



Louisiana Professional Engineering and Land Surveying Board

Received
MAR 19 2012

By LAPELS Enforcement

Petition for Declaratory Order and Ruling

1. Name of Petitioner: Michael J. Murphy
 Address: 518 Sandplper Lane, Stonewall, LA 71078
 Telephone No.: 318-286-7933
 Email: mikedavida@gmail.com

2. List all statutes, rules or orders of the Board to which this petition relates:
 LRS 37.697(B); LRS 37.698(A)(9) and LA Administrative Code 46.2101(A)

3. Clearly and concisely state all the facts necessary to show the manner in which the petitioner is aggrieved by the statute, rule or order or by its potential application, or in which the petitioner is uncertain of its effects:

Its not clear if the 120 days is a true grace period. Example 1: If I stamp a set of plans on day 100 and my fee is paid on day 118, is my stamp on those plans valid? Example 2: If I stamp a set of plans on day 100 and my fee is paid on day 121, is my stamp on those plans valid? Also, LRS37.698(A)(9) states that anyone practicing after their license has expired by more than 90 days may be disciplined. Why does this differ?

4. Clearly and concisely state the declaratory order or ruling requested by the petitioner:

If this is a grace period for anyone paying their fee on day 120 or prior, then it should be a grace period for those who's fee pay is paid after day 120. A true grace period should cover both parties. Also, it appears as though there is a discrepancy between the 90 days and 120 days.

5. State whether the petitioner has an application or is involved in a disciplinary or enforcement investigation or proceeding, or in any other matter which is presently pending before or under consideration by the Board. If so, explain in detail:

No. I paid on day 132 and was reinstated by LAPELS on February 10, 2011 and disciplined for failing to pay within the 120 day period.

6. State whether the declaratory order or ruling requested by the petitioner relates to, is similar to or is connected with any pending litigation or with any disciplinary or enforcement investigation or proceeding presently pending before or under consideration by the Board. If so, explain in detail:

At this time, my employer, the LA DOTD, is considering further disciplinary action against me using the 132 days as the basis of the fine. If the 120 days are a grace period, then instead of 132 days, it should be 12 days.

Signature of Petitioner: Michael J. Murphy Date: 3/19/12

2012-03

LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD
9643 Brookline Avenue, Suite 123
Baton Rouge, Louisiana 70809

RULING ON PETITION FOR DECLARATORY ORDER

1.

On March 19, 2012, Michael J. Murphy ("Petitioner") filed with the Louisiana Professional Engineering and Land Surveying Board (the "Board") a petition for declaratory order and ruling pursuant to LAC Title 46:LXI§727.

2.

Petitioner became licensed in the State of Louisiana as a professional engineer, number PE – 25883, on July 5, 1994. His license expired on September 30, 2010 and was not reinstated until February 10, 2011.

3.

Between October 1, 2010 and February 10, 2011 Petitioner admittedly provided engineering services in Louisiana through his daily duties as a project engineer for the Louisiana Department of Transportation and Development.

4.

On July 25, 2011, Petitioner entered into a Consent Order with the Board and was assessed sanctions for violations of La. R.S. 37:698(A)(9) and (16), relative to practicing and/or offering to practice engineering in the State of Louisiana with an expired license.

5.

Petitioner states that his employer is now considering taking further disciplinary action against him based on the period in which his license was expired.

6.

Petitioner seeks a declaratory order as to the meaning and interaction of the 120-day period set forth in La. R.S. 37:697(B) and LAC Title 46:LXI§2101(A) and the 90-day period set forth in La. R.S. 37:698(A)(9).

7.

La. R.S. 37:697, which relates to the expiration and renewal of licenses, provides, in pertinent part, as follows:

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A. **Licensure and certification shall expire at a time specified by the board and shall become invalid after that date unless renewed.** It shall be the duty of the executive director of the board to notify by letter to his last known address each licensee and certificate holder of the date of the expiration of the license or certificate and the amount of the fee that shall be required for its renewal. The notice shall be mailed at least one month in advance of the expiration of such license or certificate. **Renewal of licensure as a professional engineer, professional land surveyor, or firm, or certification as an engineer intern or land surveyor intern may be effected at any time during the two months prior to expiration by the payment of a fee not to exceed one hundred dollars per year, at the discretion of the board.**

B. Any person who renews his license or certificate within one hundred twenty days of the expiration of such license or certificate shall not be deprived of the right of renewal.

C. The maximum fee for late renewal shall be established by the board, provided that said renewal fee shall not exceed three times the normal renewal fee. The board shall not increase the biennial renewal fee by more than twenty dollars in any one-year period.

(Emphasis added).

8.

LAC Title 46:LXI§2101(A), which also relates to the expiration and renewal of licenses, provides, in pertinent part, as follows

Licenses and certifications of individuals or firms shall expire on the date specified on the renewal certificate and/or as shown on the board's records and shall become invalid after that date unless renewed within 120 days. After that period, the former licensee or certificate holder may apply to the board to reactivate his/her former license or certificate.

9.

LAC Title 46:LXI§2103, which relates to licensure status, provides, in pertinent part, as follows

Expired Status—the licensure status which exists for a licensee of the board who has failed to properly renew licensure as required in R.S. 37:697. A licensee in an expired status can no longer practice or offer to practice professional engineering or professional land surveying in Louisiana.

10.

La. R.S. 37:698(A)(9), which relates to disciplinary proceedings against licensees, provides that the Board may take disciplinary action against any licensee found by the Board to be guilty of using a seal or stamp or engaging in any other act constituting the practice of engineering or land surveying at a time when their license has been expired for more than 90 days.

ORDER

After due consideration of the petition for declaratory order and ruling filed by Petitioner and after discussion by the Board during its meeting on March 20, 2012:

IT IS THE RULING of the Board that:

11.

Licenses are typically issued by the Board for two-year periods and will expire at the end of the two-year period unless renewed timely.

12.

Once a license expires, the license is considered by the Board to be in expired status. A licensee whose license is in expired status cannot practice engineering or land surveying in Louisiana.

13.

The 120-day period set forth in La. R.S. 37:697(B) and LAC Title 46:LXI§2101(A) and the 90-day period set forth in La. R.S. 37:698(A)(9) serve two different purposes.

14.

The 120-day period set forth in La. R.S. 37:697(B) and LAC Title 46:LXI§2101(A) is the time period after the expiration of licenses within which the Board cannot deprive licensees of the opportunity to renew their expired licenses. As long as licensees renew their expired licenses within this period, they will be allowed to renew. However, after this 120-day period, the Board has the right to refuse to renew an expired license.

15.

The 90-day period set forth in La. R.S. 37:698(A)(9) is the time period following the expiration of licenses after which the Board can take disciplinary action against licensees who have continued to practice engineering or land surveying. This 90-day period relates solely to disciplinary proceedings and has nothing to do with how or when licensees can renew their expired licenses.

THUS DONE at Baton Rouge, Louisiana, on the 20th day of March, 2012.

**LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD**

By:



RICHARD L. SAVOIE, P.E., Vice Chairman