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OFFICIAL NEWSLETTER

April 1988

NEW BOARD MEMBER

On December 28, 1987, James C. Chang, Ph.D., P.E., of Houston, took the oath of office as a new member to serve for six years. He replaces former member Bill W. Klotz, P.E., also of Houston.

Dr. Chang is an Engineering Consultant III at Brown & Root USA, Inc., where he has been employed since 1969. He has been the project engineering manager of the Istanbul, Turkey, Water Supply Master Plan Update since 1986.

He received his doctoral degree from the University of Houston in 1976, his master's in civil engineering from the University of Washington in 1967, and his bachelor's in hydraulic engineering at the National Cheng Kung University, Taiwan, Republic of China, in 1962. He is active in community affairs including several Chinese and Asian American organizations.

REVISED BOARD RULES

Six board rules have been revised since they were published in the January 1987 roster of engineers. All changes except those to Rule 131.137 were effective on September 1, 1987.

RULE 131.71

The following language was added to the existing Rule 131.71, dealing with reference statements: "Accurate statements of fact from responsible sources concerning the applicant's technical abilities and performance are necessary as are frank and candid appraisals of his character, reputation, and suitability for professional registration. In this regard, an option is available to the applicant to waive his rights to pursue any cause of action against his selected reference for any

negative comments he might make in his evaluation for the board's consideration."

RULE 131.72

The following was substituted for the last sentence in Rule 131.72, dealing with professional engineer references: "Texas registrants who act as references are required to provide complete, accurate, and detailed responses on the reference form. If sufficient detail is not provided, the reference statement may be considered as nonresponsive."

RULE 131.101(6)

A fee will now be exacted for each examination administered; therefore, Rule 131.101(6) now reads: "Applicants who have been approved to take the examinations for registration will be charged an established fee for each examination scheduled."

RULE 131.137

Effective March 1, 1988, Rule 131.137, pertaining to disciplinary actions, includes the following changes.

Subsection (a)(5) permits the issuance of reprimands and will now read: "Issue a formal or informal reprimand. A formal reprimand will take the form of a board order, made public by means of the board newsletter and transmitted to the National Council of Engineering Examiners. An informal reprimand may be no less than an oral or written admonishment from the board, which will be noted in the registrant's file and board minutes."

Subsections (e) and (f) of Rule 131.137 will now read: "(e) A registrant alleged to have violated the law, rules, or standards of conduct will be notified by personal service or by certified or registered mail of

the facts or conduct alleged to be in violation and shall be afforded an opportunity to present arguments and evidence in his own behalf before a determination of guilt is made by the board, as provided in Section 131.224 of this title (relating to Show Cause Orders and Complaints)."

"(f) Where a violation appears evident, the board will consider instituting disciplinary action by means of scheduling a public hearing in conformance with Sections 131.181-131.225 of this title (relating to Hearings-Contested Cases); however, (1) The registrant will first be advised of the right to voluntarily contact the board within a specified time limit to schedule an informal conference at the board office with an informal conference review committee for the purpose of showing there has been no violation as alleged. The committee will be composed of one board member, the executive director, legal counsel, and appropriate staff personnel; however, the absence of the board member or the executive director or legal counsel shall not invalidate the formation of the committee or the conclusions of the conference. The registrant may employ an attorney to represent him. If the registrant desires a conference and the complaint cannot thereafter be dismissed on the evidence, an effort will then be made to reach an informal settlement. This settlement will take the form of a proposed agreed board order which will be presented to the board for acceptance or rejection."

"(3) Any board action under subsection (f) of this section which is not informally disposed by stipulation, agreed settlement, consent order, or default will be treated as a contested case and disposed as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) and the board rules for hearings and contested cases."

RULE 131.138(8)

To compliment the recent change in Section 15 of the Texas Engineering Practice

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Act, whereby seals are required on engineering documents when issued, not just when filed with public authorities, Rule 131.138(8) was amended to provide as follows:

"(8) The registrant shall affix his seal, sign his name, and place the date of execution, only on engineering documents that have been issued by the registrant as completed work. Such documents should be accepted by clients for their purposes and/or by public authorities for final approval or issuance of a permit. Documents considered as incomplete by the registrant may be released temporarily for interim review and do not need to have the registrant's seal or signature affixed, but shall be dated; bear the responsible engineer's name, serial number, and 'P.E.' designation; and be clearly stamped to indicate the documents are for interim review and not intended for construction, bidding, or permit purposes. The use of signature reproductions, such as rubber stamps, or computer generated or other facsimiles shall not be permitted in lieu of actual signatures."

