



May 26, 2016

Marc S. Young, P.E.
P.O. Box 1693
Sealy, TX 77474

RE: Formal Response to EAOR 40 Policy Advisory Request Regarding the Extent of the Board's Jurisdiction Outside of Texas

Dear Mr. Young:

The Texas Board of Professional Engineers (Board) met in public session on May 26, 2016 and approved this response to your policy advisory opinion request, received February 11, 2016.

Request: Please provide a policy opinion on what basis in statutory law, regulatory law or case law limits the Board's "Specific" or "General" jurisdiction to a "practice of engineering" only on projects within the State of Texas and excludes engineering done in the State for projects not in the State.

Analysis: The jurisdiction of an administrative agency is its power to hear and determine a matter committed to its discretion by statute. Except where constitutional provisions apply, statutes create and define the jurisdiction of administrative agencies and may prescribe the manner in which the delegated jurisdiction must be exercised.¹ The Texas Engineering Practice Act (Act) provides definitions, interpretations and exemptions to clarify the requirements of this agency. The Administrative Procedure Act (APA), Chapter 2001 of the Texas Government Code, controls the Board's adjudication of administrative and disciplinary actions and rulemaking procedure.² Several sections of the APA and the Act, listed below, are relevant to answering the question posed in this request (emphasis added).

Texas Government Code, Chapter 2001. Administrative Procedure, Subchapter A. General Provisions

§ 2001.003. Definitions

...
(7) "State agency" means a state officer, board, commission, or department with statewide jurisdiction that makes rules or determines contested cases. The term includes the State Office of Administrative Hearings for the purpose of determining contested cases...

Texas Occupations Code, Chapter 1001. Engineer (Texas Engineering Practice Act)

§1001.002. Definitions

In this chapter:

- (1) "Board" means the Texas Board of Professional Engineers.
- (2) "Engineer" means a person licensed to engage in the practice of engineering in this state.

§1001.004. Legislative Purpose and Intent; Liberal Construction of Chapter

(a) The legislature recognizes the vital impact that the rapid advance of knowledge of the mathematical, physical, and engineering sciences as applied in the practice of engineering has on the lives, property, economy, and security of state residents and the national defense.

(b) The purpose of this chapter is to:

- (1) protect the public health, safety, and welfare;
- (2) enable the state and the public to identify persons authorized to practice engineering in this state;

¹ *Beaver Exp. Service, Inc. v. Railroad Com'n of Texas*, 727 S.W.2d 768 (Tex. App. Austin 1987), writ denied, (Mar. 16, 1988).

² Tex. Occ. Code §§1001.501 and 1001.508

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§ 1001.054. Federal Officer or Employee

An officer or employee of the United States is exempt from the licensing requirements of this chapter during the time the officer or employee is engaged in the practice of engineering for the United States in this state.

§ 1001.401. Use of Seal

...

(b) A plan, specification, plat, or report issued by a license holder for a project to be constructed or used in this state must include the license holder's seal placed on the document. A license holder is not required to use a seal required by this section if the project is to be constructed or used in another state or country...

The Board's rules include a specific reference to a Texas P.E. offering or practicing engineering in any other jurisdiction and if found to be in violation there, defines it as misconduct.

§137.65 Action in Another Jurisdiction

(a) The engineer shall not practice or offer to practice engineering in any other jurisdiction in violation of the laws regulating the practice of professional engineering in that jurisdiction. A finding by such jurisdiction of illegal practice or offer to practice is misconduct and will subject the engineer to disciplinary action in Texas.

Answer:

The statutes mentioned above and the following summary answers the request:

The Texas Government Code defines the Board, a state agency, to have "statewide jurisdiction" when making rules or determining cases. The APA does not provide for the Board to have any jurisdiction outside of the state of Texas.

The Act defines the term "Engineer" as a person licensed to practice engineering in this state, directs the Board to protect the health and welfare of state residents, and defines the purpose of the Act to identify engineering practitioners in this state. In addition, the statute requires that a Texas licensed engineer sign and seal a project to be constructed or used in this state and clarifies that a Texas licensed engineer is not required to sign and seal a project to be constructed or used in another state or country.

For these clear reasons, the Board's interpretation of the statute is that the extent of its jurisdiction concerning engineering is limited to projects to be constructed or used within the state of Texas. Since every state licenses professional engineers in its own jurisdiction, like Texas, each state has the authority to require that any practice within their state be performed by a licensee of the state. The Board has a longstanding rule to address this issue if a Texas P.E. were found to be in violation in another jurisdiction and authorizes disciplinary action against that P.E.

While some exceptions have been noted whereby the federal government requires that a licensed professional engineer seal, sign and date (certify) certain engineering projects under federal jurisdiction, its license requirement is not state specific.

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This opinion is limited to the practice of engineering in the state of Texas and cannot opine on the regulations in other U.S. states or foreign countries. The Board encourages you to further contact the licensing authority of any state or country with projects in which you wish to become involved to determine its licensure or practice requirements.

Thank you for your support of the policy advisory opinion process. If you have any questions, please contact Mr. C. W. Clark, P.E. at (512) 440-7723.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Kinney". The signature is written in a cursive style with a large, sweeping initial "L" and a long, trailing flourish.

Lance Kinney, P.E.
Executive Director

LK:CWC:dpt