

Special Session Minutes
State Board of Registration for Professional Engineers
March 8, 2006

The State Board of Registration for Professional Engineers met in their offices at 300 Capitol Street - Suite 910 Charleston, WV on March 8, 2006. The meeting was held to review complaints and discuss issues involving non-licensees performing engineering services. Those present for the special session were:

Leonard J. Timms, Jr.	President
Edward L. Robinson	Vice-President
Bhajan S. Saluja, Jr.	Secretary
Richard E. Plymale	Member
William E. Pierson	Member
Lesley L. Rosier-Tabor	Executive Director
Don Johnson	Board Investigator
Debra Hamilton	Legal Counsel

The meeting was called to order at 1:00 pm.

The West Virginia pass-fail rate for the FE and PE exams was discussed. It was suggested that the Board only pay for one student FE exam fee waiver versus two to encourage better student preparation for the exam. Financial assistance for a new, on-line exam preparation course offered by NCEES was discussed. No formal decisions were made regarding the issue. The Board is very interested in developing a plan to address the poor pass-fail rates and will revisit the issue at their next regularly scheduled meeting.

The recent stack fire at the AEP Mitchell plant was discussed. The Board received an anonymous inquiry providing several key items of interest regarding the incident. Traditionally, the Board does not get involved in industrial issues; however the information supplied warranted the Board directing Mr. Johnson to investigate further.

The Board then discussed several complaints and inquiries that it has received regarding architects. The Board discussed the details of Case No. 2005-9 involving a licensed architect. The Board directed Ms. Hamilton to send a follow-up letter to the respondent regarding his use of non-engineers and non-licensed electrical and mechanical sub-contractors on the project in question, copied to the sub-contractors, informing them that such actions would result in Board action in the future.

Representatives from the Architects' Board joined the meeting at 2:00 pm. They were:

Greg A. Williamson, President
Lloyd W. Miller, Secretary
E. T. Boggess, Board Member
Lexa Lewis, Executive Secretary

Mr. Williamson presented the Architect Board's concerns with recent practice overlap issues between the Boards. Mr. Boggess stated there had always been a "live and let live" gentlemen's agreement between the Engineers Board and the Architects' Board and they wanted to know what had precipitated the recent change.

Ms. Rosier commented that the addition of a part-time investigator has provided for a focused effort on compliance with the engineering law. She cited several examples of the successful

public relations efforts made on behalf of the WV PE Board in recent years that were causing the engineering community, as well as the public, to sit up and take notice of violations. Pro-active investigative efforts, such as visits to Building Inspection departments and plan rooms, as well as meeting with various professional groups, have uncovered a number of problems. It was pointed out that the architect issues are only a small fraction of the problems discovered.

Mr. Williamson and Mr. Boggess both commented on their perceived simplicity of Case No. 2004-1 and questioned why this Board chose to get involved. Mr. Boggess stated that the complaint should have been brought to the Architects' Board first and let them address it. He said that in the past the Attorney General's office would have investigated the complaint for the Architect's, although Ms. Hamilton pointed out that the Attorney Generals Office does not have investigative powers.

Mr. Robinson explained that it was reported to the PE Board that the motel under construction had structural and other problems that posed life safety issues and we would be negligent to not take action. The PE Board hired a third party architect/engineering company to review the plans. The deficiencies which were found resulted in the complaint being filed. Ultimately the architect agreed to a Consent Order that required him to hire engineers to review his design, make necessary changes and insure the motel met building code requirements. This architect also paid a civil penalty and for the Board's cost in investigating the complaint. Copies of the signed Consent Order had been given to the Architects' Board immediately upon entry for reciprocal action. The Architects' Board indicated they had taken no action to date. Mr. Boggess, as well as other Architects Board reps, indicated they were unaware of the significance of the structural deficiencies noted and agreed that this was a situation that warranted immediate action and now recognized the PE Board's concerns.

The next complaint discussed was Case No. 2005-9. Ms. Lewis stated that she told the architect involved about the practice of architects using consultants to work under their direction to do the non-architectural items in a building design. It was Ms. Lewis' understanding that this particular architect was doing all of the design himself, in house. Copies of the signed Consent Order were given to the Architects' Board. The Consent Order reflected the architects understanding that he could use non-licensed engineers to do his project. In this particular case, the mechanical and electrical portions of the project were done by out-of-state construction contractors who are not engineers. The Architects Board indicated they had taken no action to date.

Copies of both Consent Orders, previously provided to the Architects' Board when they were signed and final, were disseminated during the meeting for review and discussion.

