



Oregon

**State Board of Examiners for
Engineering & Land Surveying**

670 Hawthorne Ave. SE, Suite 220

Salem, OR 97301

(503) 362-2666

Fax (503) 362-5454

E-mail: osbeels@osbeels.org

LAW ENFORCEMENT COMMITTEE

Meeting Summary

December 11, 2008

Members Present:

Dan Linscheid, Chair

Ed Butts

Grant Davis

Ken Hoffine

Staff Present:

Mari Lopez

Jennifer Gilbert

James R. (JR) Wilkinson

Allen McCartt

Others Present:

Joanna Tucker-Davis, AAG

Katharine Lozano, AAG

The meeting was called to order at 11:00 a.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Ave. SE, Suite 220, Salem, OR 97301.

Chair Linscheid announced that three informal conferences were scheduled prior to the meeting of the Law Enforcement Committee (LEC). The LEC make their recommendations as below.

Informal Conferences

2453

The respondent an EIT and the respondent's attorney met with the LEC for an informal conference via telephone on December 3, 2008. The LEC issued the respondent a Notice of Intent to Assess a Civil Penalty of \$1,000 for violating the "resident engineer" requirement of the Oregon Administrative Rule (OAR) 820-010-0616(2), which was the predecessor to OAR 820-010-0720. The investigation began when the complainant alleged that the respondent misrepresented them self as a professional engineer in two news articles. The investigation revealed that the articles' authors misrepresented the respondent's qualifications, so the allegations were unfounded. However, evidence was obtained during the course of the investigation to show that the respondent submitted an application on October 28, 1999, to the Oregon Office of Minority, Women, and Emerging Small Business (OMWESB) requesting

certification to perform engineering services without having a professional engineer in responsible charge.

The respondent's attorney noted that the application was old and was not an offer to practice engineering to the OMWESB, but was an application for a certification program they administer and for a certification they might bestow. The OMWESB denied the respondent's certification request to offer engineering services, but issued her certifications for graphic design, AutoCAD, construction management, and other "non-engineering" services. After some discussion, the LEC inquired of the respondent as to the name of the "resident" engineer on staff at the time of the OMWESB application. The respondent named a PE stating they had worked together at another engineering firm that was shutting down. Once closed, the PE helped the respondent start the engineering firm in September 1999. The engineering firm became a subconsultant to the contractor on the Tri-Met "Max" project. The respondent worked under the supervision of various registrants. Further discussion did not result in a settlement, so the LEC determined additional investigation.

2464

The respondent was represented by an attorney in an informal conference with the LEC on December 11, 2008. The LEC issued the respondent a Notice of Intent to Assess a \$3,000 Civil Penalty for the unlicensed practice of engineering violating Oregon Revised Statute (ORS) 672.007(1)(a),(c). The respondent worked for T-Mobile and prepared documents for a T-Mobile permit application to the City of Springfield to construct a 120-foot steel monopole wireless communication facility within an existing shopping center. The Springfield Development Code 32.130 required engineering reports to satisfy specific code sections. The respondent signed two permit application documents as a "RF Engineer" and the City denied the application in part due to the respondent not being a registered engineer. T-Mobile did not appeal the decision.

The respondent's attorney noted that T-Mobile is committed to conducting their business in Oregon in full compliance with the law. Some of the statutes are not entirely clear about what types of activities are covered by the engineering laws. T-Mobile asserted that the respondent did not violate the ORS 672. To the extent that the respondent was doing engineering activities, he was covered by the exception under the ORS 672.060(6). T-Mobile respectively disagreed with the imposition of the fine and the conclusion that his behavior is subject to discipline. The discussion turned to what prompted the complaint and to what T-Mobile and its employees can do to avoid future violations.

The core issue was that the City of Springfield required an engineer's statement to satisfy two code requirements. In particular, one requirement was for a statement on the safety of the installation regarding radio frequency emissions. To comply with the code requirement, the respondent submitted a letter as "RF Engineer" on T-Mobile letterhead concluding the emissions were safe by providing supporting calculations. Thus, the respondent practiced engineering and represented himself as an engineer. In response to a second code requirement, the respondent signed a letter as "RF Engineer" regarding the need for the facility. However, the LEC determined that the letter was not the practice of engineering, but that the respondent had used the reserved title "engineer."

