STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

FILE COPY

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST LLOYD W. SCOTT, R.L.S., RESPONDENT.	:	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.16 are:

Lloyd W. Scott
2022 16th Street South
Wisconsin Rapids, WI 54494

Examining Board of Architects, Professional
Engineers, Designers and Land Surveyors
1400 East Washington Avenue, Room 288
P. O. Box 8936
Madison, WI 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue, Room 183
P. O. Box 8936
Madison, WI 53708

A party aggrieved by this decision may petition the board for rehearing within twenty (20) days after service of this decision pursuant to Wis. Stats. sec. 227.12. The party to be named as respondent in the petition is Lloyd W. Scott.

A party aggrieved by this decision may also petition for judicial review by filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings will be held and serving the board and other parties with a copy of the petition for judicial review within thirty (30) days after service of this decision pursuant to Wis. Stats. sec. 227.16. The party to be named as respondent in the petition is the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

A Complaint was filed in the above-captioned matter on February 17, 1982. The respondent, Lloyd W. Scott, orally made an Answer to the allegation contained within the Complaint at the Prehearing Conference held on April 5, 1982. (See, "Memorandum on Prehearing Conference", dated April 12, 1982.)

A hearing was held on April 20, 1982. The respondent appeared personally and without an attorney. The complainant appeared by Attorney Steven M. Gloe, Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8936, Madison, Wisconsin 53708.

The record in this matter was left open thirty (30) days from the date of hearing for respondent to submit a letter concerning restitution made, or to be made, and the record remained open for an additional ten (10) days for complainant to verify such restitution.

The hearing examiner filed his Proposed Decision on September 10, 1982, and objections to the Proposed Decision were filed on September 22, 1982 by Attorney Byron C. Crowns. Mr. Crowns also filed his Notice of Appearance on behalf of Respondent on that date. Attorney Gloe filed his response to the objections on October 1, 1982 and the Board heard oral arguments on the objections on November 4, 1982.

Based upon the evidence in the record, the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors adopts as its final decision the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Lloyd W. Scott, (Scott) was at all times relevant to this proceeding registered as a land surveyor in the State of Wisconsin. The certificate of registration of Scott bears number S-584 and was issued on January 18, 1957.

2. Scott resides at 2022 16th Street South, Wisconsin Rapids, Wisconsin 54494.

CONDUCT

3. On or about August 12, 1968 Scott, as a part of his land surveying practice, completed the performance of a land survey and the preparation of a map of survey (hereinafter, "1968 survey") for Glendale and Dorothy Hagstrom, the owners of the parcel surveyed. The parcel surveyed was contained within the N.W. ¼ of the S.W. ¼ of Section 15, Township 40 North, Range 6 East in Vilas County, Wisconsin.

4. In performing the 1968 survey, Scott employed a two-man crew for the field work. Scott instructed the field crew as to the point of beginning for the surveying, but the remainder of the field work was performed by the crew without the physical presence of Scott. Scott did not instruct nor require his field crew to check for the closure of the parcel surveyed.

5. In performing the field work, Scott's crew turned an angle of 96° at the Northwest corner of the north line of the parcel. The crew should have turned an angle on the north line of 86°06'29". This mistake resulted in a surveying error of approximately 10 degrees in turning the angle.

6. Scott prepared his survey map of the parcel based on the field notes made by his field crew. Scott failed to check the field notes made by his crew of their field procedures, or to physically check the angles and distances found by the crew.

7. In November of 1968, Arthur Boomer (Boomer) and his wife purchased a portion of the parcel described in paragraph 3 above from Glendale and Dorothy Hagstrom. The portion of the parcel purchased is described herein as "Lot 16".

8. Subsequent to the purchase of Lot 16, Boomer caused a garage to be constructed on the lot. As a result of the surveying error in turning the angle in the 1968 survey, as described in paragraph 5 above, the garage of Boomer was constructed so as to straddle the true southern boundary of Lot 16. The approximate southern one-half of the garage thereby encroached upon two separate parcels of property owned by two separate individuals.

9. Scott became aware in 1977 of the error in the 1968 survey and of the resulting encroachment by the garage of Boomer. Scott promised Boomer that he would rectify the situation. Scott promised to arrange for quitclaim deeds to Boomer for parcels around the garage and to pay for the parcels of land involved if necessary.

