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The Honorable Ken Paxton  
Attorney General of Texas  
209 W. 14<sup>th</sup> Street  
Austin, TX 78701  
Via e-mail to [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

**RQ-0440-KP**  
**FILE# ML-49056-21**  
**I.D.# 49056**

Re: Request for Attorney General's Opinion Regarding Potential Conflicting Statutes  
on Land Surveying

Dear Attorney General Paxton:

On behalf of the Texas Board of Professional Engineers and Land Surveyors (Board), I write to request an Attorney General's Opinion involving potential conflicting statutes regarding the regulation of professional land surveying in Texas. For background, the Board is a legislatively mandated licensing board tasked with overseeing the practice of professional engineering and professional surveying in the state and enforcing the Texas Engineering Practice Act (Texas Occupation Code, Chapter 1001), the Professional Land Surveying Practices Act (Texas Occupations Code, Chapter 1071), and associated Board rules found in Title 22, Texas Administrative Code Chapters 131 through 139.

Over the past year, multiple inquiries have been submitted to the Board regarding professional engineers possibly practicing professional surveying in areas near the Texas-Mexico Border, in violation of the Professional Land Surveying Practices Act. Upon review of related statutes, it appears that there may be a conflict between the requirements of the Texas Engineering Practice Act, the Professional Land Surveying Practices Act, and provisions in the Local Government Code. After consulting with the Board's General Counsel, and on behalf of the Board, I am requesting an Attorney General's Opinion about the potential conflict in statute and guidance on how the Board should navigate this conflict.

#### BACKGROUND ON ISSUE

The Professional Land Surveying Practices Act regulates the practice of professional surveying in the State of Texas, and it defines professional surveying as "the practice of land, boundary, or property surveying or similar professional practices."<sup>1</sup> The Act further defines "professional surveying" to include platting and laying out land or subdivisions of land.<sup>2</sup>

Subsection 1071.251(b) of the Professional Land Surveying Practices Act, relating to Registration, License, or Certificate Required, states "a person may not engage in the

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<sup>1</sup> Tex. Occ. Code § 1071.002(6).

<sup>2</sup> Tex. Occ. Code § 1071.002(6)(A)(ii).

practice of professional surveying unless the person is registered, licensed, or certified as provided by this chapter.” Based on the statute, only an individual registered as a professional land surveyor in the State of Texas may engage in the practice of professional surveying, including boundary or property surveying and platting subdivisions of land, in Texas.

Meanwhile, the Texas Engineering Practice Act regulates the practice of engineering in Texas. Specifically, Subsection 1001.003(a)(2) states that while an engineer can complete an *engineering* survey the term “engineering survey” does not include the surveying of real property or other activity regulated under Chapter 1071 (the Professional Land Surveying Practices Act).<sup>3</sup> Thus, the Texas Engineering Practice Act excludes land surveying activities from the activities licensed engineers may perform.

However, portions of the Local Government Code appear to conflict with the requirements of the Professional Land Surveying Practices Act, specifically, Texas Local Government Code, Chapter 232, relating to County Regulation of Subdivisions. Subchapter A of Chapter 232 relates to Subdivision Platting Requirements in General, while Subchapter B relates to Subdivision Platting Requirements in County Near International Border.

Subchapter A of Chapter 232 requires that the owner of a tract of land located outside the limits of a municipality must have a plat of the subdivision prepared; the plat must describe the subdivision by metes and bounds, must locate the subdivision with respect to an original corner of the original survey of which it is a part, and must be filed and recorded with the county clerk of the county in which the tract is located.<sup>4</sup> Subchapter A is silent on who must prepare the subdivision plat, describe the subdivision by metes and bounds, and locate the subdivision with respect to the original survey. However, all of these tasks fall within the definition of “professional surveying.”<sup>5</sup> As such, they must be done by a registered professional land surveyor per the requirements of the Professional Land Surveying Practices Act.<sup>6</sup>

Further, Subchapter B of Chapter 232 applies only to a county in which any part of the county is within 50 miles of an international border or a county any part of which is located within 100 miles of an international border and that contains the majority of the area of a municipality with a population of more than 250,000.<sup>7</sup>

In counties subject to Subchapter B, any subdivision of land in which one of the lots of the subdivision is five acres or less must have a plat of the subdivision prepared.<sup>8</sup> Further, the

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<sup>3</sup> Tex. Occ. Code § 1001.003(a)(2).