The LEC noted that T-Mobile can use the title of “RF Engineer” as an in-house designation, but in Oregon a non-registrant using the engineer title in the public realm is prohibited. The Board has imposed fines where a person calls themselves an engineer when they are not registered as required by the ORS 672.020. The respondent’s attorney observed that T-Mobile operates in every state and this is the first instance where disciplinary action has been initiated against an employee for using “RF Engineer.” In reply, it was pointed out that the use of the title is considered by statute the practice of engineering (ORS 672.007(1)(a)). The respondent’s attorney continued that there is not much case law to help T-Mobile understand the law.

The LEC offered the respondent’s attorney a settlement agreement. During a break, the respondent’s attorney checked with corporate headquarters and the terms were not acceptable. After additional discussion, the LEC determined that further investigation was needed.

2502

The respondent a PLS and his attorney met with the LEC in an informal conference on December 11, 2008. The LEC issued the respondent a Notice of Intent to Revoke Registration and Assess a \$9,000 civil penalty for violating the ORS 209.250(1) and (4)(b), the ORS 672.025(2), the ORS 672.200(2) and (4), the OAR 820-010-0621(1) and (2), the OAR 820-020-0015(2) and (10), the OAR 820-020-0025(1), and the OAR 820-030-0060. The LEC found that the respondent had failed to file a map of survey within 45-days of setting monuments, failed to return two corrected maps of survey within 30-days, failed to properly seal and/or sign five final documents, and improperly prepared a boundary description.

The respondent’s attorney acknowledged that the violations occurred given the circumstances. He continued that the complaint did not come from clients and a loss of confidence in the respondent or in the profession. The respondent is a member of the Professional Land Surveyors of Oregon (PLSO) and supports increased oversight and education. The respondent’s attorney then itemized the respondent’s circumstances relative to each allegation. For example, the respondent takes responsibility for a staff surveyor who while under his employ made mistakes on a lot line adjustment. The lot line adjustment has been properly prepared and submitted. In another instance, the client refused to pay for the map of survey despite the respondent’s repeated attempts to seek payment. Regardless, the respondent understood that the map needed to be filed and has submitted a map to rectify the situation. On other allegations, the respondent has signed the tentative plans, but asserted that the common practice in the area was not to sign tentative plans. The respondent’s attorney concluded there were no continuing violations as the respondent is committed to resolving the matter.

The LEC expressed concern about the respondent’s statement that as the elected County Surveyor he would continue to operate his private practice (takes oath of office on January 5, 2009). It appears a conflict of interest in that the respondent would review as County Surveyor his firm’s maps of survey for compliance to ORS 209.250. In reply, the respondent’s attorney described an agreement wherein the respondent released economic interest to his employees and hired a full-time registered surveyor. Any maps of survey the firm prepared would be reviewed by the neighboring County Surveyor. By releasing economic interest, the respondent would not have a conflict. The respondent added that he built the business and it would be difficult to close and discharge his employees. After additional discussion, the respondent’s attorney noted that

the respondent changed his business practices by hiring a registrant, by handing control over to his employees, and by the neighboring County reviews.

Upon conferring, the LEC entered into a settlement agreement with the respondent wherein the OSBEELS would drop the revocation action and, in turn, the respondent would agree to the violations, pay a \$3,000 civil penalty, and acknowledge the conflict of interest prohibitions established by the OAR 820-020-0030(3) and related rules. **The LEC recommended that the Board approve the settlement agreement with the respondent.**

Cases Reviewed

2437

The complainant, a former Mayor of a city in Oregon, alleged that the respondent a PE was negligent by failing to retain records in a manner that would be client accessible according to the OAR 166-200-0105(4)(5)(6)(9), Public Works-Engineering Records, and was unprofessional in his conduct to the City according to the OAR 820-020-0010(4). The respondent responded that their contract with the City from 1985 until 2004 did not require the engineering firm to maintain records for the City's use. However, the engineering firm provided the documents upon City request and reimbursement. **The LEC recommended closing the case as Board lacks jurisdiction and allegations are unfounded.**

2443

The complainant was a former County Building Official who alleged that the client of the respondent, "had to hire another engineer" in order to complete an engineering project. However, the complainant did not provide any description of the allegation other than to provide a copy of his plan review letter dated April 25, 2005, along with calculations and plans sealed and signed by the respondent. The respondent then revised his plans and calculations for independent review. Since the complainant was no longer employed as the Building Official, the investigation found a subsequent review letter signed by another County Building Official. The second review letter showed that the respondent had continued problems conforming to the provisions of the Oregon State Structural Specialty Code. The LEC determined to issue the respondent a Notice of Intent to Revoke Registration for violating the ORS 672.200(2),(4), the OAR 820-020-0015(2), and the OAR 820-020-0020(1),(2) for negligence or incompetence in the practice of engineering.

