



Alabama State Board of Licensure for
Professional Engineers and Land Surveyors

100 N. Union Street, Suite 382
Montgomery, Alabama 36104-3762

Mailing Address:
P.O. Box 304451
Montgomery, AL
36130-4451

Robert J. Bentley
Governor

Regina A. Dinger
Executive Director

January 3, 2014

Phone: (334) 242-5568
Toll Free: (866) 461-7640
Fax: (334)2425105
www.bels.alabama.gov

Mr. Jeffery Neal Lucas, PLS
Attorney At Law
P.O. Box 361606
Birmingham, Alabama 35236

Rule Number: 34-11-1 (9), 34-11-1 (7),
34-11-2 (a & b), 330-X-2-.01(15)
General Question: Does the factual
situation described fall within the
definition of "Responsible Charge"

Dear Mr. Lucas:

This declaratory ruling of the Alabama Board of Licensure for Professional Engineers and Land Surveyors is issued in response to your request.

QUESTION

Although a public utility and its licensed land surveyors are exempt from regulation under Title 34, Chapter 11, in a good faith effort to comply with the spirit of the law and standard surveying practices, would company licensed land surveyors be deemed by the Board as exercising the requisite supervision to be in responsible charge of the land surveying work performed and produced by subcontractors if the public utility treats them as independent subcontractors?

FACTS, LAW, AND ANALYSIS

Section 34-11-14 (2) states "The work of an engineer intern or land surveyor intern, employee, or a subordinate of any person holding a certificate of licensure under this chapter, or any employee of a person practicing lawfully under paragraph b of subdivision (1) of Section 34-11-4, if the work is done under the responsibility and supervision of a person holding a certificate of licensure under this chapter or a person practicing lawfully under paragraph b of subdivision (1) of Section 34-11-4."

Section 34-11-14 (4) states "the practice of engineering or land surveying with respect to transportation or utility facilities by any transportation company or public utility subject to regulation by the Alabama Public Service Commission, the Federal Aviation Administration, the Federal Communications Commission, the Federal Energy Regulatory Commission, or the Nuclear Regulatory Commission, including its parents, affiliates, or subsidiaries; or by the officers and employees of any transportation company or public utility including its parents, affiliates, or subsidiaries. This exception shall not extend to any engineer or land surveyor engaged in the practice of engineering or land surveying whose compensation is based in whole or in part on a fee."

Section 34-11-1(9) Code of Alabama, 1975 defines Responsible Charge as "Direct control and personal supervision of engineering work or land surveying work."

Section 330-X-2-.01(15) of the Board's *Administrative Code* states "the term "Responsible Charge" shall mean direct control, personal supervision of and legal responsibility for the engineering work or land surveying work performed. This responsible charge shall be of such a nature that the client may reasonably presume that the licensed engineer or land surveyor which he has employed is the provider of the professional services. The licensed professional engineer or licensed professional land surveyor providing such control and supervision shall have made decisions on technical matters of policy and design and shall have exercised his or her professional judgment in all engineering or land surveying matters that are embodied in the design and the plans, specifications, land surveys, or other documents involved in the work. By applying his or her seal, and/or signature, and date to the final documents, the licensee signifies compliance with the requirements of these definitions and the Rules of Professional Conduct (Code of Ethics) and accepts responsibility therefore."

CONCLUSION

A public utility that engages in the practice of land surveying for its own purposes meets the requirements for exemption from licensure as stated in Section 34-11-14 (4) Code of Alabama, 1975. In addition, licensed professional land surveyors employed by the public utility to supervise and perform its land surveying activities as needed and necessary fall under the exemption stated in Section 34-11-14 (2).

A licensed professional land surveyor public utility employee can provide oversight of the land surveying activities performed for the public utility by subcontracted licensed professional land surveying companies, their licensed professional land surveyors, as well as any auxiliary personnel needed to assist in the land surveying activities when the oversight meets the requirements of Section 330-X-2-.01(15). In order to meet these requirements the licensed professional land surveyor must make all decisions on technical matters and exercise his or her professional judgment in land surveying matters that are embodied in the land surveys, or other documents involved in the work.

Therefore, it is the opinion of the Board that the factual situation described in which licensed professional land surveyor employees of a public utility provide oversight of subcontractors performing land surveying activities for the public utility meets the definition of "responsible charge" as outlined in the Code of Alabama and the Administrative Code of the Board.



Phillip E. Santora, PLS/PE
Chair