

**Texas Board of Professional Engineers**  
Policy Advisory Opinion Regarding Comprehensive Building Design  
February 8, 2007

**Executive Summary:** The Texas Board of Professional Engineers (Board) has been asked to determine if the practice of engineering includes comprehensive and complete design of buildings by a competent engineer without the services of an architect. Attorney General (AG) Greg Abbott has released an opinion (GA-391) which provides additional information related to this policy advisory. The AG opinion states that building design can be performed exclusively by an engineer if the “adequate performance of the particular service or work in connection with that project requires a person with engineering education, training, and experience.” The opinion goes on to state that “whether an adequate performance of a particular service or work requires a person with engineering education, training, and experience is a question of fact.”

The Board has determined pursuant to the Advisory Opinion process outlined in Texas Administrative Code, Title 22, Part 6, Chapter 131, Subchapter G, based on the present statute and rules, in addition to Attorney General opinions DM-161 and GA-391, that an engineer may engage in comprehensive and complete building design of a project without the involvement of an architect if the adequate performance of the particular service or work in connection with that project requires a person with engineering education, training, and experience.

The Board does recognize that architects have broad authority to manage and oversee building projects, which may include building design. Nothing in this opinion is intended to limit an architect’s ability under their statutory authorization.

**Discussion:** The statute under Texas Occupations Code - Title 6, Subtitle A, Chapter 1001 (§1001.003) also known as the Texas Engineering Practice Act (Act), specifies that design is the practice of engineering and that a building is listed in conjunction with design under this section of the law. This opinion is based on the information contained in the Act as it relates to engineers, while not prohibiting building design by architects who are bound by the laws and rules of the Texas Board of Architectural Examiners (TBAE). The Act defines what is engineering and an excerpt from the beginning of the law in §1001.003 explains, in part: (bold added for emphasis)

§1001.003 Practice of Engineering

(c) The practice of **engineering includes:**

- (10) a service, **design**, analysis, or other work performed for a public or private entity **in connection with a** utility, structure, **building**, machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature;

Buildings can be grouped into public works and private works as mentioned in various sections of the Act. This separation allows for further clarification of applicable law as it relates to these two categories. Engineering aspects of a public works project must be designed and constructed under the supervision of a licensed professional engineer, unless exempted under the Act.

### **When is building design exempted under the Act?**

Under the Act there are several sections that provide exemptions from the licensure requirements when working on building projects. Specifically, §1001.053 contains some specific exemptions from the Act for public works projects, depending on the type of project and monetary value. Also, §1001.056 describes building projects for the private sector and defines when an engineer is not required to be involved with the building project.

### **Legislative Intent**

Under §1001.004(b) of the Act, there is a description of the legislative purpose and intent as follows:

- (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; and
  - (3) fix responsibility for work done or services or acts performed in the practice of engineering.

In addition to specifying the purpose and intent of the statute, there are sections that also allow other individuals to perform work without being in violation of the Act. In other words, architects may design buildings without creating a situation where there would necessarily be a violation of the Act; however, the laws and rules of the TBAE would still apply to them, unless exempted. This is addressed in §1001.004(e) of the Act:

- (e) This chapter does not:
- (4) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

### **Texas Engineering Practice Act Authority**

The Board has the authority to issue an advisory opinion as stated in §1001.601 but, under §1001.603, it does not affect the authority of the Attorney General to issue an opinion as authorized by law. Attorney General opinion DM-161 dated August 27, 1992, relating to the construction of Section 16 of Article 249a V.T.C.S., the act regulating the practice of architecture, was requested by TBAE. In that opinion, Attorney General Dan Morales opined that the professions of architects and engineers overlap. In summary, General Morales opined that the statute regulating the practice of architecture “does not bar a licensed professional engineer licensed under article 3271a, V.T.C.S., [the predecessor to the current Engineering Practice Act] from preparing plans and specifications, the preparation of which requires the application of engineering principles and the interpretation of engineering data” for a public building. In other words, a

professional engineer is not prohibited from being the design professional for construction or modification of buildings. Attorney General Opinion GA-391 dated January 10, 2006, further addresses the issue of overlap between the professions of architects and engineers concerning building design. General Abbott states that whether an engineer may engage in comprehensive and complete building design without the involvement of an architect “depend[s] on whether the adequate performance of the particular service or work in connection with that project requires a person with engineering education, training, and experience”. He further states that “whether adequate performance of a particular service or work requires a person with engineering education, training, and experience is a question of fact.”