2456

The complaint against the respondent a PE came from law enforcement cases #2426 and #2427 where two other individuals were investigated for the unlicensed practice of engineering. At the time of the initial investigation, the two individuals worked in a San Diego engineering office and under the supervision and control of the respondent. The initial investigation against the two individuals was closed as board lacks jurisdiction. However, the investigation against the respondent found that he was in responsible charge of the project and had neglected to seal and sign the final report. The LEC found that the respondent admitted his mistake and took

immediate steps to seal and sign the final report. **The LEC recommended closing the case by sending the respondent a letter of concern regarding the seal and sign requirement of final documents under OAR 820-010-0621(1).**

2460

The complainant a PE alleged that the respondent a PE failed to seal and sign specifications on the replacement of two HVAC systems prepared for a School District Invitation to Bid (ITB). The School Board had appointed the respondent as the engineer to outline the specifications for the replacement of the HVAC systems; however, the published versions prepared by the respondent lacked his seal and signature as required by the OAR 820-010-0621(1). When notified of the deficiency, the respondent prepared a second specification set that then lacked his expiration date violating the OAR 802-010-0620(2). The LEC determined to issue the respondent a Notice of Intent to Assess a \$3,000 Civil Penalty for violating the ORS 672.020, the OAR 820-010-0620(2), (4), the OAR 820-010-0621(1), (2), and the OAR 820-020-0015(9),(10) for failing to properly seal and sign final engineering documents.

2470

The complainant a PE alleged that the respondent a PE modified and affixed his stamp, signature, and company logo to mechanical and plumbing documents the complainant prepared for a project. The respondent sealed the complainant's documents to show design modifications on five seismic restraint structural drawings. The respondent claimed that his modifications and his seal and signature appear in red to indicate the additions to the drawings. He also wrote that his seal and signature are always placed within the seismic restraint legend to indicate the portion of the project he is responsible for creating. However, the OAR 820-010-0622(1)(c) requires a registrant who is modifying another professional engineer's design or document to cloud, encircle, or in some other way clearly indicate that portion of the design or document they are changing or revising. The engineer also is to refer the reviewer to a separate design or document. The respondent's additions were not clearly indicated and caused confusion. The LEC determined to issue the respondent a Notice of Intent to Assess a \$3,000 Civil Penalty for violating the OAR 820-010-0622(1)(c) and the OAR 820-010-0623.

2477

The complainant a PE alleged that the respondent a PE used an electronic signature to sign engineering plans not associated with matters in case #2460. Regardless, the investigation found that the plan set contained 48 sheets each sealed and signed with an identical signature. The respondent noted that other firms had sent electronic signatures on plans in PDF format and he assumed that it was allowed. However, the rule allowing digital signatures (OAR 820-010-0620(5)) became effective July 9, 2008. Prior to the rule change, registrants were required to "wet sign" engineering documents. The LEC determined to merge this allegation with the Notice of Intent authorized by case #2460 for violating the OAR 820-010-0620(4) for failing to properly sign a final document.

2478

The complainant hired the respondent a PLS to stake two adjacent lots. The respondent completed the project. Approximately a year later, the complainant sold one lot and it was found that the respondent had made a 19-foot mistake in staking a property corner. The complainant stated that the respondent had agreed to correct the mistake and pay the cost for a lot line adjustment. However, the respondent has not corrected the mistake or filed the paperwork. The respondent has been unresponsive to investigator inquiries. The LEC found that the respondent was negligent or incompetent in land surveying and determined to issue him a Notice of Intent to Revoke Registration and Assess a \$2,000 Civil Penalty for violating the OAR 820-020-0025(1) and the OAR 820-020-0015(8).

