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ATTORNEYS AT LAW

May 22, 2013

Mr. Barry Hipp  
Senior Director, District Operations  
Cleburne Independent School District  
505 North Ridgeway, Suite 100  
Cleburne, Texas 76033

VIA EMAIL DELIVERY

RE: Texas Engineering Practice Act

Dear Mr. Hipp:

This is in response the Cleburne Independent School District's ("District") request for an opinion on the applicability of the Texas Engineering Practice Act ("Act"), Texas Occupations Code Chapter 1001, to certain District construction projects. Specifically, the District asked if the Act applied to "civil" construction projects (highways, streets, roads, paving and concrete flatwork such as sidewalks) as well as buildings. In my opinion, subject to the exceptions describe below, the Act applies to all construction projects undertaken by the District, both civil and buildings.

Section 1001.407 of the Engineering Practice Act provides:

**CONSTRUCTION OF CERTAIN PUBLIC WORKS.** The state or a political subdivision of the state may not construct a public work involving engineering in which the public health, welfare, or safety is involved, unless:

- (1) the engineering plans, specifications, and estimates have been prepared by an engineer; and
- (2) the engineering construction is to be performed under the direct supervision of an engineer.

Exceptions are set out in section 1001.053 of the Act which provides:

**PUBLIC WORKS.** The following work is exempt from this chapter:

- (1) a public work that involves electrical or mechanical engineering, if the contemplated expense for the completed project is \$8,000 or less;

- (2) a public work that does not involve electrical or mechanical engineering, if the contemplated expense for the completed project is \$20,000 or less; or
- (3) road maintenance or improvement undertaken by the commissioners court of a county.

Under established rules of statutory construction, when an exception is expressly provided in a statute, it is understood that no other exceptions apply. Accordingly, the exception for “road maintenance or improvement undertaken by the commissioner’s court of a county” means that civil construction by other governmental entities are subject to the requirements of the Engineering Practice Act.

The Engineering Practice Act does not define “public work”, but the term is defined in a number of other Texas statutes. Some of those statutes are cited below.

Government Code section 2258.002, governing the payment of prevailing wages by governmental entities, provides: “This chapter applies only to the construction of a public work, including buildings, highway, road, excavation, and repair work or other project development or improvement, paid in whole or in part from public funds, without regard to whether the work is done under public supervision or direction.”

Government Code section 2267.001, governing the procurement of construction services by political subdivision, including school districts, defines a public work contract as “a contract for constructing, altering, repairing a public building or carrying out or completing any public work.” The clear intent of this language is not to limit a public work to buildings.

Government Code section 605.001, Eight-Hour Workday for Certain Public Works, mandates an eight-hour work day for anyone employed by the state or a political subdivision for the “construction, repair, or improvement of a building, bridge, road highway, stream, or levee or other similar work.”

Government Code section 2166.259, Small Contractor Participation Assistance Program, defines a “Public works project” as “a construction project designed to serve the public necessity, use, or convenience that is undertaken by the [Texas Facilities Commission], including a project for the construction, alteration, or repair of a building”.

Local Government Code section 271.024, setting out the requirements for competitive bidding on certain public works projects describes those projects as ‘construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property.’”

Utility Code section 104.112, permitting utilities to recover relocation cost, applies to the cost to relocate utilities to “accommodate construction or improvement of a highway, road, street, public way or other public work.”

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Water Code section 5.515 authorizes the Texas Commission on Environmental Quality to authorize emergency action for a “public works project needed to repair or replace a damaged road, bridge, or other infrastructure improvement destroyed during a catastrophe.”

Water Code section 15.602 defines public works as “any project to acquire, construct, improve repair or otherwise provide any buildings, structures, facilities, equipment or other real or personal property improvements designed for public use, protection or enjoyment undertaken by a political subdivision and paid for, in whole or in part, out of public funds.”

Water Code section 60.402 provides that a public works contract is one for the “construction, repair, or renovation of a structure, road, highway or other improvement or addition to real property.”

These statutes demonstrate the clear intent of the Texas Legislature that “public works” include both civil projects and buildings.

In addition to the statutes, there are a number of reported court cases and Texas attorney general opinions finding that civil projects are “public works”. In a recent case, the Texas Supreme Court wrote: “Design of any public work, such as a roadway, is a discretionary function” of the governmental entity. *State v. Rodriguez*, 985 S.W. 2d 83, 85 (Tex. 1999).

In conclusion, in my opinion, the term “public work” includes civil projects as well as buildings and the District is required to engage an engineer for any project involving engineering unless the value of the project is less than the values set out in Texas Occupations Code section 1001.

Very truly yours



GEORGE E. GRIMES, JR.

GEG/pam