

Minutes

Arizona State Board of Technical Registration
LEGISLATION AND RULES COMMITTEE
1110 W. Washington Street, Suite 240
Phoenix, Arizona 85007
Tuesday, February 20, 2018 – 10:30 A.M.

1. CALL TO ORDER – 10:30am

2. **ROLL CALL – Present:** William Greenslade, Edward Marley (telephonic), LeRoy Brady, Jason Foose (telephonic), Peter Leeds **Not Present:** Robert Stanley
Staff: Melissa Cornelius, Douglas Parlin, Robert Stam, Kurt Winter
A.A.G.: Scott Donald

3. CALL TO THE PUBLIC

No one appeared before the Committee

4. ADOPTION OF MINUTES

Review, Consideration and Possible Action of the following:

A. Approve, modify and/or reject February 21, 2017 L&R Committee minutes.

Mr. Greenslade moved and Mr. Marley seconded to approve the minutes; motion carried.
Mr. Leeds abstained.

5. REVIEW, DISCUSSION AND POSSIBLE ACTION ON THE FOLLOWING:

A. AZBTR Substantive Policy Statement 17, “Whether acting as an expert witness constitutes “engineering practice” under Arizona statutes”, issued 10/24/2017

Ms. Cornelius explained that this issue was before the Committee at the request of the Attorney General’s Office. Mr. Donald explained that the Board issued the substantive policy statement after long discussion and the Board asked that the L&R Committee review the policy statement.

Mr. Greenslade stated that he agreed with the Board that, when reading the Board’s Practice Act, acting as an expert witness required registration but also agreed with the Board that there were other factors to be considered. Mr. Foose asked Mr. Donald to clarify what was a substantive policy statement. Mr. Donald obliged and further stated he would be willing to give the Committee legal advice. Mr. Greenslade asked that if a witness testified in court as a professional engineer, and the witness was not registered in Arizona, would they be in violation of the Board’s Practice Act and had such a case come before the Board. Mr. Donald answered that the witness would be in violation and, to his knowledge, no such case had yet come before the Board. Ms. Cornelius asked Mr. Foose

to recollect the October 2017 Board Meeting for the Committee. Mr. Foose recalled that the Department of Transportation's was concerned that out of state expert witnesses could potentially sway a jury by disregarding local knowledge and policies, to the financial detriment of the people of Arizona. Mr. Marley, after reviewing the October 2017 Board Meeting minutes, asked if there was material or case examples for them to review to better understand the affect the policy statement had made. Mr. Brady asked for vote to move into executive session.

Mr. Leeds moved and Mr. Greenslade seconded for the Committee to enter Executive Session to receive legal advice; motion carried.

The Committee entered Executive session at 10:48am. The Committee reentered open session at 10:57am.

Mr. Greenslade stated that the policy statement might leave the Board open to litigation. He therefore expressed his belief that the Committee recommend to the Board that it rescind the policy statement. Mr. Marley agreed and opined that a jury had the responsibility to conclude which expert witness, on either side, was more knowledgeable. Mr. Leeds agreed stating the courts should have the final say in choice of expert witnesses.

Mr. Marley moved and Mr. Foose seconded to refer this matter back to the Board and recommend the Board rescind the substantive policy statement; motion carried.

B. Submitted question concerning Architects stamping previously reviewed shop drawings.

Mr. Marley opined that it was up to the registrant's discretion whether to stamp an already reviewed shop drawing, stating he had done so himself. Ms. Cornelius asked if shop drawings were different from plan drawings. Mr. Marley answered that they were different; designers created shop drawings and the registrant would review them to make sure they complied with their plans. Mr. Greenslade pointed out that the submitted question asked if statute required architects to affix a shop-drawing review stamp. Mr. Greenslade stated that there wasn't a statute requirement. Mr. Marley agreed.