<sup>4</sup> Tex. Loc. Gov't Code §232.001.

<sup>5</sup> Tex. Occ. Code § 1071.002(6).

<sup>6</sup> Tex. Occ. Code § 1071.251.

<sup>7</sup> Tex. Loc. Gov't Code §232.022.

<sup>8</sup> Tex. Loc. Gov't Code §232.023

plat must define the subdivision by metes and bounds, locate the subdivision with respect to an original corner of the original survey of which it is a part. As previously discussed, these tasks are considered the practice of “professional surveying” under Section 1071.002 of the Professional Land Surveying Practices Act. However, Subchapter B of Chapter 232 then goes on to state that such a plat must be **certified by a surveyor OR engineer** registered to practice in Texas.<sup>9</sup> Section 232.023(b)(1) provides, “A plat required under this section must be certified by a surveyor or engineer registered to practice in this state.”<sup>10</sup>

Further, the plat must have attached to it a document prepared by a professional engineer certifying that the water and sewer service facilities comply with the model rules adopted under Section 16.343 of the Water Code.

Based on a plain reading of Section 232.023, it appears that while only an engineer can certify the attached document certifying the water and sewer service facilities, an engineer OR surveyor registered to practice in this state can certify the plat subdividing the lots. Allowing an engineer to certify subdivisions appears to directly conflict with the requirements of the Professional Land Surveying Practices Act, which reserves the platting of subdivision of land to only registered professional land surveyors.

Professional engineers engaging in this specialized field of professional surveying, without the demonstrated competency, pose a potential danger to the welfare of the public. Based on the Board's research, it is unclear why a specific region of the state, namely the area encompassing those counties close to the Texas-Mexico border, does not require a registered professional land surveyor to engage in tasks that clearly fall under the definition of “professional surveying.”

Because of the apparent conflict between the Texas Occupations Code and the Local Government Code, the Board seeks guidance on the following issues:

1. Does Local Government Code, Chapter 232, Subchapter B, authorize a licensed professional engineer to certify a plat of a subdivision of land that is subject to Subchapter B, even though the Professional Land Surveying Practices Act restricts platting to only registered professional land surveyors?
2. If Chapter 232, Subchapter B authorizes a licensed professional engineer to certify a plat of a Subchapter B subdivision, is said practice a violation of the Professional Land Surveying Practices Act, or instead, does Section 232.023 serve as a limited exception to the Professional Land Surveying Practices Act requirement that only a registered professional land surveyor may certify plats?
3. Does the Board have the authority to take enforcement action against a licensed professional engineer who certifies a subdivision plat in accordance with Chapter

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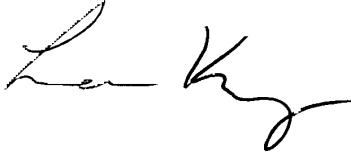
<sup>9</sup> Id.

<sup>10</sup> Tex. Occ. Code § 232.023(b)(1).

- 232, Subchapter B of the Local Government Code but in apparent violation of the Professional Land Surveying Practices Act?
4. If the Local Government Code allows for engineers to engage in the platting of Subchapter B subdivisions, how should the Board rectify the apparent conflict with the Texas Engineering Practice Act and the Professional Land Surveying Practices Act as these Acts clearly state that professional engineers are not authorized to conduct any surveying of real property or other activity regulated under Chapter 1071 (the Professional Land Surveying Practices Act)?

The Board respectfully requests your opinion on the issues identified herein. If you need any additional information, please contact me via e-mail at [lance.kinney@pels.texas.gov](mailto:lance.kinney@pels.texas.gov) or via phone 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 the last name "Kinney" clearly distinguishable.

Lance Kinney, Ph.D., P.E.  
Executive Director

LK:MZS