set forth in this Order, by the signature of Respondent, City Manager, on this Order Respondent acknowledges and agrees that this Order will be considered by the Board as an administrative action for purposes of Board Rule 139.35(e). Furthermore, Respondent acknowledges that he has read the Order and understands its provisions and how they apply to the Respondent.

Respondent agrees and consents to the issuance of an Order by the Board to abide by the plan of corrective measures which was provided to the Board in a letter dated August 4, 2009, from Mr. William P. Chesser, Esq., attorney for the City of Brownwood, with an attachment Memorandum dated August 4, 2009, from Mr. Kevin Pate, Development Services Administrator, styled "Issuance of Building Permits Policy." The memorandum includes a listing of six procedures that shall be followed and complied with by the Development Services Department and Public Works Department staff members prior to the issuance of a building permit which is attached and is incorporated herein. Respondent understands that failure to do so will result in referral by the Board to the appropriate authority for civil and/or criminal action.

WAIVER, CONSENT and AGREEMENT dated this _____ day of _____, 2009.

City of Brownwood
BY:

Bobby Rountree, City Manager
City of Brownwood

William P. Chesser, Esq.
Counsel for City of Brownwood

State of Texas

County of _____

This instrument was acknowledged before me on _____, 2009, by Mr. Bobby Rountree, City Manager for the City of Brownwood, a Texas city, on behalf of said city.

Notary Public in and for the State of Texas

My commission expires: _____

ORDER

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Professional Engineers does hereby issue an Order against Respondent, City Manager, for conduct alleged in the foregoing Agreed Board Order.

Respondent is ordered to immediately abide by the plan of corrective measures which was provided to the Board in a letter dated August 4, 2009, from Mr. William P. Chesser, Esq., attorney for the City of Brownwood, with an attached Memorandum dated August 4, 2009, from Mr. Kevin Pate, Development Services Administrator, styled "Issuance of Building Permits Policy." The memorandum includes a listing of six procedures that shall be followed and complied with by the Development Services Department and Public Works Department staff members prior to the issuance of a building permit which is attached and is incorporated herein. Respondent understands that failure to do so will result in referral by the Board to the appropriate authority for civil and/or criminal action.

And it is so ordered.

SIGNED and DATED this _____ day of _____, 2009.

FOR THE BOARD:

Dale Beebe Farrow, P.E.
Executive Director

APPROVED AS TO FORM:

Jeb Boyt
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that I have this _____ day of _____, 2009, served copies of the foregoing Agreed Board Order to all parties to this proceeding by Certified Mail No. _____.

Dale Beebe Farrow, P.E.
Executive Director