C. Submitted question regarding Land Surveyor exceptions regarding ADOT related surveys

Mr. Leeds asked if there was a statute or rule that gave exemption to ADOT employed land surveyors. Ms. Cornelius answered 'no'. Mr. Greenslade stated that the submitter wanted to know if ADOT employed land surveyors needed to submit their surveys to the recorder. Mr. Greenslade opined that 'yes' they were required to record their surveys. Mr. Leeds agreed stating he did not understand why they would not record their surveys. Mr. Greenslade stated that the Board could not take action without a complaint. Ms. Cornelius agreed and stated that the Committee communicate with the submitter to file a complaint with the Board if he felt a violation had taken place.

After discussion of agenda item 5d, Mr. Foose asked to further discuss agenda item 5c. The Committee agreed to return to agenda item 5c for discussion.

Mr. Foose indicated that the Committee should discuss ARS 33-105(A)(1) since it may indicate that there are other ways in which a survey may be recorded other than with a county recorder. Mr. Greenslade asked Mr. Foose to write a 'white paper' for further analysis of this issue for the Committee to review and discuss at a subsequent meeting. Mr. Foose stated he would write an analysis. Mr. Leeds suggested having the submitter do the analysis. Michelle Guy, a member of the public, stated that the language of ARS 33-105(A)(1) indicated that a survey did not need to be recorded if it mirrored an already recorded survey.

D. School Facilities Board question regarding whether contractors and/or unlicensed designers can design public schools

Mr. Marley stated that, to perform professional work on public works, an individual must register with the Board. Mr. Leeds stated that the question the submitter asked was whether the Board required a design build firm with an in house architect to register. Mr. Marley stated that he knew of two construction firms with in-house architects and both firms registered with the Board. Mr. Marley asked the Committee to consider drafting a substantive policy statement that would specify that design build firms needed to register with the Board if they performed professional services and have a registrant on staff. Mr. Donald stated that he would look into the matter.

Mr. Greenslade asked for clarification regarding what the submitter wanted the Committee do with his question. Ms. Cornelius explained that the submitter knew the answer to the question, but wanted the answer in writing. The Committee directed staff to communicate with the submitter and ask them to request a legal opinion from their AG.

E. Update regarding the Board's proposed rules

Mr. Marley expressed concern that there might be issues with part 9 of the Final Notice of Rulemaking regarding SB1436. Ms. Cornelius stated that the changes proposed in SB1436 would supersede any of the Boards proposed rule changes and therefore there was no issue. Mr. Leeds indicated there was a typo on page 7.

Ms. Cornelius reported that the HIRSC submitted the only public comment for the Notice of Proposed Rulemaking; that at its last meeting the Board voted to make the changes submitted by the HIRSC and have the rules package submitted to GRRC.

F. Submitted question regarding Designers of Engineering Systems Licensure

Mark Habermann appeared before the Committee and provided materials for the Committee to consider. Mr. Habermann asked that the Committee consider licensing designers of engineering systems in a similar manner as the state of Wisconsin. Ms. Cornelius asked Mr. Habermann if the exam for licensure in Wisconsin was state run. Mr. Habermann did not know the answer. Ms. Cornelius explained that the Board traditionally utilized national exams. Mr. Marley opined that the current government was more in favor of deregulation than creating additional regulation. Mr. Greenslade agreed and stated that a group seeking licensure needed to state their case to the legislature, and that the Board cannot advocate on the group's behalf. Mr. Leeds opined that this was not the correct forum for discussion. Mr. Habermann explained that he had communicated

with his representative, but was hoping for support from the Committee. Ms. Cornelius stated that the Board could support the group, but not advocate on their behalf.

6. **FUTURE AGENDA ITEMS** – 5c

7. **FUTURE MEETINGS** – No future meeting date at this time

8. **ADJOURNMENT** – 11:43am

Edward Marley, Chairman

A handwritten signature in black ink, appearing to be 'E. Marley', written over a horizontal line.