TEXAS HOUSE OF REPRESENTATIVES

Committee on
Environmental Regulation
77th Texas Legislature

Warren Chisum
Chairman

Dennis Bonnen
Vice Chairman

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December 20, 2001

Post-it® Fax Note 7671	Date 1/16/02	# of pages ▶ 5
To Rait Calvert	From Derek Seal	
Co./Dept. Atty Gen	Co. Rep. Chisum	
Phone # 463-2057	Phone # 463-0736	
Fax #	Fax #	

Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Dear Attorney General Cornyn:

This office respectfully requests an opinion concerning the scope of Section 20(a)(5) of the Texas Engineering Practice Act ("Act"). As you know, Section 20(a)(5) exempts engineers in industry from licensing under the Act, and also permits them to carry the job title "Engineer." The specific issue presented here is:

> **Whether the Act permits in-house engineers for companies that do not offer engineering services to the public (hereafter "Non-Engineering Companies) to include their job titles on business cards, cover letters, and other forms of correspondence.**

DISCUSSION

No person in Texas is permitted to make commercial use of the designation "Engineer" unless that person is licensed under the Act. See TEX. REV. CIV. STAT. ANN. art. 3271a § 1.2(a)(2). However, there are several exemptions to this prohibition, including the following one applicable to in-house engineers in industry:

> **The following persons shall be exempt from the licensure provisions of this Act, provided that such persons are not directly or indirectly represented or held out to the public to be legally qualified to engage in the practice of engineering:**

* * * *

Annette Glass, Committee Clerk
Office: Texas Capitol Extension, Room E2.154 • 512-463-0776
Mail: P.O. Box 2910 • Austin, Texas • 78768-2910 • FAX 512-463-0541

Edmund Kuempel, Fred M. Bosse, D.R. "Tom" Uher
Zeb Zbranek, Charlie Howard, Dawnna Dukes, Charlie Geren

> (5) any **regular full time employee of a private corporation** or other private business entity who is **engaged solely and exclusively in performing services for such corporation** and/or its affiliates; provided, such employee's services are on, or in connection with, property owned or leased by such private corporation and/or its affiliates or other private business entity, or in which such private corporation and/or its affiliates or other business entity has an interest, estate or possessory right, or whose services affect exclusively the property, products, or interest of such private corporation and/or its affiliates or other private business entity; and, provided further, that such employee does not have the final authority for the approval of, and the ultimate responsibility for, engineering designs, plans or specifications pertaining to such property or products which are to be incorporated into fixed works, systems, or facilities on the property of others or which are to be made available to the general public. **This exemption includes the use of job titles** and personnel classifications by such persons not in connection with any offer of engineering services to the public, **providing that no name, title, or words are used which tend to convey the impression that an unlicensed person is offering engineering services to the public;**
>
> * * * *

TEX. REV. CIV. STAT. ANN. art. 3271a § 20(a)(5) (emphasis added).

Plainly, Section 20(a)(5) permits in-house engineers who are not licensed under the Act to carry job titles that include the term "Engineer." The issue, therefore, is whether the mere inclusion of such job titles on correspondence unrelated to the practice of engineering "convey[s] the impression that an unlicensed person is offering engineering services to the public." TEX. REV. CIV. STAT. ANN. art. 3271a § 20(a)(5). For the reasons set forth below, this office believes that it does not.

First, by definition, it is difficult to fathom how a member of the public could be misled into believing that an in-house engineer for a company that does not perform or offer to perform any engineering services for the public is somehow offering such services by the mere use of the job title "Engineer." For example, a business card of a petro-chemical corporation employee which includes the job title "Process Engineer" is, without more, hardly capable of conveying the impression that he is offering engineering services to the general public. This is especially true given that the company itself does not provide such services.

In addition, many Non-Engineering Companies hold frequent "town hall" style meetings with their community in order to keep the public informed as to their operations and activities. Requiring in-house engineers to deceive the public regarding their job titles would undermine the core purpose of such meetings, *i.e.*, to foster trust by providing a free and accurate flow of information. As with the business cards, it strains credulity to contend that the mention of the word "Engineer" could dupe the public into believing that the meetings are sales pitches for engineering services.

Second, an interpretation of Section 20(a)(5) that would permit the use of the job title "Engineer" by such companies, while at the same time prohibiting those employees from disclosing their job title to anyone outside of the company, would effectively write the exemption out of the Act. Under such an interpretation, the companies would be forced to provide their employees with multiple job titles and require that they assess each communication in advance to determine which title to provide if asked or required.

