

August 16, 2007

**Texas Board of Professional Engineers Policy  
Regarding Conflict of Interest and Compensation.**

A recent enforcement case has prompted the Texas Board of Professional Engineers to provide clarification on the rules regarding notification of a conflict of interest situation. Engineers that act as district engineers for municipal utility districts and developers in the same district are discussed in this policy statement.

**Background:** The Texas Board of Professional Engineers (Board) is providing guidance to the engineering community, governmental entities, and the public regarding the application of rules covering conflict of interest and compensation in the practice of engineering for a situation in which a licensed professional engineer is employed by both a Municipal Utility District (MUD) and a developer who works in the jurisdiction of that MUD, and that the licensed professional engineer performs services for the MUD and the developer on a project within the MUD. This opinion is provided to clarify the Board's interpretation of the rules.

Two rules from the Texas Engineering Practice Act regarding conflict of interest and the acceptance of compensation from multiple parties follow. The relevant language has been copied below:

**§137.57 Engineers Shall be Objective and Truthful**

(c) The engineer shall disclose a possible conflict of interest to a potential or current client or employer upon discovery of the possible conflict.

(d) A conflict of interest exists when an engineer accepts employment when a reasonable probability exists that the engineer's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer. An engineer may accept such an employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing. An engineer in a conflict of interest employment shall maintain the interests of the client and other parties as provided by §137.61 of this title (relating to Engineers Shall Maintain Confidentiality of Clients) and other rules and statutes.

**§137.63 Engineers' Responsibility to the Profession**

(5) accept compensation or benefits from more than one party for services pertaining to the same project or assignment;

**Discussion:** The Board maintains that §137.57 (c) and (d) apply to this situation and that the rule would be satisfied by either action taken in an open meeting of the Board of Directors of the MUD with the consent of the developer or other party who would potentially create the conflict or a written developer reimbursement agreement between the MUD and the developer provided the agreement specifically recognizes that the MUD engineer will provide services in connection with the project.

The Board maintains that engineers are prohibited from being compensated by more than one party for services pertaining to the same project or assignment according to §137.63. However, this does not restrict an engineer from receiving compensation from more than one party for tasks that are separate and distinct within the same project or assignment, that may occur in the development of land within a MUD or from multiple MUDs who agree to hire a single engineer for a joint project.