

MINUTES
POLICY ADVISORY OPINION COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
1917 S. Interstate 35
Austin, Texas 78741
February 20, 2020—9:30 AM

Discuss and Possibly Act on the Following Agenda Items:

1. Preliminary Matters:

A. Call to Order.

Mr. Rolando Rubiano, P.E., Chair, called the Policy Advisory Opinion Committee meeting of the Texas Board of Professional Engineers and Land Surveyors to order at 9:30 a.m. at the Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, TX. (NOTE: all votes are unanimous unless noted.)

B. Roll Call.

Ms. Bodden called the roll. It was noted for the record that a quorum was present.

The following Committee members were present:

Rolando Rubiano, P.E.	Chair
Ademola Adejokun, P.E.	Member
Lamberto Ballí, P.E.	Member
Kiran Shah	Public Member

Veena Mohan, Assistant Attorney General, was present to provide legal counsel to the Board.

The following staff members were present:

Lance Kinney, Ph.D., P.E.	Executive Director
Rick Strong, P.E.	Director of Licensing and Registration
Michael Sims, P.E.	Director of Compliance and Enforcement
Elissa Mazza	Staff Attorney
Clif Bond	Senior Investigator
Cristabel Bodden	Executive Assistant

C. Excuse absent Committee members.

All Committee members were present.

D. Welcome Visitors.

Terry Bilderback, P.E., Texas Society of Professional Engineers; Jessica Bogus, Texas Department of Transportation; Albert Cheng, Public Member; Steven J. Freeman, II, Texas Society of Professional Surveyors; Edmundo Gonzalez, P.E., R.P.L.S., Advisory Member; Coleen Johnson, R.P.L.S., Surveyor Member; Govind Nadkarni, P.E., Advisory Member; Mark Neugebauer, R.P.L.S., L.S.L.S., Board Member; Catherine Norwood, P.E., Board Member; and Daniel Wong, Ph.D., P.E., were present.

E. Public Comment.

None.

2. November 14, 2019 Policy Advisory Opinion Committee Meeting Minutes.

It was MOVED/SECONDED (Ballí/Adejokun) to approve the November 14, 2019 Policy Advisory Opinion Committee minutes as submitted. A vote was taken and the MOTION PASSED.

3. Policy Advisory Opinion Request Regarding the Need to Seal Drawings or Calculations for Pressure Vessels Designed and Installed in Texas (Policy Advisory Request No. 54).

Mr. Sims discussed Policy Advisory Request No. 54 regarding the need to seal drawings or calculations for pressure vessels designed and installed in Texas with the Committee members. An exhibit was provided for the Committee for their review.

Mr. Sims stated that this Policy Advisory Opinion request was received anonymously on January 18, 2020. Mr. Sims relayed that although Board rules seem to adequately address the basis for this request, more information is needed before staff can adequately provide an appropriate response.

Several factors that could affect the response were not included in the original request. As the request is anonymous and the information insufficient, we cannot formulate an appropriate response without additional details and information. Therefore, staff propose that Policy Advisory Request No. 54 not be accepted since it does not have sufficient detail to formulate a proper response.

Mr. Rubiano asked how one would go about replying to an anonymous request. Dr. Kinney relayed that it would be posted on the Texas Board of Professional Engineers and Land Surveyors website.

Mr. Rubiano stated that the request asked an important question and asked if there were any guidelines relevant to the request.

Mr. Nadkarni, Advisory Member, relayed that ASME does provide information on pressure vessels but only as a guideline and does not provide requirements or specific information. The manufacturer will go out and build it based on the guideline.

Mr. Ballí asked staff to include various scenarios in the response even though there was insufficient information and it was anonymous.

Mr. Rubiano stated that he appreciates effort made by staff but that he needed staff to further review this request and come back to the Committee with a broader discussion and engagement and communication with the public. Staff must list what current Board rules do state regarding the design calculation detail of pressure vessels that fall under ASME. The Committee is interested in staff internally generating an advisory response.

Dr. Kinney stated that he could provide a broader option and see what is available and provide that information to the committee at the next meeting.

It was MOVED/SECONDED (Rubiano/Ballí) to recommend to the Board at its Regular Quarterly Board meeting on February 20, 2020, to approve staff's recommendation to not accept Policy Advisory Request No. 54 as it does not contain sufficient detail to allow for a

proper response and post staff's response on the website. The Committee directs staff to further review issues of this request to see how best to develop this policy advisory. A vote was taken and the MOTION PASSED.

4. Update on Work Group Regarding the Use of and Sealing Procedure for Digital Three-Dimensional Models (Policy Advisory Request No. 50).

Mr. Sims discussed Policy Advisory Request No. 50 regarding the use of and sealing procedure for digital three-dimensional models with the Committee members. An exhibit was provided for the Committee for their review.

Mr. Sims stated that the work group had met on January 30, 2020. The work group is comprised of 15 individuals including several Board members, engineering firms, and several state agencies.

Mr. Rubiano thanked Board staff and Mr. Adejokun for the tremendous amount of time, work, energy, and insight that was provided by the group during the meeting.

Mr. Sims plans to reconvene the group in about a month and relay the information back to the Committee.

Mr. Sims stated that the workgroup is looking into developing further guidance and possible rules beyond the traditional seal for an engineering product to some sort of digital authentication to have the same intent of the seal on a paper document to know that an engineer was involved in that product.

