

BEFORE THE ENGINEERING AND LAND SURVEYING EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 97-39
)	DIA NO. 99DOCEL-2
ALVIN H MILLER)	
LS 5227)	AMENDED
TRI-STATE ENGINEERS, PC)	FINDINGS OF FACT,
1919 210TH STREET)	CONCLUSIONS OF LAW,
MANCHESTER IA 52057)	DECISION AND ORDER
)	
RESPONDENT)	

TO: ALVIN H MILLER

On February 18, 1999, the Iowa Engineering and Land Surveying Examining Board (Board) issued a Statement of Charges to Alvin H. Miller, P.E. (Respondent). The Statement of Charges alleged that the Respondent (Count I) failed to comply with a Board decision imposing discipline by practicing land surveying in Iowa contrary to the March 6, 1987 Stipulation and Agreement, in violation of Iowa Code § 272C.3(2)a(1997) and (Count II) is charged with unethical conduct and practices harmful to the public by practicing land surveying in Iowa and holding out to the public as authorized to practice land surveying in Iowa without proper licensure in violation of Iowa Code §§ 542B.1, 542B.21(3), 542B.27 and 193C IAC 4.2(1), 4.8(5).

A Notice of Hearing was issued setting the hearing for May 21, 1999. The hearing was continued to July 14, 1999 at 3:00 p.m. due to the Respondent's health problems.

A prehearing conference was held on July 8, 1999 by telephone conference call. The state submitted the Prehearing Conference Report. The Respondent did not participate in the hearing.

The hearing was held as scheduled on July 14, 1999 at 3:00 p.m. in the conference room at the Iowa Department of Commerce, 1918 S.E. Hulsizer, Ankeny, Iowa. The hearing was open to the public without the Respondent's objection, pursuant to Iowa Code section 272C.6(1)(1997). The Respondent failed to appear and was not represented by counsel. The state was represented by Pamela Griebel, Assistant Attorney General. John M. Priester, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. The following Board members were present for the hearing: Susan M. Long, P.E., Board Chair; Nicholas Konrady, P.E., L.S.; Dwayne Garber, P.E., L.S.; Randall Beavers, P.E.; Terry Martin, P.E.; and Diana Hoogestraat and Susan Albright, public members. The testimony was recorded by a certified court reporter.

After hearing the testimony and examining the exhibits, the Board convened in closed executive session to deliberate its decision, pursuant to Iowa Code section 21.5(1)(f) (1997). The Administrative Law Judge was instructed to prepare the Board's order, in conformance with their deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, State's Prehearing Conference Report, Respondent's Prehearing Conference Report, the testimony of the witnesses, and the following exhibits:

- State's Exhibit A: Proof of Service-restricted, certified mail (March 22, 1999);
- State's Exhibit B: Specification of Charges (June 11 1986);
- State's Exhibit C: Stipulation and Agreement (March 6, 1987);
- State's Exhibit D: Complaint (September 2, 1997);
- State's Exhibit E: Letter to Respondent from Board (December 4, 1997);
- State's Exhibit F: Letter from Respondent to Board (December 16, 1997);
- State's Exhibit G: Letter from Board to Lawrence A. Strickling (June 5, 1998);
- State's Exhibit H: Letter from Respondent to Board (June 15, 1998);
- State's Exhibit I: Letter from Lawrence Strickling to Board (July 4, 1998);
- State's Exhibit J: Letter from Board to Lawrence Strickling (August 3, 1998);
- State's Exhibit K: Letter from Board to Lawrence Boyer (August 3, 1998);
- State's Exhibit L: Letter from Lawrence Strickling to Board (August 11, 1998);
- State's Exhibit M: Consulting Report from Lawrence Boyer (January 16, 1999).

SYNOPSIS

The Respondent, a licensed professional engineer, entered into a Stipulation and Agreement on March 6, 1987, where he agreed not to renew his land surveying registration and never practice land surveying in Iowa in the future. A complaint was filed alleging that the Respondent continued to practice land surveying.