10. Boomer discussed the encroachment of Boomer's garage with the owners of the parcels upon which the garage encroached, and attempted to obtain quitclaim deeds from such owners. However, one owner desired $400.00 for a quitclaim deed, while the other desired between $200.00 - $300.00 for a quitclaim deed. Scott deemed a total price of $600.00 - $700.00 in exchange for quitclaim deeds to the parcels to be unreasonable. Therefore, Scott did not fulfill his promise to Boomer to rectify the situation, as described in paragraph 9 above.

11. Subsequent to Scott's failure to rectify the situation, Boomer took other measures to settle the problem, which included hiring an attorney and retaining another land surveyor to perform a survey. In March of 1982, Boomer received quitclaim deeds from the adjoining owners in exchange for granting the owners other property of Boomer's, which rectified the situation.

12. On or about May 6, 1982, subsequent to the hearing in this matter, Scott paid Boomer $100.00 in reimbursement for Boomer's legal fees in rectifying this situation.

13. On or about July 31, 1978 Scott personally resurveyed the parcel described in paragraph 3 above, and prepared a survey map to correct the errors contained in the 1968 survey. Subsequent to his 1978 survey, Scott prepared a quitclaim deed containing a corrected metes and bounds description of Lot 16 to correct the inaccurate description contained in the conveying instrument of 1968 between Hagstroms and Boomers. The quitclaim deed was executed, delivered and recorded by October 10, 1978.

14. In performing the land surveying and preparing the survey map described above in paragraph 13 in 1978, Scott failed to meet the minimum standards for property surveys in the following respects:

a. The bearings were not referenced to a magnetic, true or otherwise indentifiable meridian or line of the public land survey, recorded subdivision or to the Wisconsin coordinate system as required by Wis. Adm. Code sec. A-E 5.01(5)(b).

b. The map failed to describe the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(4) and (5)(e), as it failed to describe the land surveyed by metes and bounds commencing with some corner marked and established by the U.S. Public Land Survey.

c. The map failed to show whether the monuments necessary for the location of the parcel were found or placed, as required by Wis. Adm. Code sec. A-E 5.01(5)(d).

d. The map failed to identify the person for whom the survey was made; as required by Wis. Adm. Code sec. A-E 5.01(5)(e).

15. On or about March 17, 1980, and in response to inquiries by the Department of Regulation and Licensing, Division of Enforcement, Scott provided the Division with a copy of the July 31, 1978 survey described in paragraph 13 above. The survey contains the following statements:

"Note: Description furnished on separate sheet to owners."

16. The purpose of the 1978 survey, as described in paragraph 13 above, was to correct the errors made in the 1968 survey. At the time the 1968 survey was performed, the property was owned by Glendale and Dorothy Hagstrom. Subsequent to preparing the 1978 survey, Scott drafted a quitclaim deed containing the correct description of Lot 16 as ascertained from his 1978 survey. The quitclaim deed then was executed by Glendale and Dorothy Hagstrom on or about October 2, 1978 and recorded on October 10, 1978.

17. A notation upon the copy of the 1978 survey provided to the Division of Enforcement indicating that the description was "furnished on separate sheet to owners", refers to the quitclaim deed provided to the Hagstroms for their execution and subsequently provided Boomer as the corrected document of conveyance of Lot 16.

PRIOR DISCIPLINARY ACTIONS

18. On June 29, 1977 a disciplinary action was commenced entitled "In the Matter of the Land Surveyor's License of Lloyd Scott".

19. In a decision dated May 16, 1978, the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors (Board) made, in pertinent part, the following Findings of Fact, Conclusions of Law and Order:

a. As part of his land surveying practice, Scott prepared or supervised in the preparation of a land survey map entitled Nieratkas Property depicting land in the NE ¼ and the SE ¼, Section 4, T40N, R1W located in Price County, Wisconsin, and said map is dated November 18, 1974 with revisions dated as May 10, 1975 and June 4, 1975.

b. The County Surveyor for Price County, Alfred Schneider, made requests to Scott on May 9, 1975 and August 13, 1976 to file a copy of the map and Scott refused to file a copy of the map.

c. The Board concluded that Scott's failure to file a true and correct copy of the map constituted a violation of Wis. Stats. sec. 59.60(6) and constituted misconduct in the practice of land surveying, within the meaning of Wis. Adm. Code sec. A-E 4.003(3)(a).

d. The Board ordered that Scott's certificate of registration with the Board be suspended for 12 months.

