



TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

Advisory Opinion - AOR #7 (2011)

What geoscientific work is exempt from licensure requirements under Texas Occupations Code Sec. 1002.252 (3)? This section states that: "geoscientific work performed exclusively in exploring for and developing oil, gas, or other energy resources, base metals, or precious or nonprecious minerals, including sand, gravel, or aggregate, if the work is done in and for the benefit of private industry" are activities that do not require a license under this chapter.

The Board has had questions for many years concerning the intent of the word "exclusively" and the phrase "for the benefit of private industry" that is included in the above cited section of the Texas Geoscience Practice Act (Act). The Board has attempted to determine if this word and this phrase were included in the statute with the intent that some oil and gas activities would not be exempt from the requirements of the Act. For example, is geoscientific interpretation presented for the sole purpose of securing financing from the public *exclusively* part of the exploration and development process? Could the fact that the benefits of oil and gas exploration are not *exclusively for the benefit of private industry* since the public also benefits in the form of severance tax paid to the state be a cause to require a license? These are the types of questions that have been posed to the Board in the form of inquiries and complaints over the years.

The Board has had an ad-hoc Legal Interpretation Committee explore the question and this activity did not conclusively resolve the issue. The Board also encouraged the development of an advisory workgroup to involve the oil and gas community to assist with answering the issue. Attempts were made to secure wide participation in the workgroup, and included liaison representatives with involvement in the Houston Geological Society, the American Association of Petroleum Geologists, and the Society of Independent Professional Earth Scientists. Over a period of more than a year, the workgroup met and finally petitioned the Board with a rule proposal that would define that certain activities involving oil and gas exploration and development would not be exempt. All members of the workgroup had ample and equal opportunity to provide input to the rule proposal. The workgroup members felt that the issue should be made available to a broader audience for further review.

The Board finally agreed to publish the rule proposal for the purpose of receiving more widespread public input to help with the determination of exemption applicability but only if certified by legal counsel that the proposal was within the Board's authority to adopt. Based on the subsequent overwhelming public opinion against adoption of the proposal, and legislative intent brought to the attention of the Board, the Board has withdrawn the proposed rulemaking.

SUMMARY

It is the opinion of the Board that those who engage in the work performed in the exploration for and development of oil, gas, or other energy resources, base metals, or precious, or nonprecious minerals, including sand, gravel, or aggregate, are not required to be licensed under the Texas Geoscience Practice Act.