FINDINGS OF FACT

1. On June 16, 1965. the Respondent was issued Iowa professional engineering and land surveying registration number 5227 by the

Board. On March 16, 1987 the Respondent entered into a Stipulation and Agreement with the Board in which he agreed to allow his land surveying license to lapse and he would not reapply nor would he practice land surveying in the future. The Respondent was allowed to continue as a licensed professional engineer and his license is in good standing until December 31, 2000. (State's Exhibit C, Stipulation and Agreement)

2. The Respondent's firm has not had a licensed land surveyor on staff since July 14, 1995. However, the Respondent has represented to the public in telephone advertising that the firm is authorized to perform land surveying work in Iowa. (State's Exhibit D)

3. The Respondent's firm has performed land surveying work as defined in Iowa Code § 542B.2 on various occasions since July 14, 1995. The Respondent has located and determined the correctness of land boundaries and corners, determined the relationship of appurtenances and physical features with land boundaries, placed monuments, prepared descriptions defining land boundaries and easements and represented himself as qualified to perform land surveying in Iowa. (Testimony of Boyer, State's Exhibit M)

4. The Respondent testified that the telephone advertisements concerning his firm's ability to perform land surveying after July 14, 1995 was an oversight on his part. He stated in his letter that he failed to cancel the ads, and once brought to his attention he did modify the ads. The Respondent denied performing land surveying functions - he admitted preparing descriptions of easements, but denied placing monuments nor causing monuments to be placed. (Letter from Respondent to Board, May 4, 1999)

CONCLUSIONS OF LAW

1. "A person shall not engage in the practice of engineering or land surveying in the state unless the person is a licensed professional engineer or a licensed land surveyor . . ." Iowa Code § 542B.1.

2. Iowa Code § 542B.21(3)(1997) provides in relevant part:

The board shall have the power by a five-sevenths vote of the entire board to suspend for a period not exceeding two years, or to revoke the certificate of registration of, or to reprimand any registrant who is found guilty of the following acts or offenses:

3. Knowingly making misleading, deceptive, untrue and fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

3. Iowa Code § 272C.3(2)a provides that "[e]ach licensing board may impose one or more of the following as licensee discipline revoke a license, or suspend a license either until further order of the board or for a specified period, upon any of the grounds specified "

4. Iowa Code § 542B.27(1) further provides the board may impose a civil penalty for the unlicensed practice of land surveying. The civil penalty is not to exceed one thousand dollars for each offense. Iowa Code § 542B.27(2).

5. The Iowa Code, in § 542B.2 (1997), defines "land surveying" as:

The practice of "land surveying" within the meaning and intent of this chapter includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the platting of lands and subdivisions thereof.

6. A licensed professional engineer may also make a survey known as an engineering survey. An "engineering survey" is defined in Iowa Code § 542B.2(5) as:

"Engineering surveys" include all survey activities required to support the sound conceptions, planning, design, construction, maintenance, and operation of engineered projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

7. The preponderance of the evidence established that the Respondent violated Iowa Code § 272C.3(2)a by continuing to practice land surveying after entering into a Stipulation and Agreement that stated he would never practice land surveying again. The evidence also established that the Respondent engaged in unethical conduct and practices harmful to the public by practicing land surveying and holding out to the public as authorized to practice land surveying without proper licensure in violation of Iowa Code §§ 542B.1, 542B.21(3) and 542B.27.

8. The evidence that establishes the above violations are:

a) The Plat of Survey for the Keystone Area Education Agency, Waukon, Iowa. (State's Exhibit M, p. 56). This is found to be the making of a survey for the division or subdivision of any tract or parcel of land, which constitutes

an act of land surveying under Iowa Code § 542B.2(5)(a)(2).

b) The Respondent's firm staked a lot for Robert Jacobson on March 5, 1996. (States Exhibit M, pp. 23-26). At this time there was no licensed land surveyor at the Respondent's firm. Staking the lot, or physically reestablishing a corner for a lot, constitutes the act of land surveying pursuant to Iowa Code § 542B.2(5)(a)(1).

c) The Respondent continued to advertise his firm as performing land surveying after July 14, 1995, when the firm no longer employed a licensed land surveyor. (State's Exhibit D).

DECISION AND ORDER

IT IS THEREFORE THE ORDER of the Iowa Engineering and Land Surveying Examining Board, that the Respondent shall be assessed a civil penalty of \$1000 for the three above-cited violations.

IT IS THE FURTHER ORDER of the Board that the issuance of this decision of the Board shall serve as a PUBLIC REPRIMAND to the Respondent for his violations of the Iowa Code.

IT IS THE FURTHER ORDER of the Board that the Respondent's Professional Engineering license shall be suspended until the time that he successfully completes the "Intermediate Studies in Engineering Ethics" course, totaling 40 professional development hours, provided by the Murdough Center for Engineering Professionalism, College of Engineering, Texas Tech University, Lubbock, Texas.

IT IS THE FURTHER ORDER of the Board that the Respondent shall be assessed the cost of these proceedings in the amount of \$75.

Dated this 30th day of September, 1999.


Susan M. Long, P.E.
Chair

Iowa Engineering and Land Surveying Examining Board

cc: Alvin H. Miller
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