

OPEN MINUTES
Professional Engineering Division of the
Missouri Board for Architects, Professional Engineers,
Professional Land Surveyors and Landscape Architects

Monday, January 30, 2012, 8:00 A.M.
Lincoln Room
Capitol Plaza Hotel and Convention Center
415 West McCarty
Jefferson City, Missouri

The Professional Engineering Division of the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects was called to order by Mr. Royce Fugate at 8:00 a.m. on Monday, January 30, 2012. A quorum being present, Mr. Fugate declared the meeting open for business.

Members Present

Royce Fugate, Chair of the Division
Kevin Skibiski, Member of the Division

Member Absent

Abiodun "Abe" Adewale, Member of the Division

Others Present

Judy Kempker, Executive Director
Sandra Robinson, Executive Assistant
Kevin Oligschlaeger, Board Investigator
Curt Thompson, General Counsel

To better track the order in which items were taken up on the agenda, each item in the minutes will be listed in the order it was discussed in the meeting.

Approval of Minutes

On motion of Mr. Skibiski and seconded by Mr. Fugate, the minutes for the November 7, 2011 Professional Engineering Division Open Meeting were approved as submitted.

Email inquiry from Paul Woodward regarding fire sprinkler design and Board Rule 20 CSR 2030-13.010 Immediate Personal Supervision

The Division Members discussed the email inquiry from Mr. Paul Woodward regarding fire sprinkler design and Board Rule 20 CSR 2030-13.010 Immediate Personal Supervision. Mr. Woodward specifically asked if the Code of State Regulations (CSR) definition of immediate personal supervision overruled the requirement for a NICET III technician to design fire suppression and/or fire sprinkler systems. Upon discussion, Mr. Skibiski made a motion directing Ms. Kempker to send a letter to Mr. Woodward advising, "No, a NICET III can design a fire suppression system but a professional engineer has to have supervision of the project and must take responsibility of the drawings. NICET III can do shop drawings but a licensed Professional Engineer has to take responsibility of and sign off on the plans. The motion was seconded by Mr. Adewale and unanimously carried.

Please note that at approximately 8:05 a.m., Mr. Adewale joined the meeting,

Election of Division Chair, Exam Chair and PDH Audit Chair

Mr. Skibiski nominated Mr. Fugate for Professional Engineering Division Chair. Mr. Adewale seconded the nomination and it unanimously carried. The Professional Engineering Division Members decided to elect a Vice Chair of the Division. Therefore, Mr. Adewale nominated Mr. Skibiski for Vice Chair of the Professional Engineering Division. Mr. Adewale seconded the nomination and it unanimously carried. Mr. Skibiski nominated Mr. Adewale as Exam Chair for the Professional Engineering Division. Mr. Adewale seconded the nomination and it unanimously carried. Mr. Adewale nominated Mr. Fugate as PDH Audit Chair for the Professional Engineering Division. Mr. Skibiski seconded the nomination and it unanimously carried.

Discussion regarding the January 26, 2012 email from MSPE's Executive Director, Bruce Wylie requesting updates on the following topics:

1. **The standard of care liability issue in current board rules – understanding and agreement to delete the rule?** The comment period ended in December and one comment was received by the Board from Mr. Chris Davis on behalf of AIA Missouri. The comment was in support of the change; however, it was suggested that the amendment be further clarified to reflect the 2012 International Building Code, Section 107 so that there would be a reference to the latest code version. The Division Members reviewed the comment and agreed that the Proposed Amendment should be revised to make reference to the 2012 International Building Code instead of the 2009 version. Mr. Wylie then said Bill Quatman had expressed concern that the Standard of Care rule is a cause for concern and should be rescinded because it misstates the "standard of

care” as set out in Missouri Approved Jury Instructions (MAI) and Missouri case law on the standard of care for design professions. Mr. Quatman and AIA/Missouri urged the Board to repeal 20 CSR 2030-2.040, Standard of Care, for the following reasons: 1) The regulation is inconsistent with section 2.010(3), Missouri court cases and jury instruction; 2) Section 107 of the 2009 IBC relates only to building construction and does not encompass the wide variety of other design services, e.g. bridges, roads, treatment plants, surveys, etc.; 3) Section 107 is titled “Submittal Documents” and is aimed at building officials and the submittal process, rather than on the standard of care for professional practice; and, 4) The standard of care cannot be codified in 2 pages of the IBC, as it requires expert testimony unique to the individual area of practice in questions. The Division Members felt rescission of the rule warranted further discussion and if the Board would later decide to rescind the rule, a Proposed Rescission would need to be promulgated.

2. **Further push to get professors licensed – foreign educated education assessment, how’s it going?** The Board has a procedure that it have been trying to work out with the Universities in getting the facility licensed by providing a separate testing room from the students and requiring the verification of only their most recent four (4) years of engineering experience. In addition, a statutory change was made allowing the waiver of the Professional Engineer exam for individuals with a PhD. The Board is of the opinion that it is important that the Department Heads, Provost, Chancellor and Deans be licensed.
3. **Expert witness services – does it require licensed PE?** As the statute is currently written, testimony as an expert witness in engineering cases does not require licensure as a PE.
4. **Chapter 327 changes – moving selection of Chairman to the Board vs. the Governor, what’s the best language to move into a legislative bill?** It was suggested instead of having 15 members with a separate Board Chair, the number of members be reduced to 14 with the chair serving as both a Division Member and Chair of the Board. It was also decided to revise Section 327.031 to allow for the election of a vice Board Chair. The Board would elect its own chair and vice chair at its first meeting of each even year. The Board Chairperson and Vice Chairperson shall continue to serve as members of their respective divisions with full voting rights within their division. If on August 28, 2012, the term of a chairperson nominated by the governor has not expired, the board shall consist of fifteen members until the expiration of that chairperson’s term.

Motion to Close

At approximately 9:03 a.m., Mr. Fugate then called for a motion to close the meeting to the general public for the purpose of discussing confidential or privileged

communications between this agency and its attorney as well as to discuss pending litigation and complaint matters. Mr. Adewale made a motion that the meeting be closed to the general public pursuant to Chapter 610.021 subsection (14) and 324.001.8 and 324.001.9, RSMo for the purpose of discussing investigative reports, complaints, audits and/or other information pertaining to licensees or applicants; Chapter 610.021 subsection (1) RSMo for the purpose of discussing general legal action, causes of action or litigation and any confidential or privileged communication between this agency and its attorney, and for the purpose of reviewing and approving closed meeting minutes of one or more previous meetings under Chapter 610.021 RSMo which authorizes this agency to go into closed session during those meetings. The motion was seconded by Mr. Skibiski. A roll call vote was taken and the motion unanimously carried. Mr. Fugate asked that all visitors leave the room. Mr. Wylie then departed. After Mr. Wylie's departure, Mr. Fugate then declared the meeting closed to the general public.

Reconvene in Open Session

At 4:23 p.m., the Professional Engineering Division Members reconvened in Open Session for the purpose of adjourning.

Adjournment

There being no further business, on motion of Mr. Skibiski, seconded by Mr. Adewale and unanimously carried, the meeting adjourned at 4:23 p.m.

ATTEST:

Executive Director

Date Approved:_____