TBPE
TEXAS BOARD OF PROFESSIONAL ENGINEERS
Engineering For A Better Texas
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http://engineers.texas.gov

February 15, 2012

Ms. Carol Hemphill
240 Canterbury Dr.
Austin, TX 78737

RE: Policy Advisory Request EAOR #32

Dear Ms. Hemphill:

The Policy Advisory Opinion Committee met in public session on February 15, 2012, and approved this response to your policy advisory request dated December 6, 2011. The Texas Board of Professional Engineers (Board) also approved this response on February 15, 2012.

Question # 1

I am requesting an opinion on whether a Committee or individual members of the Committee and/or staff are allowed to deviate from the Board rules outlined in the Engineering Practices Act without authorization and full Board approval.

Response:

No, the Board and staff may not deviate from the Texas Engineering Practice Act or the Board Rules. Certain sections allow for discretion or interpretation by the Board or staff, and those actions requiring further Board or Committee approval are specifically called out. Based on **§ 1001.201** and Rule **131.1** of the Texas Engineering Practice Act (TEPA), the Board shall administer and enforce this chapter.

Question #2

This deviation would including [sic] licensing an individual who does not meet the qualifications outlined in the Engineering Practices Act and dismissing citizen complaints without proper investigation or Board involvement. If so, under what circumstances and with what authority may they do so?

Response:

There is no deviation from the requirements for licensure. The Board has authority to issue licenses according to **§ 1001.308**:

§ 1001.308. Issuance of License
(a) On payment of the license fee, the board shall issue a license authorizing the practice of engineering to an applicant who, in the board's opinion, has met all the requirements of this subchapter.

The process and approval of licensing applications is a function of the Board staff, with final Board approval as per Subchapter H of the Board rules **137.83, 133.87**, and specifically:

§ 133.87 Final Action on Applications
(d) The board by vote shall confirm the action taken on a license at its next regularly scheduled meeting.

Board staff may dismiss a complaint, but it must be reported to the Board:

§ 1001.252 General Rules Regarding Complaint Investigation and Disposition
(j) The board's staff shall regularly report to the board on each complaint dismissed by board staff, including:
(1) the name of the complainant;
(2) the name of the person who is the subject of the complaint;
(3) the basis of the complaint; and
(4) the reason for the dismissal of the complaint.

Complaints are conducted according to the following Board rules:
139.11 Complaints General
139.13 Filing a Complaint
139.15 Processing a Complaint
139.17 Investigating a Complaint
139.19 Final Resolution of Complaint
(b) If sufficient evidence and documentation does not exist to substantiate that one or more violations of the Act or board rules has occurred and disciplinary action is not warranted, the board staff shall recommend to dismiss the complaint and report the dismissal to the board.
139.21 Reporting Complaint Status to the Board

Questions 3, 4, and 5

Regarding Policy Advisory Opinions, I would also like a response to the following:
- *Is a Policy Advisory Opinion an individual response, or does the Committee or Board approve the response?*
- *Is the Opinion binding in the future? Does it govern future policy or enforcement?*

Response:

A Policy Advisory is approved by the Policy Advisory Opinion Committee and Board.
Policy advisories are conducted according to the following Board rules:

131.101 Subject of an Advisory Opinion
131.103 Request for an Advisory Opinion
131.105 Board Initiated Opinion
131.107 Receipt, Review and Processing of a Request
A policy advisory can be relied upon as a defense to prosecution according to **§ 1001.604**:

§ 1001.604. Reliance on Advisory Opinion
It is a defense to prosecution or to imposition of a civil penalty that a person reasonably relied on a written advisory opinion of the board relating to:
(1) the provision of the law the person is alleged to have violated; or
(2) a fact situation that is substantially similar to the fact situation in which the person is involved.

A policy advisory is considered in future policy and enforcement actions. Any policy advisory opinion issued by the Board should be followed by the Board and staff until it is modified as per rule **131.107(m).**

Sincerely,

Lance Kinney, P.E.
Executive Director

LK:CBP:dpt