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TEXAS HOUSE OF REPRESENTATIVES

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July 7, 2005

RQ-0360-GA OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
Opinions Committee
209 West 14th Street
Austin, TX 78701

FILE # ML-44264-05

I.D. # 044264

Re: Request for Attorney General Opinion to determine whether the Texas Board of Professional Engineers' interpretation of its statute and DM-161 regarding the authority of engineers to exclusively perform comprehensive and complete building design by preparing *all* the plans and specifications for certain buildings (*i.e.* without the involvement of an architect), is an overly liberal interpretation of General Morales' response that could cause public confusion and thus, endanger public health, safety and welfare.

Dear General Abbott:

In my capacity as Chairman of the House Licensing and Administrative Procedures Committee, I am requesting your formal opinion on the following question:

Must an architect be engaged to prepare the architectural plans and specifications¹ for a public building as described in section 1051.703 of the Texas Occupations Code (hereinafter "public works buildings") or may an engineer prepare both the *architectural* and *engineering* plans and specifications without the involvement of an architect, as proposed by the Texas Board Professional Engineers in its "Draft Policy Advisory Opinion Regarding Building Design" in which the Board addresses the question whether "the practice of engineering includes

¹ Architectural plans and specifications are the instruments of service in an architectural practice. Architectural practice is a "service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs, the proper application of which requires education, training, and experience in those matters." (§ 1051.001(7) of the Texas Occupations Code).

"Working for South Texas"

COMMITTEES: CHAIR, LICENSING AND ADMINISTRATIVE PROCEDURES
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comprehensive and complete design of buildings," as published in the June 10, 2005 issue of the *Texas Register*, and in which the Board concluded that building design may be performed exclusively by an engineer with or without the involvement of an architect?²

The Texas Board of Architectural Examiners and the Texas Board of Professional Engineers both went through Sunset Advisory Commission reviews before my committee in 2003. While changes were proposed for both boards unique to their missions and methods of regulating their respective professions, each was continued as an individual agency. One new element in both acts, however, was the formal establishment of a Joint Advisory Committee (JAC) charged with making recommendations to resolve issues of professional overlap between the two boards.

The Joint Advisory Committee is composed of three (3) of the appointed members from the Architects Board and three (3) from the Engineers Board, and one practicing professional from each profession.

In publishing a unilateral policy advisory opinion that relates to the practice of architecture, the Texas Board of Professional Engineers seems to be ignoring the intent of the Texas Legislature to use the JAC to resolve disputes regarding overlap issues. In other words, by saying that what engineers do is engineering regardless whether the architectural statute describes those actions as the practice of architecture, the Engineers Board appears to have overstepped its authority.

The Engineers Board seems to say that because certain engineers have been educated, trained and examined to perform some elements in the design of buildings, *complete and comprehensive* building design is the practice of engineering and may be performed exclusively by licensed professional engineers, with or without the involvement of a licensed architect. To reach this conclusion, the Engineers Board cites the language of Chapter 1001 of the Texas Occupations Code (the "Engineers Practice Act"), specifically 1001.003(c)(10), and an Opinion issued by Attorney General Morales on August 27, 1992, referred to in the policy advisory opinion and this letter as DM-161.

The Texas Board of Professional Engineers' analysis, however, appears to run contrary to the legislature's intent in creating a Joint Advisory Committee between the two boards. Their analysis is done in a vacuum without due consideration of another law, the Architects Practice Act (Chapter 1051, Texas Occupations Code). Specifically, in citing the Engineers Practice Act statute to support its position, the Engineer's Board refers to section 1001.003(c)(10) and concludes that because their definition contains, among many others, the words "design," "in connection with a," and "building," that they may connect all three to mean that engineers can lawfully design whole buildings without the services of an architect in all circumstances. It seems, however, that they have failed to acknowledge the qualifying language that defines the scope of design for engineers as it relates to buildings. For example, while engineering may involve design in connection with a building, it must be of a "mechanical, electrical, electronic, chemical, pneumatic, geotechnical or thermal nature." (See § 1001.003(c)(10)). Moreover, had

² Tex. Bd. Prof. Eng., Tex. Reg. (proposed June 10, 2005) (Attached)


the Texas Legislature intended to mean that engineers may design all buildings without the services of an architect, we need not have qualified the word "design" with the phrase "in connection with a" building. Rather, we could have simply said that engineers may design buildings. In other words, we acknowledge that engineers, depending on their education, experience and examination, play a vital role in preparing certain engineering plans and specifications for public works buildings (*i.e.* mechanical engineers prepare mechanical plans and specifications, electrical engineers preparing electrical plans and specifications, structural engineers prepare structural plans and specification, etc.). However, the Engineers' Board's recent published draft opinion on the issue seems to go far beyond this scope of practice and fails to acknowledge another body of law that directly relates to building design, that being the regulation of the practice of architecture found in the Texas Occupations Code § 1051.