A current problem with a grading plan prepared by an architect in Bridgeport was discussed. The Bridgeport city engineer has refused the plans because they were not prepared by a professional engineer. The architect has objected to this to both the Architect's and PE Boards. Discussion of the specifics show that the plans rejected included more than grading. The PE Board found no problem with the city engineer's action and chose to not get involved. The Architects' Board stated this was a "gray" area and did not indicate what they planned to do on this issue.

Throughout the discussions on the specific complaints a number of issues came up. Mr. Miller stated that the architects are encountering a number of problems with contractors and code officials on what is required for plans. The design-build work is causing them a lot of problems. He expressed his frustrations at having no enforcement powers against non-licensed architects. Mr. Williamson also stated that he was told when he came on the Architects' Board that they had no enforcement powers against non-registrants. Ms. Hamilton, after a cursory review, stated that the Architects' rules seemed to narrow the powers set forth in their statute.

Mr. Boggess responded that they used to have a representative from the Attorney General's office attend the architects' meetings. The representative would send letters to violators and provide direction. Mr. Boggess stated that over time they were assigned attorneys who were not qualified and who provided little assistance. The Board had two lay members who were lawyers so the Board saw no need to continue to request assistance from the Attorney General's office.

Mr. Williamson stated that he did not believe the PE Board had the authority to discipline architects as he read the engineers law. Mr. Timms and Mr. Robinson both responded that the PE Board has the authority to address the practice of engineering by non-engineers. Mr. Williamson stated that his training, both in school and since, qualifies him to do engineering on the projects he designs. Mr. Timms questioned that assertion. Mr. Williamson added that his architect's license did not make him an engineer.

Ms. Rosier stated that the gentlemen's agreement between the Boards as spelled out in the "Handbook for Building Officials" does not allow architects to perform many of the services being discussed. To that point, no explanation was provided.

Mr. Williamson suggested that the Engineers Board let the architects take care of problems with architects. The PE Board members agreed to try this with the understanding that they would continue to address architect issues which posed life-safety problems. Copies of three sets of plans performed by an architect which the Engineers Board believe required the use of a WV PE were given to the Architects' Board to address. The PE Board also requested special assistance of the Architects Board in contacting the architect involved in these matters because he has refused to respond to our staff's repeated phone calls.

The PE Board members decided to stay future investigations on joint matters for 30 days pending response from the Architects Board. After 30 days, the PE Board will continue their investigation simultaneously unless they receive satisfactory notice that the problem has been remedied or that the Architects' Board is pursuing the matter. With respect to any future matters, the PE Board reiterated its stance that if at any time they are of the opinion that there is a health, safety or welfare concern involved, the PE Board is required to, and will, pursue immediate action. Both Boards agreed to this plan of action.

Mr. Timms brought up the problem of many WV licensed architects directing engineers not to seal the work they do for the architect. Mr. Timms quickly pointed out that while this may be acceptable under the architect's law, it is illegal under the statute by which WV PEs must operate. Licensed Professional Engineers are required to seal their work. The WV PE Board is addressing this issue with licensees who don't seal their work and requested the Architects Board publish an article on this in their next newsletter.

At the end of the meeting, the group summarized the following agreements:

- To work together on common issues and share more information between the Boards.
- To review the 1995 edition of the publication entitled "Handbook for Building Officials", developed as a joint gentlemen's agreement between the two Boards, to determine if updates were needed. It was pointed out that the "Professional Use of Seals" brochure was published as a joint effort last year in an effort to accomplish this very update and should be the item reviewed to ensure that it captured the essence of the original document.
- The Architects' Board would communicate that engineers are required to seal the work performed by them and the architect cannot direct otherwise.

- Ms. Hamilton would talk to the Deputy Attorney General over boards to discuss assistance for the Architects' Board.

The WV PE Board continued their meeting after the departure of the Architects' Board representatives. The Board directed Ms. Hamilton to draft a letter to the Architects' Board summarizing the expectations on the Architect Board's investigation of the plans given to them at the meeting, as well as defining the future cooperative plans between the two agencies.

The Board directed Mr. Johnson to obtain a complete set of drawings on the building in question in Bridgeport.

Upon motion by Mr. Robinson, seconded by Mr. Plymale, the meeting adjourned at 4:15 p.m. The Board members will be compensated one day per diem plus travel expenses.

Leonard J. Timms, Jr., P.E.
Board President

Bhajan S. Saluja, P.E.
Board Secretary