Note: when subsection (8), above, was promulgated, the former subsections (9) and (10) which appeared in the 1987 roster of engineers were deleted.

RULE 131.152(j)

Rule 131.152, pertaining to independent professional judgment, was amended by changing subsection (j) to read as follows:

"(j) The engineer shall submit to a client only that work (plans, specifications, reports, etc.) done by him or under his responsible supervision; however, an engineer, as a third party, may complete, correct, revise, or add to the work of another engineer when engaged to do so by a client, provided: (1) the client furnishes the documentation of such work submitted to him by the first engineer; (2) the first engineer is notified in writing by the second engineer of the engagement referred to in paragraph (1) of this subsection immediately upon acceptance of the engagement; and (3) any work completed, corrected, revised, or added to shall have a seal affixed by and become the responsibility of the second engineer."

SEALS: AN IMPORTANT REMINDER

In Newsletter Number 13, July, 1987, we printed the most significant amend-

ments made to the Texas Engineering Practice Act by the Legislature in 1987. Two of those amendments involved the engineer seal in Section 15 which was divided into three subsections.

Subsection (b) now provides: "Plans, specifications, plats, and reports issued by a registrant must include the registrant's seal affixed to the document." This differs from the previous law which only required the seal on documents when filed with public authorities. See Rule 131.138(8) printed elsewhere in this publication wherein the Board interprets "issued" to mean the issuance of completed work.

An important new subsection (c) was added to Section 15 which is quoted as follows: "This Act applies to all engineering practiced in this state that is not exempted under this Act. A public official of this state or of a political subdivision of this state who is charged with the enforcement of laws, ordinances, codes, or regulations that affect the practice of engineering may only accept plans, specifications, and other related documents prepared by registered engineers, as evidenced by the seal of the engineer. A public official shall report violations of this Act to the proper authorities."

These two amendments and the revised Rule 131.138(8) on the engineer's responsibility to affix his seal on completed work were included in an informative letter mailed in August, 1987, to each of the 254 county judges, 1157 municipalities, 1086 superintendents of independent school districts, 120 public colleges and universities, and the heads of 14 selected state agencies. A special notice about these changes was also published in the Texas Register dated September 18, 1987, on page 3284. This notice pointed out that city, county, and other governmental engineers whose documents become a part of the public records would be affected by the new seal requirements.

Interest has increased appreciably regarding compliance with Sections 19 and 20(f) of the Act dealing with the construction of public works and privately owned buildings, respectively. Engineers in government and engineers in private practice, especially those who perform consulting work for architects, should become familiar with the pertinent portions of the Act and board rules to assist in voluntary compliance efforts within their individual spheres of professional influence.

WHAT IS SECTION 19?

"What is this Section 19 you're talking about?" "Is it a new law?" "Why haven't

we heard about it before?" These are typical questions frequently posed to the Board about Section 19 of the Texas Engineering Practice Act.

What is it? It is the general state law which prohibits public entities from engaging in the construction of any public work involving engineering and exceeding \$3,000 in cost unless the engineering plans and specifications and estimates have been prepared by, and the engineering construction done under the direct supervision of a registered engineer, with the exception of county road maintenance and betterment work.

It certainly is not new because it was a part of the original 1937 engineers registration law. But, it may be considered new by many individuals who received an informative letter from the Board, or have been the object of an official inquiry, or learned about it during an educational seminar. Because of the important 1987 amendments to other pertinent sections of the Act, wide dissemination was made of information about the Act.

Some individuals have argued that the \$3,000 threshold exemption is outdated and unrealistic; that it places an undue burden on public entities and an unfair disadvantage on their in-house capabilities, their consulting architects and skilled tradesmen engaged by contract; and that the exemption should be a much higher figure.

Notwithstanding the arguments, there has been no indication that the exemptions in Section 19 were even remotely considered for change in 1965 when the registration law became a full practice act, or in 1981 during the "Sunset" review, or in 1987 when Section 15(c) was enacted to provide the heretofore missing link between the legal requirements of the Act and the duties and responsibilities of other governmental entities.