Lastly, the Engineer's Board believes DM-161 gives engineers authority to design all buildings without architects. While DM-161 certainly gives engineers the authority to prepare *engineering* plans and specifications on public works projects, it does not appear to allow engineers the additional authority to prepare both the architectural and engineering plans and specifications for public works buildings. To that extent, I believe DM-161 was an accurate interpretation of law that is not in conflict with the question posed here.

It is my interpretation of section 1051.703 of the Texas Occupations Code that on these public works projects, the Texas Legislature has demonstrated its concern for protecting the public health, safety and welfare by expressly requiring an architect's involvement. As such, while an engineer is required to prepare the *engineering* plans and specifications, an architect is also required to prepare the *architectural* plans and specifications. Engineers may not "engineer" an entire public building. In other words, while engineers are experts in preparing plans and specifications that define the design of certain engineering systems in a building (mechanical, electrical, structural), architects are experts in preparing plans and specifications that "establish the form, appearance, aesthetics and construction details for the construction, enlargement, or alteration of a building or environs." (See the definition of the practice of architecture section 1051.001(7) of the Texas Occupations Code). Architectural plans and specifications are required for construction, and must be prepared by a licensed design professional who has successfully demonstrated competence achieved through an architectural education, appropriate experience and successful completion of the nationally accepted and recognized architectural examination.

Your legal assistance on this issue is greatly appreciated, and will guide future actions of the House Licensing and Administrative Procedures Committee in ensuring the most efficient administration of the laws governing these two important professions.

Sincerely,



Rep. Ismael "Kino" Flores
Chairman

House Committee on Licensing & Administrative Procedures



Texas Board of Architectural Examiners
Architecture / Interior Design / Landscape Architecture

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July 6, 2005

The Honorable Greg Abbott
Texas Attorney General
ATTN: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

R.Q-0360-GA
FILE # ML-44265-05
I.D. # 044265

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JUL 07 2005
OPINION COMMITTEE

Dear General Abbott:

The Texas Board of Architectural Examiners ("the Board") is seeking a formal opinion from the Attorney General of Texas regarding issues related to the Board's statutory mission to "protect the public against the irresponsible practice of architecture" by enforcing the provisions of the Architects' Registration Law, TEX. OCC. CODE ANN. ch. 1051 ("the Act"). It has been argued that a licensed engineer's authority under TEX. OCC. CODE ANN. ch. 1001 to prepare engineering plans and specifications allows the engineer to provide complete design services for a building that is subject to the restrictions of the Act.

The Board believes that, while the Act does not prohibit a licensed engineer from preparing engineering plans and specifications (e.g., plans and specifications for electrical, mechanical, and structural systems) for a building, it does prohibit an engineer from preparing plans and specifications that "establish the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy." The Board further believes that if an engineer, without the assistance of an architect, prepares all plans and specifications for a building subject to the restrictions of the Act, he or she engages in the unlawful practice of architecture.

The Board recognizes that many buildings are exempt from the restrictions of the Act and that an engineer, just like any other person who is not an architect, may prepare plans and specifications for those buildings. The Board's questions are directed toward buildings that are not exempt from the Act, such as the buildings subject to § 1051.703 of the Act. The Board believes the Legislature, in enacting various provisions of the Act, clearly intended architects to prepare architectural plans and specifications for buildings for human use or occupancy that are not exempt from the Act. Although engineers, too, may prepare plans and specifications for these non-exempt buildings, their work is limited by statute to the engineering systems of these buildings.

The attached brief sets forth the Board's specific questions and describes the law in this area through extensive references to statutory provisions, case law, and a prior Attorney General Opinion addressing this subject. It is the Board's hope that the Attorney General, through a formal opinion, will help explain and clarify several issues that are critical to the Board's carrying out its statutory mission effectively and in the manner intended by the Legislature.

If you have questions or a need for clarification of any matter at issue in the brief, please contact the Board's offices. Thank you for your consideration in this matter.

Sincerely,


Gordon E. Landreth, AIA, Chair
Texas Board of Architectural Examiners

cc: Texas Board of Architectural Examiners
Cathy L. Hendricks, ASID/IIDA, Executive Director