Clearly, this scenario would render the exemption a burden to such companies, as they would have to expend additional resources policing the communication of certain job titles to others who are not deemed employees, agents or representatives of the company. In addition, given that many state agencies require company employees to include their job titles on submissions, see, e.g., TNRCC form PI-7 (Registration Form for Exemptions and Permits by Rule), it is not difficult to imagine a "dual title" scenario where the submission would identify an employee by one job title, while internal documents attached thereto identify the employee by another. The question would then arise whether the attached documents, originally generated internally, would violate that Act if they included the term "Engineer." Under the interpretation described above, the answer may unfortunately be "yes."

Given the unreasonable burdens and risks that accompany the implementation and management of a "dual title" system, most companies would have no choice but to abandon use of the job title "Engineer" under Section 20(a)(5) altogether. This result could not have been the intention of the legislature in enacting Section 20(a)(5). Indeed, the Texas Supreme Court long ago admonished against interpreting statutory provisions in a manner that leads to such absurd consequences. See, e.g., Cramer v. Sheppard, 167 S.W.2d 147, 155 (1942) ([S]tatutory provisions will not be so construed or interpreted as to lead to absurd conclusions, great public inconvenience, or unjust discrimination...."); see also, e.g., C&H Nationwide, Inc. v. Thompson, 903 S.W.2d 315, 322 n. 5 (1994) (same).

Third, the interpretation described above does nothing to further the Act's goal of regulating the licensure of practicing engineers in order to "protect the public health, safety and welfare". See TEX. REV. CIV. STAT. ANN. art. 3271a § 1.1; see also Monroe v. Frank, 936 S.W.2d 654, 659 (Tex. App. – Dallas 1996, writ dism'd) (admonishing that statutory interpretation "must consider the evil which the statute addresses."). Simply put, interpreting the Act as imposing a ban on the otherwise

permissible use of the job title "Engineer" in company correspondence serves no protective function if Non-Engineering Companies and their employees do not perform or offer to perform engineering services for the public. TEX. GOVT. CODE ANN. § 311.023(1) (permitting courts construing a statute to consider the "object sought to be obtained" by its enactment).

Conversely, interpreting the Act as permitting employees of Non-Engineering Companies to include their job titles on ordinary correspondence makes Section 20(a)(5) a feasible option, and does not run afoul of the protective goal of the statute. See Dallas Central Appraisal Dist. v. GTE Directories Corp., 905 S.W.2d 318, 321 (Tex. App. - Dallas 1995, writ denied) (noting that "statutes must be construed in a manner giving effect to the entire statute....").

I have corresponded on this issue with Victoria Hsu, the Executive Director for the Texas Board of Professional Engineers. In Ms. Hsu's November 27, 2001 correspondence to my office, she expressed apparent concurrence regarding this interpretation of Section 20(a)(5), stating:

> It may be reasonable to interpret this language as permitting the use of the term "engineer" by in-house engineers on their business cards and in their job titles as long as these individuals do not use this designation to offer their engineering services to the public, as long as the designation does not convey the impression that an unlicensed person is offering engineering services to the public.

A copy of my correspondence with Ms. Hsu is attached for your reference.

I am mindful of the 1966 and 1981 Attorney General Opinions which address certain usage of the designation "Engineer" by unlicensed individuals. Op. Tex. Att'y Gen. No. C-691 (1966); Op. Tex. Att'y Gen. No. MW-384 (1981). Those opinions, however, only briefly mentioned Section 20(a)(5), and did not focus on the distinction between Non-Engineering Companies and companies that do, in fact, perform or offer to perform engineering services for the public. That distinction, I believe, is critical to this analysis. As discussed above, Non-Engineering Companies simply do not pose any of the dangers to the public the Act contemplates. This remains true without regard to whether such companies' employees include their job titles on ordinary correspondence.

Finally, the 1966 Attorney General Opinion, upon which the Board most heavily relies in interpreting Section 20(a)(5), is overly broad and out of step with the times. That opinion, issued decades ago, concluded generally that any "means of communication to the public" of the job title "Engineer" by unlicensed individuals would violate the Act. Op. Tex. Att'y Gen. No. C-691 (1966).

With respect to in-house engineers expressly permitted to carry the job title "Engineer" under Section 20(a)(5), this conclusion raises serious questions. For example, any time an in-house "Engineer" provided his job title on a credit application or mentioned it during a conversation at a cocktail party, would he violate the Act? Again, the answer under such an unworkable interpretation would probably be "yes." This is yet another example of absurd consequences caused by failing to interpret the Act in a narrowly tailored manner that is workable yet legitimately protective of the public's interests.

I hope this letter provides some assistance in your efforts to construe the scope of Section 20(a)(5) of the Act. If you need any further information regarding this request for opinion, please notify me and I will respond promptly.