20. On August 23, 1977, another disciplinary action was commenced, entitled "In the Matter of the Land Surveyor's License of Lloyd Scott".

21. In a decision also dated May 16, 1978 the Board made, in pertinent part, the following Findings of Fact, Conclusions of Law, and Order:

a. On or about August 9, 1976, Harold J. Prohl, through the Otto Albertus Real Estate Company, retained Scott to perform a survey of a parcel of land described generally as that part of NE ¼ of NE ¼ of S5, T43N, R6E, lying north of present County Trunk Highway W.

b. Prior to performing the survey, Scott provided an estimate of its cost as $250.00 to $300.00. Upon completion of the survey work, Scott billed Prohl in the amount of $870.20 and provided Prohl with a map of the property surveyed.

c. This map did not include a description of the property surveyed as required by Wis. Adm. Code sec. A-E 5.01(5)(e), nor a description of the exact length and bearing of the boundaries of the parcel surveyed as required by Wis. Adm. Code sec. A-E 5.01(5)(c), nor was the map sealed as required by Wis. Adm. Code sec. A-E 5.01(5)(f).

d. The Board concluded by such preparation of a map constituted misconduct in the practice of land surveying within the meaning of Wis. Adm. Code sec. A-E 4.003(3)(a) and (b).

e. The Board ordered that the certificate of registration be suspended for 12 months, such suspension to run concurrently with the suspension set forth in paragraph 19(d) above.

22. In an Order dated July 6, 1979, the Board stayed the suspensions set forth in paragraph 19(d) and paragraph 20(e) above, upon the conditions that Scott: (1) file by August 23, 1979 all survey maps required to be filed in Rusk or Price Counties but not yet filed with the Rusk or Price County Surveyors and (2) provide to Harold Prohl a survey map which met the requirements of law and that met the terms of Scott's contract to Prohl and that a copy of said map be filed with the Board.

CONCLUSIONS OF LAW

1. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors has jurisdiction to take disciplinary action in this proceeding pursuant to Wis. Stats. sec. 101.315(3) [1967], Wis. Stats. sec. 443.02(8) [1977], and Wis. Stats. sec. 443.12(1) [1979-80].

2. Scott's failure to check the field procedures of his survey crew regarding the 1968 survey and his failure to instruct or require his crew to check for the closure of the parcel surveyed, as described in paragraphs 4

and 6 of the Findings of Fact, constitutes gross negligence, incompetence and misconduct in the practice of land surveying within the meaning of Wis. Stats. sec. 101.315(8)(a) [1967] [now renumbered, s. 443.12(1)]; and, furthermore, constituted permitting an employee or employees to be in responsible charge of land surveying, contrary to Wis. Stats. sec. 101.315(5)(a) [1967], [now renumbered, s. 443.14(8)(a)].

3. Since Wis. Adm. Code secs. A-E 4.003(1)(b) and 4.003(2) were not effective until January 1, 1974, Scott's conduct concerning the 1968 survey as set forth in paragraph 2 above, did not violate such rules.

4. Scott's failure to fulfill his promise to Boomer to rectify the situation precipitated by Scott's erroneous 1968 survey by arranging for quitclaim deeds to Boomer for the parcels around the garage and to pay for the parcels of land involved if necessary, constituted misconduct in the practice of land surveying within the meaning of Wis. Stats. sec. 443.08(a) [1977], Wis. Stats. sec. 443.12(1) [1979-80], and Wis. Adm. Code sec. A-E 4.003(3)(c).

5. Scott's failure to meet the Minimum Standards for Property Surveys set forth in Wis. Adm. Code sec. A-E 5, as detailed in paragraph 14 of the Findings of Fact, constitutes misconduct in the practice of land surveying within the meaning of Wis. Stats. sec. 443.02(8)(1) [1977], [now renumbered, s. 443.12(1), and Wis. Adm. Code secs. A-E 4.003(3)(a) and (b)].