2513

The respondent a PE (retired) contacted the Board about reactivating his retired professional engineer registration. In the course of discussion, the respondent indicated that he had engaged in the practice of engineering during retirement. The respondent then wrote the Board explaining his belief that as a retiree he was still licensed to practice part-time. In response to a Board inquiry, the respondent identified 26 clients for whom he had performed engineering services. The LEC found that the respondent had engaged in the practice of engineering while in retirement status and determined to issue the respondent a Notice of Intent to Assess a \$1,000 Civil Penalty for violating the ORS 672.020 and the OAR 820-010-0520.

2540

The respondent is a construction contractor who used a handheld GPS unit to conduct an “unofficial survey” of a Marion County property. The respondent is not registered with the Board, but invoiced his client \$2,000 and an adjoining neighbor for \$2,400 for his work. Later, the adjoining property owner hired a PLS to complete a survey of his property. The PLS found the respondent was in error by 11 feet. The respondent stated he was a licensed contractor who never represented himself a surveyor. As shown by the invoices, he was “very explicit” in stating that his survey was “unofficial.” He was firm that all he did was “beat down brush” and dig around to find existing fence lines. However, the LEC found that the respondent had engaged in the unlicensed practice of land surveying and determined to issue him a Notice of Intent to Assess a \$2,000 Civil Penalty for violating the ORS 672.025(1).

New Business

Unemployment Claims: Expert Reviewers

The LEC discussed including language in the Request for Qualifications for Professional Reviewers and Expert Witnesses (RFQ). An approved professional reviewer filed an unemployment claim at the conclusion of his expert review. The Board notified the Employment Division that the reviewer was not hired as an employee, but as a contractor. The LEC determined to modify the RFQ to include language explicitly stating that a reviewer is a contractor and is not eligible for unemployment benefits at the conclusion of their review.

Revisions to Professional Reviewer and Expert Witness Selection Procedures

The LEC discussed modifying the *Professional Reviewer and Expert Witness Selection Procedures* to outline the steps to remove a reviewer from the Board approved provider list. **The LEC reviewed the proposed language and determined to add the provisions to the Procedures.**

Linscheid letter regarding Mill Creek Lane Road

This letter was provided for informational purposes only and was not discussed.

Investigator memorandum: Concern of ads on PLSO Web Site

Board investigators received an inquiry regarding the placement of two ads on the Professional Land Surveyors of Oregon (PLSO) Web site. The preliminary investigation showed that one ad was for an unlicensed person seeking employment and the other was for a person offering their scrivener services. Both ads have expired and were not renewed. The LEC determined that the allegations did not warrant opening a law enforcement cases.

Investigator memorandum: Concern regarding non-licensed personnel using “engineer”

Board investigators received an inquiry regarding a person who used the title of Design Engineer in email correspondence. The preliminary investigation showed that upon being informed of the violation the person had changed the signature title by the time of the investigation. A copy of the business card confirmed that they were not using the title of “engineer.” The LEC determined that the allegation did not warrant opening a law enforcement case.

Law Enforcement Flow Chart: Revisions

During a staff review of the Law Enforcement Flow Chart, it was found that the Chart would be clarified if it showed the additional connection between the LEC and further investigation and the subject matter expert. A footnote was also added to clarify that the respondent is not notified if a preliminary investigation resulted in an insufficient complaint. **The LEC reviewed the proposed changes and determined to modify the Chart.**

Anonymous complaint

Board investigators received an anonymous complaint regarding a PLS. The PLS was arrested and booked into a County Adult Corrections facility for various charges involving domestic violence. The investigation revealed that for revocation the ORS 672.200(3) requires the conviction to involve “the practice of engineering or land surveying.” Furthermore, a similar restriction is found in the OAR 820-020-0015(6). As a result, the LEC determined that the allegations did not warrant opening a law enforcement case.

Unfinished Business

Update on 2466

Staff updated the LEC by informing that the public records request from the Oregon State Board of Geologist Examiners was received and inventoried. However, a case summary has not been prepared.

Update on 2332

Staff informed the LEC that this case is related to law enforcement case #2443 in that the complainant is unavailable. No further action was discussed.

Settlement Agreement Monitoring

LEC Cases Subject to Monitoring and LEC Cases Subject to Collections:

The LEC reviewed the LEC Cases Subject to Monitoring and the LEC Cases Subject to Collections and offered no comments.

Case Status Report

The Committee briefly reviewed the case status list.

The meeting adjourned at approximately 12:35 p.m.