



May 24, 2019

Mr. Curtis J. Cassidy, P.E., CFM
City Engineer, City of Mesquite
PO Box 850137
Mesquite, TX 75185-0137

RE: Formal Response to Request for Policy Advisory Request Regarding an Engineer's Ability to Nullify and Void a Design

Dear Mr. Cassidy:

The Texas Board of Professional Engineers (Board) met in public session on May 23, 2019, and approved this response to your request, dated February 13, 2019.

Scenario:

You seek guidance on the following issue:

Is a city obligated to ensure that a design professional has been paid prior to the city approving the plans for construction or permitting using said design? Specifically, can an engineer or engineering firm inform a city that engineering documents it created have been made "null and void" and have been retracted due to non-payment?

Response:

The Policy Advisory Opinion process allows the Board to issue interpretations of the Texas Engineering Practice Act and Board Rules to address specific questions. The committee reviewed this request and determined that it can be answered by reference to the existing language of a statute or board rule and does not need to go through the Policy Advisory process.

The Texas Engineering Practice Act (the Act) establishes practice requirements for engineering in the state of Texas. The answer to the proposed scenario follows.

Section 1001.402 of the Act, relating to Enforcement by Certain Public Officials, states that a public official of the state or a political subdivision of the state who is responsible for enforcing laws that affect the practice of engineering may accept a plan, specification, or other related document only if the plan, specification, or other document was prepared by an engineer, as evidenced by the engineer's seal.

In accordance with this statute, the city is in compliance with the Act by requiring that plans for permitting or construction of a project that involves engineering be signed and sealed by a licensed professional engineer.

Board Rule 137.33 (22 Texas Administrative Code §137.33), relating to Sealing Procedures, further addresses proper sealing procedures. Specifically, §137.33 (f) states:

(f) License holders shall affix their seal and original signature or electronic seal and signature with the date on the final version of their engineering work before such work is released from their control.

If engineering documents received by a city have been signed and sealed in accordance with §137.33(f), a city should rightfully consider the plans to be final.

Neither the Act, nor Board Rules, provide for the retraction of signed and sealed engineering documents or address payment disputes between private parties. As such, a city is under no obligation to ensure the design engineer has been paid.

A design engineer who has not been paid by his or her client has other avenues available to obtain payment and should consult with an attorney regarding the pursuit of these options.

Conclusion:

No new Policy Advisory Opinion will be developed for this request.

Thank you for your support of the policy advisory opinion process. If you have any questions, please contact Mr. Michael Sims, P.E., Director of Compliance & Enforcement, at (512) 440-7723.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Kinney". The signature is fluid and cursive, with the first name "Lance" and last name "Kinney" clearly distinguishable.

Lance Kinney, P.E.
Executive Director

LK:MZS:asm