Until it is changed, it is the law; it is general, but germane; it is pertinent and important; and it reasonably serves a legislative purpose in the best interest of the public's health, safety, and welfare.

"DESIGNS" BY AIR CONDITIONING CONTRACTORS CLARIFIED

In our July 1987 Newsletter we reported the gist of Attorney General Opinion No. JM-693. The opinion was issued as an interpretation of the 1983 Air Conditioning Contractor License Law (Art. 8861,

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V.T.C.S.), permitting state licensed contractors to 'design' air conditioning systems as an exception to the Texas Engineering Practice Act (Art. 3271a, V.T.C.S.). The Opinion was construed to equate 'design' with the 'engineering' of such systems, thus apparently preempting the otherwise applicable provisions of the engineering Act.

Requests for reconsideration of that opinion were filed with the Attorney General by this Board and by the Texas Department of Labor and Standards. The Attorney General declined to reconsider JM-693, per se; however, by letter of November 25, 1987, he responded by asserting that Opinion JM-693 was a correct interpretation of Art. 8861, but it had been misconstrued because it did not equate 'design' with the 'engineering' of air conditioning systems.

Without defining 'design', the letter states that Art. 8861 refers to 'design' as it is commonly understood in the air conditioning business; that Art. 8861 does not carve out an exception from the ambit of the engineering Act for all activities comprising engineering as it applies to air conditioning contracting; it carves out only that aspect of the air conditioning business known as 'design'.

This Board and the Texas Department of Labor and Standards are still in the process of preparing a joint position statement on this matter. In the interim, the substance of this Board's position is that the engineering of heating, ventilating, air conditioning, commercial refrigeration, and process cooling and heating systems will be performed by registered professional engineers in each instance where an exemption does not exist for non-engineers under Sections 19 and 20(f) of the Texas Engineering Practice Act. For non-exempt buildings, state licensed air conditioning and refrigeration contractors may perform such design procedures as are commonly associated with engineered systems. These include layouts, fittings, drawings, and the translating of specifications, calculations, sketches, and other documents developed by engineers, into working drawings to assist the contractor in the installation, alteration, or modification of environmental air conditioning, commercial refrigeration, and process cooling and heating systems.

When a joint position statement is agreed upon, dissemination will be made to contractors, engineers, and to public officials who are charged with the enforcement of laws, ordinances, codes, or regulations

that affect the practice of engineering and air conditioning contracting.

SIMILAR INQUIRIES MADE BY ARCHITECTS AND SCHOOL OFFICIALS

By invitation, the Board sent two staff representatives on November 17, 1987, to participate in an educational conference about Section 19 of the Texas Engineering Practice Act with members of the Corpus Christi Chapter of the Texas Society of Architects, and some of their consulting engineers. After a short presentation and recital of answers to a prepared list of questions posed by the architects, additional discussion ensued about the strictness of the Act and how Section 19 should be interpreted.

It was apparent that some architects thereafter counselled with the school districts they represent about the greater need for engineer involvement in their construction programs. Another invitation was received by the Board to meet this time with a regional group of school officials from the greater Corpus Christi area. On January 20, the two staff representatives made a similar presentation about Section 19.

Both groups were interested in the new emphasis being placed on compliance with Section 19, the various services considered as engineering rather than architectural, and the type of supervisory services the engineer should be providing during construction to satisfy the law.

Regarding supervision of engineering construction, the Board has always relied on the general stipulations set forth in Attorney General Opinion No. C-791 (1966) which states that the engineer 'must be in a position to inspect and control, as each progresses, the various phases of the construction project which involve the 'practice of engineering' as defined in' the Act. 'Control' in this sense is restricted to engineering judgments and decisions based on the engineering designs of the project and not related to the control exercised by a contractor for construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the work.

The Board is unaware of any subsequent Attorney General Opinions or reported court decisions which better define the application of Section 19 to public works or

contradict the stipulations of Opinion C-791.

THERE IS ONLY ONE TYPE OF REGISTRATION

Responding to the statutory \$110 temporary increase in registration and renewal fees, many engineers have asked if the Board could place them in a 'retired' or 'inactive' status at a reduced fee. They have generally expressed the dilemma of having to cope with the so-called 'professional tax' or give up their licenses altogether.