Mr. Ballí asked that staff present the guidelines on this topic developed by NCEES to the Committee. Mr. Sims stated that these guidelines would be addressed at the next meeting.

Mr. Adejokun asked if Board staff had corresponded with any of the workgroup members who took on action items for the next workgroup meeting, Mr. Sims replied that he had not received an update on this but will reach out for this next week. Mr. Adejokun thanked Mr. Sims for setting up this meeting.

No action was required on this agenda item.

5. Update on Work Group Regarding Contracting and Procurement of Engineering Services.

Mr. Sims updated the Committee on the work group regarding contracting and procurement of engineering services and how it fits into the Board's mission. An exhibit was provided for the Committee for their review.

Mr. Sims stated that the work group had met on February 5, 2020. The work group is comprised of 9 individuals including several Board members, several engineering consulting and construction firms, and a representative from ACEC Texas and was created as a request of the Policy Advisory Committee and not from the development from a specific advisory opinion request from a member of the public.

Mr. Sims stated that the work group expanded on the issues related to Policy Advisory Opinion request No. 48 regarding licensing requirements for contractors and subcontractors. The workgroup had an informative discussion about procurement and how firm registration signing and sealing of engineering was accomplished in various scenarios.

The consensus of the group is that engineers are doing engineering work in large scale construction projects and it needs to be clear in contracting and sealing who the engineering firms and individual engineers are.

The workgroup established that the current rule scheme is well understood and adequately addresses the procurement of engineering services. Violations of current rules should be submitted and evaluated on a case-by-case basis. Staff recommends that no rule changes are needed at this time.

No additional meetings are required for this work group.

No action was required on this agenda item.

6. Update on Policy Advisory Process for Land Surveying Issues.

Mr. Sims updated the Committee on the work group regarding the process for Land Surveying Issues. An exhibit was provided for the Committee for their review.

Mr. Sims stated that at the November 14, 2019, Policy Advisory Opinion Committee meeting, Committee members directed Board staff to research the ability of the Texas Board of Professional Engineers and Land Surveyors Board to issue a Policy Advisory Opinions related to Land Surveying issues.

Mr. Sims relayed that Subchapter M of the Texas Engineers Practice Act authorizes the Board to issue advisory opinions. Specifically, rule § 1001.601a states on its own initiative or on the request of any interested person, the Board shall prepare a written advisory opinion about an interpretation of this chapter or the application of this chapter to a person in regards to a specified existing or hypothetical factual situation.

As authorized by this statute, all policy advisory requests must have a foundational base in Chapter 1001. While the act discusses some aspects of the regulation of land surveyors, other portions of the regulation of land surveying are found only in the Professional Surveying Practices Act, Chapter 1071.

As part of the revisions to the Engineer Practice Act associated with the merger with the Land Surveying Board, portions of the act were explicitly revised to apply to both the engineering practice and the land surveying practice acts.

However, subchapter M of the Engineering Practice Act relating to advisory opinions was not revised to explicitly include the chapter 1071. As such, the legislative intent to include chapter 1071 in the advisory process is unclear.

Board staff can issue clarification on surveying issues outside of the advisory opinion process.

However, a revision to the statute may be needed to get the added weight for an advisory opinion.

No action was required on this agenda item.

7. Review of Policy on the Acceptance of Anonymous Policy Advisory Opinion Requests.

Mr. Sims relayed that an exhibit was provided for the Committee for their review.

Mr. Sims stated that historically, the Board has accepted anonymous policy advisory opinion requests. Several recent anonymous requests have been submitted that lack sufficient detail for Board staff to evaluate the request and provide an appropriate response. As requests are anonymous and no contact information is provided to seek clarification, Board staff cannot provide an adequate response to the requestor and must simply post a response on the website as required in the Texas Register.

Subchapter G of Chapter 131 of the Board rules contains details on the policy advisory process. Specifically, Board rule 131.103 details the minimum information that must be included in the anonymous policy advisory opinion request in order for the Board to provide a complete response to the request.

The requestor must provide requestor contact information, affected sections of the act or Board rules, the description of the situation, the reason/s the engineering advisory is requested, parties or stakeholders that will be affected by the opinion, and known pending litigation involved in the situation.

In the past, the Board has not strictly enforced the provisions of the statute and have accepted anonymous requests submitted without meeting the minimum requirements.

Staff is seeking guidance from the Committee on how they wish to handle these anonymous requests.

The first option is to no longer accept anonymous requests by requiring the requestor to provide contact information. If the Board accepts and this path is chosen, Board staff will update the request forms to make clear that contact information in addition to the other six requirements are provided in order for Board staff to consider the request for an advisory opinion.

The second option is to make clear on the request form that adequate information must be submitted on the request form. If Board staff determine that the request does not contain adequate information, Board staff will reject the request.

Mr. Rubiano stated that he wanted to table the discussion until more adequate information could be provided, the Committee could further discuss the request from Board staff and what is in the best interest for staff, explore it from different avenues, determine what would be the minimum information required to engage staff, and the impact it could or would have on the community and public-at-large.

No action was required on this agenda item.

8. Issues for consideration at Future Board Meetings.

Mr. Rubiano asked that Agenda Item #7 be addressed at the next Board meeting.

9. Adjourn.

It was MOVED/SECONDED (Ballí/Adejokun) to adjourn the meeting at 10:31 a.m. A vote was taken and the MOTION PASSED.

Date Board accepted minutes:

May 21, 2020