

June 10, 2016

Attorney General Ken Paxton
Office of the Attorney General
300 W. 15th Street
Austin, TX 78701

Mr. William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Post Office Box 12157
Austin, Texas 78711

Mr. Lance Kinney, PhD, P.E. Executive Director
Mr. C.W. Clark, P.E., Director of Compliance & Enforcement
Texas Board of Professional Engineers
1917 S Interstate 35,
Austin, TX 78741

Dear Attorney General Paxton, Executive Director Kuntz and Executive Director Kinney:

Our goal with this letter is to address professional engineering evaluations and Texas Building Official/TDI's acceptance of professional engineering work by any [Texas professional engineer](#), in the context of Texas law that we are aware of.

Texas Building Official and TDI Superseding a Texas Professional Engineer's Decision Making Process

Our membership has been involved with statements from Texas Building Officials and members of the TDI staff that take on the following tone:

1. We do not take PEs at their word, I can tell you we have so many PEs that will stamp anything.....
2. Either you are going to provide _____ [this is specific to test data and/or proprietary product intellectual property (IP)] or _____ [implication was approval denied].
3. I'm telling you again; you are either going to provide _____ testing or you do not have them as far as we are concerned.
4. We are not taking a PE stamp with a blatant statement that you've got _____ testing, we are going to assure that you have a _____ test report; the only way I can do that is to see _____ test report.
5. I've never been allowed to see _____ test report and all I've got is a piece of paper with a P.E. stamp on it.
6. All these statements have been made in a manner to "encourage" providing proprietary IP, test data or to strongly suggest that the only way to get an approval is to have an ICC or ICC-ES report. The consequence is denied approval.
 - a. The fact is that building officials are members of ICC.
 - i. "The ICC was created in 2003 from the merger of three regional code councils: Building Officials and Code Administrators International, Southern Building Code Congress International and the International Conference of Building Officials. As a result of the merger, International Code Council, Inc. is the sole statutory member of ICC Evaluation Service, Inc. ("ICC-ES"), International Accreditation Services, Inc.

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("IAS") and International Code Council Foundation, Inc. ("ICCF"). Each entity has a separate board, distinct programs, and revenue stream." ([2015 ICC annual report, page 54](#))

- b. In 2014 ICC-ES & ES, LLC contributed \$29.2 million ([2014 ICC annual report, page 67](#)) in assets to ICC.
- c. ICC-ES generates important non-member income to support ICC activities and the overall health of ICC.

Statements 1 through 5 are very unsettling comments to say the least. While it is wished that these types of comments were atypical, it happens to our members more that it should. Clearly, this type of opinion and approach directly affects the [Texas concept of free enterprise and commerce for all products](#). They are also concerning in the context of both professional engineering responsibilities and general professional engineering law.

We assume that if anyone inside the building design, installation and building code plan review/inspection process does not believe a [Texas professional engineer](#) is credible and that person or group has performed the due diligence needed to provide detailed evidence of a [Texas professional engineer law](#) violation, they have every right to provide this information to Mr. Lance Kinney, P.E. of [the Texas Board of Professional Engineers](#) (TBPE) to discuss and take appropriate action as the TBPE sees fit.

We believe professional engineering and the building code are intended to encourage innovation and promote the [Texas concept of free enterprise and commerce for all products](#).

The business logic path then suggests that, in all cases where an [ANSI accredited firm](#) or a [Texas professional engineer](#) is involved,

7. An [ANSI accredited firm](#) or a [Texas professional engineer](#) shall gain immediate Texas building official or TDI approval of a product evaluation, (i.e. [IBC 1703.4.2 Research reports](#)).
8. Any testing undertaken is proprietary IP that has been reviewed and affirmed by an [ANSI ISO/IEC 17065](#) report which is then [IBC section 1703 compliant](#).
9. This approach is intended to certify compliance with the relevant Texas building code or building specifications adopted by the TDI.
10. To amplify:
 - a. The work of an [ANSI accredited firm](#) or a [Texas professional engineer](#) shall be approved by a Texas building official or TDI, unless a Texas building official or TDI, upon denial of this work, provides key provisions of the administrative law, building code, and/or professional engineering law that have not been complied with in writing.
 - i. This includes all specific citations along with commentary on what specifically is in non-compliance with appropriate evidence supporting the item of non-compliance.
 - b. Since the building code and any administrative law is essentially a legal contract, any Texas building official or TDI shall also provide the specific path to cure any deficiency so that the [ANSI accredited firm](#) or a [Texas professional engineer](#) can take specific actions to cure.
 - i. Failure to approve without providing specific actions to cure can be a denial of a professional engineer's license to work in their area of expertise.
 - c. When each deficient element is fully cured in writing, approval shall be granted.
 - d. If not fully cured, approval will remain denied until cured.

This is a review of the Texas Building Code, TDI, Texas Administrative law and Professional Engineering law. Given this review, implementing the use of alternative materials, designs or methods of construction by any group listed on the [ANSI Accredited Product Certification Body website](#) or by any [Texas professional engineer](#) shall be allowed to be used and approved for use by any Texas building official or TDI as systematically defined in item 10 above. The goal is to ensure that all [ANSI 17065 accredited organizations](#) or [Texas professional engineers](#) are treated consistently.

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Please let us know if any of the above information is incorrect. Otherwise SBCA will encourage our members to expect that these concepts are accurate, and SBCA members will take corresponding action and will expect outcomes accordingly as well.

Thank you for your consideration and timely feedback if anything presented is incorrect and any further insight/counsel that can be provided so that SBCA members assuredly comply with Texas laws.

Respectfully yours,



Kirk Grundahl, P.E.
Executive Director
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