



TEXAS BOARD OF PROFESSIONAL ENGINEERS

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June 2, 2004

The Honorable Greg Abbott
Attorney General of the State of Texas
Office of the Attorney General
P. O. Box 12548, Capital Station
Austin, TX 78711-2548
ATTN: Opinion Committee

FILE # ML-43741-04
I.D. # 43741

Dear General Abbott:

The Texas Board of Professional Engineers (Board) requests your opinion on whether engineering documents prepared by a licensed engineer are valid when such documents are prepared when the licensed engineer is employed by an engineering firm that is not registered by the Board to offer or perform engineering services.

THE LAW

The Texas Engineering Practice Act (Act), Chapter 1001 of the Occupations Code, grants the Texas Board of Professional Engineers the authority to license engineers and regulate the practice of engineering in Texas. Section 1001.308 (a) states that the issuance of a license authorizes the practice of engineering.

The Board is also required to register firms to practice engineering in Texas. Section 1001.405 states in part:

- (b) A business entity may not engage in the practice of engineering in this state unless:
- (1) the business entity is registered with the board; and
 - (2) the practice is carried on only by engineers.

Further, subparagraph (g) of this section states that the Board by rule may provide that a business entity that has not been previously registered with the Board and that is engaged in the practice of engineering in violation of Subsection (b) is not subject to disciplinary action for the violation if the business entity registers with the Board not later than the 30th day after the date the Board gives written notice to the business entity of the registration requirement. Board Rule 137.77(d), adopted effective May 21, 2004, adopts the requirements of Section 1001.405(g).

The Honorable Greg Abbott
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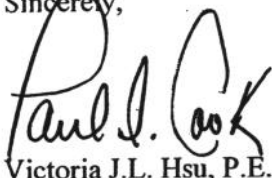
DISCUSSION

In the past the Board has taken disciplinary action against firms that illegally practice engineering in Texas without first being registered with the Board. In some of these cases a licensed professional engineer employed by the firm has prepared either plans, specifications or other related construction documents and affixed the engineer seal to the project documents. In some cases the project is constructed prior to the Board opening an inquiry regarding the firm's registration. A question has been raised about the legality of documents bearing the seal of the license holder when the firm is not registered with the Board. The licensure and the competency of the engineer is not in question, but the firm employing the license holder can not legally offer to perform or perform engineering in Texas without first being registered with the Board.

Under the statutory provisions discussed above, the Board is uncertain as to the status of engineering documents prepared and sealed by a licensed engineer when such engineer is employed by an engineering firm not registered by the Board. In addition, if engineering documents are determined not to be legally valid due to the fact that the engineering firm is not registered at the time the engineering documents are prepared, what effect, if any, occurs to the validity of the documents when the firm is subsequently registered with the Board after the 30-day notice from the Board provided in Board Rule 137.77(d)?

Thank you in advance for your assistance and if you have any questions please feel free to contact Mr. Paul D. Cook, Assistant Executive Director, at 512/440-3079.

Sincerely,



Victoria J.L. Hsu, P.E.
Executive Director

Enclosure: Copy of the Act