Sincerely,

Warren Chisum

Warren Chisum,
House Committee on Environmental Regulation

cc: Victoria Hsu

enclosures: November 27 Letter from Victoria Hsu
November 14 Letter from Warren Chisum

TEXAS BOARD OF PROFESSIONAL ENGINEERS

November 27, 2001

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To Beverly	From Derek Seal	
Co./Dept. Opinions	Co. Rep. Chisum	
Phone #	Phone # 463-0736	
Fax #	Fax #	

The Honorable Warren D. Chisum
Texas House of Representatives
P.O. Box 2061
Pampa, TX 79066-2061

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Dear Representative Chisum:

Thank you for your November 14, 2001, letter regarding the exemption from the licensure requirements of the Texas Engineering Practice Act for in-house, or industry, engineers. It is a great pleasure to hear from you and we welcome your interest in this issue.

You mentioned, in your letter, a 1981 Attorney General Opinion, presumably OAG Opinion No. MW-384, in which the Attorney General held that Section 20 of the Act exempts in-house engineers from the Act's licensing requirements, but not from using the designation of "engineer." The Texas Board of Professional Engineers (Board) has also been guided by OAG Opinion No. C-691, a 1965 opinion in which the Attorney General held, even more explicitly, that in-house engineers may not use the designation of "engineer" on stationery, building directories, telephone directories, business cards, advertisements or other means of communication to the public unless they are first licensed or registered with the Board.

The Board takes seriously its legislative mission to protect the public health, safety, and welfare by ensuring that only licensed professional engineers represent themselves or offer their services directly to the public. However, as you suggest, the last sentence of Section 20(5), which states that the exemption includes "the use of job titles and personnel classifications by such persons not in connection with any offer of engineering services to the public, providing that no name, title or words are used which tend to convey the impression that an unlicensed person is offering engineering services to the public," does seem to lend itself to a more permissive interpretation than that given thus far by the Attorney General. It may be reasonable to interpret this language as permitting the use of the term "engineer" by in-house engineers on their business cards and in their job titles as long as these individuals do not use this designation to offer their engineering services to the public, and as long as the designation does not convey the impression that an unlicensed person is offering engineering services to the public.

While I cannot speak for the Board Members on this matter, as they have not considered the particular question raised in your letter, I think it would be very reasonable for you to seek clarification from the Attorney General in asking for a new OAG opinion on this issue. I want to reassure you that we are committed to implement the law.

Again, thank you for your interest, and I look forward to working with you in connection with the Board's upcoming sunset review.

Respectfully,

Victoria J.L. Hsu, P.E.
Executive Director

cc: Board Members

Warren Chisum
STATE REPRESENTATIVE

COMMITTEES:
ENVIRONMENTAL REGULATION, CHAIR
COUNTY AFFAIRS
HOUSE ADMINISTRATION

House of Representatives

AUSTIN OFFICE:
P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
(512) 463-0738

DISTRICT OFFICE:
P.O. BOX 2061
PAMPA, TEXAS 79066-2061
(806) 665-3552

November 14, 2001

Victoria J.L. Hsu, P.E., Executive Director
Texas Board of Professional Engineers
1917 IH 35 South
Austin, Texas 78741

Dear Ms. Hsu,

Its been some time since I had the pleasure of seeing you at a House Environmental Regulation Committee hearing. We always appreciated your knowledge of the issues and the candor in your testimony. In preparing for the review of your agency by the Texas Sunset Advisory Commission, I recently became aware of an issue surrounding how the Texas Board of Professional Engineers handles in-house engineers who do not offer services to the public.

As we are both aware, statutes provide for an exemption from licensing for in-house engineers in Subdivision (5), Section 20 of the Texas Engineering Practice Act. We are also both familiar with a 1981 Attorney General's Opinion that says Section 20 exempts in-house engineers from licensing but does not exempt them from using the term "engineer." However, the last sentence in Subdivision (5) clearly says the exemption includes the use of job titles and personnel classifications as long as the person does not offer engineering services to the public. In light of the last sentence in Subdivision (5), could you clarify how current law prohibits in-house engineers from using the term "engineer" on their business cards and in their job titles?

I suppose I'm having a hard time understanding how the inconvenience in asking a private business to change the titles for all their in-house engineers will protect the public in the spirit of the Texas Engineering Practice Act. It just doesn't quite seem fair that this in-house exemption has been in the law since 1965 but all of the sudden we're asking in-house engineers to change their titles. In light of the controversy, I am curious to know whether you think it might be worthwhile for me to ask for a new Attorney General's Opinion on the issue.

I appreciate your efforts to protect the public and maintain integrity in the engineering profession, and I look forward to hearing from you.

Sincerely,

Warren Chisum

Warren Chisum,
State Representative

District 88: Carson, Childress, Collingsworth, Dallam, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Ochiltree, Roberts, Sherman, Wheeler