



June 24, 2021

Mr. Mustaque Rumi, P.E., PMP, RAS
Chief Engineer
Engineering & Capital Projects Department
Metropolitan Transit Authority of Harris County
1900 Main Street
Houston, TX 77002

Policy Advisory Opinion Request No. 55

Re: Formal Response to Request for Policy Advisory Opinion Request Regarding The Extent of the Utilities Exemption in the Texas Engineering Practice Act

Dear Mr. Rumi:

The Texas Board of Professional Engineers and Land Surveyors (Board) met in public session on May 27, 2021 and approved this response to the referenced request dated September 16, 2020.

Request:

Mr. Jose Castellanos with the Metropolitan Transit Authority of Harris County (METRO) seeks guidance on the following issues:

- Does the exemption for Employees of Certain Utilities or Affiliates contained in the Texas Engineering Practice Act preclude a utility company from having to sign and seal engineering plans if sealed plans are requested by a public transportation agency?

The Board understands Mr. Castellanos has left METRO since the request was submitted and the contact person for this request is now Mr. Mustaque Rumi with METRO.

Background:

The Policy Advisory Opinion process allows the Board to issue interpretations of the Texas Engineering Practice Act (the Act) [Texas Occupations Code, Chapter 1001] and Board Rules to address specific questions. The committee reviewed this request and determined that it can be answered by reference to the existing language of the Act.

Based on your request, it is the Board's understanding that METRO owns a transit corridor that is 500 feet wide and approximately 26 miles long. The Board further understands that METRO intends to one day build a light rail transit system within this corridor.

It is the Board's understanding that there is not an established utility easement or other such mechanism currently in place to authorize a utility company to cross the transit corridor. As such, each time a utility company needs to cross this corridor via underground or aerial crossings, METRO negotiates a new lease agreement with the company for the crossing.

The Board further understands that as part of its standard lease agreement, METRO normally requires that the engineering plans associated with the utility crossings be signed and sealed by a professional engineer licensed in the State of Texas. It is the Board's understanding that a utility company has argued that Section 1001.058 of the Act, relating to Employees of Certain Utilities or Affiliates, exempts them from being required to provide plans signed and sealed by a professional engineer.

Response:

Section 1001.058 of the Act exempts certain employees of utilities from the need to be licensed. However, based on the Board's understanding of the request, the issue at hand is not directly related to Section 1001.058 of the Act, rather the negotiation of agreements between local jurisdictions and utility companies.

The Board does not have jurisdiction or authority over the content or format of agreements between jurisdictions responsible for Right of Way, Corridor, and Easement management and utility companies and does not involve itself in contract negotiations to which it is not a party. Based on the Board's understanding that an easement or lease is not already in place, it is the Board's opinion that a political subdivision, such as METRO, can include conditions in a lease as long as they are not less restrictive than the requirements in the Act or Board rules. As such, if METRO wishes to include a requirement of signed and sealed engineering plans in its agreement, this requirement would not conflict with the Act.

Stakeholder Feedback:

To solicit feedback from stakeholders and interested parties, the Board published a draft version of this response in March 2021 in both the Texas Register and on the Board's website for a 30-day comment period. One comment was received supporting the proposed response.

Conclusion:

No new Policy Advisory Opinion will be developed for this request. The Board is basing its response on the details of this specific scenario, as detailed by the requestor and this response is only applicable to this request. This response shall not be expanded or applied to any other fact patterns.

Thank you for your support of the policy advisory opinion process. If you have any questions, please contact Mr. Michael Sims, P.E., Director of Compliance & Enforcement at (512) 440-7723.

Sincerely,



Lance Kinney, P.E.
Executive Director

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