While the Board realizes that the increased fees legislated last summer to be effective for two years are a financial concern to many retired and unemployed engineers, the Act provides for only one type of registration. The Board has no authority to create different classes of registrants.

A certificate of registration is either active or expired. If it has not been expired for two years, it is renewable with an additional penalty fee which is also based on the increased registration fee. After two years an expired certificate cannot be renewed, but a new registration may be obtained with a new application under provisions of the Act then in existence. As of September 1, 1992, applicants will be required to have a specified college degree and pass the two 8-hour written examinations.

Registrants who have elected not to renew their certificates at the higher fees, and have notified the Board of such in writing, will no longer receive delinquent notices or copies of the Newsletter.

COURT ACTION

Victor M. Garcia, architect, residing in Fort Worth, was enjoined by the 153rd District Court under an agreed judgment whereby he cannot practice, offer, or attempt to practice engineering or affix to any drawings a seal purporting to be that of a registered engineer. The Board had alleged that Mr. Garcia affixed an altered engineer's seal to a set of plans and filed the plans with a public authority for a building permit for the construction of an office building.

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DISCIPLINARY ACTIONS

On April 15, 1987, the Board issued a reprimand to Bertram C. Okoye, P.E. of Austin, for misrepresentations made to the public about the number of engineers in his firm.

On April 15, 1987, by stipulated agreement, the license of David F. Causey, P.E. of Las Vegas, Nevada, was suspended for one year in a reciprocal action based on his license suspension for cause in Nevada.

On April 15, 1987, George A. Pulliam, P.E. of Austin, received a reprimand for misrepresentations made to a public authority tending to discredit the engineering profession.

Effective May 25, 1987, the license of Lawrence R. Rega, P.E. of Richardson, was suspended for six months with the last three months probated. Mr. Rega was charged with misdirecting work from his employer to himself and using his employer's files for personal gain.

On October 1, 1987, the Board reprimanded Charlie L. Bellah, P.E. of Corpus Christi, for practicing in matters beyond his expertise and preparing incomplete and unsealed plans.

Effective July 1, 1987, the license of Eugenio Sciulli, P.E. of St. Petersburg, Florida, was suspended and probated for 18 months, based on a reciprocal action in Florida for negligence.

On January 28, 1988, the Board issued individual reprimands to Steven D. Kallman, P.E. Walter V. Linden, Jr. P.E. and Patrick A. Lackey, P.E. for seal infractions in their firm on one municipal project, and for permitting an unlicensed employee to be publicly represented as an engineer.

On January 28, 1988, the Board issued a probated suspension of license for one year to Harvey T. Blankenship, P.E. of Fort Worth, for practicing without a current license.

BOARD FORMS TAKE ON NEW LOOK

The Board recently revised the Reference Statement form used in support of applications for registration. The new form now includes a waiver which, if signed by the applicant, permits his designated references to be perhaps more detailed and frank in their appraisals of the applicant without fear of retaliation. To be in compliance with the State's Open Records Act, reference statements cannot be held in confidence after the application evaluation has been completed and Board action taken. See a summary of Board Rule 131.71 elsewhere in this publication.

The application form will soon be revised in an effort to prevent important questions being overlooked by the applicant. Also, a question will be included concern-

ing the conviction of a misdemeanor offense. Such convictions may be grounds for rejection of an application under Section 12(e) of the Act and Board Rule 131.120.

1988 BOARD MEETINGS

The Board has tentatively scheduled its remaining quarterly meetings to be held in Harlingen on April 20 and 21, in Austin on July 20 and 21, and in Midland on October 19 and 20. All meetings are announced in the Texas Register and are open to the public. Petitions and other presentations to the Board must be approved and appear on the posted agenda.

EXAMINATION DATES

Engineering examinations are scheduled for October 29, 1988; April 15 and October 28, 1989; and April 21 and October 27, 1990. The deadline date for submission of an application for the Fundamentals and Principles and Practice of Engineering Examinations is approximately two months prior to the examination date. Seniors and graduate students may obtain applications and information from the engineering dean's office at their schools. All other persons interested in taking the examination should contact the Board office for an application and eligibility information.

FROM
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