6. Scott's conduct concerning the notation on the map provided to the Division of Enforcement, as described in paragraphs 15, 16 and 17 of the Findings of Fact, did not constitute misconduct in the practice of land surveying within the meaning of Wis. Stats. sec. 443.12(1) or Wis. Adm. Code sec. A-E 4.003(3)(c).

ORDER

NOW, THEREFORE, IT IS ORDERED that the certificate of registration of Lloyd W. Scott shall be, and hereby is, suspended for an indefinite period beginning fourteen (14) days from the date hereof. Following suspension of his license, Scott may write parts III and IV of the land surveyor's written licensing examination on any regularly scheduled examination date. Upon achieving a passing score on both parts, Scott's license to practice land surveying shall be reinstated.

EXPLANATION OF VARIANCE

The Board has accepted the hearing examiner's Findings of Fact and Conclusions of Law in their entirety. It has not accepted the examiner's recommended Order suspending Scott's license for one year, however, and instead has ordered that Scott's license be suspended for an indefinite period until Scott takes and passes parts III and IV of the written examination for land surveyors.

The misconduct involved in this matter and the misconduct found in the two previous disciplinary proceedings involving this respondent evince a lack of knowledge of, or an inability to apply, basic principles and legal requirements of the practice of land surveying.

Because the present proceeding does not constitute an isolated instance of such misconduct, the Board feels that protection of the public requires that Mr. Scott be required to demonstrate his current understanding of and ability to apply principles involved with the area of his practice involved here. Passage by Mr. Scott of parts III and IV of the land surveyor's examination, which includes material relating to standards and ethics, legal knowledge, integration of data, and records, should adequately demonstrate that understanding. The Board also feels that protection of the public requires that until Mr. Scott is able to make that demonstration, he not be permitted to practice.

Dated at MADISON, Wisconsin this 24th day of November, 1982.

Examining Board of Architects, Professional Engineers, Designers and Land Surveyors

By Percival T. Sprague
Percival T. Sprague
Chairman, Land Surveyors Section

WRA:kr
6690

BEFORE THE STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST LLOYD W. SCOTT, R.L.S., RESPONDENT.	:	ORDER DENYING MOTIONS TO DISMISS AND FOR REHEARING

A hearing in the above-captioned matter was held on April 20, 1982. Complainant appeared by Attorney Steven M. Gloe. Respondent appeared without counsel. On September 10, 1982 the hearing examiner issued his Proposed Decision in the matter.

Subsequently, on September 22, 1982 a Notice of Appearance was filed on behalf of Respondent by Attorney Byron C. Crowns, 480 East Grand Avenue, P.O. Box 759, Wisconsin Rapids, Wisconsin 54494. Attorney Crowns also filed on that date Respondent's objections to the Proposed Decision in the form of motions to dismiss the proceedings and to remand to the hearing examiner for rehearing. Attorney Gloe filed his Response to Motions on October 1, 1982. The Board heard oral arguments on the Motions at its meeting taking place on November 4, 1982. Respondent appeared in person and by Attorney Crowns. Complainant appeared by Attorney Gloe. Based upon the record herein and upon arguments of counsel, the Board rules as follows:

ORDER

IT IS HEREBY ORDERED that Respondent's motion to dismiss these proceedings is denied.

IT IS HEREBY FURTHER ORDERED that Respondent's motion to remand these proceedings to the hearing examiner for rehearing is denied.

EXPLANATION

Respondent's motion to dismiss these proceedings is based upon a number of considerations. He first argues that the statutory provisions pursuant to which these proceedings were brought is unconstitutionally vague and indefinite. The Board does not, as both parties would appear to agree, have authority to rule upon the constitutionality of the statutory provisions it is charged with enforcing, and Respondent's constitutional challenge may therefore not be addressed.

Second, Respondent contends that the complaint "fails to specify whether the objectionable conduct of the Respondent is for gross negligence, incompetence or misconduct..." The Board finds that the complaint is sufficiently specific in this regard inasmuch as Counts I and III allege gross negligence, incompetence <u>and</u> misconduct, while Counts II and IV allege only misconduct.

Respondent next points out that he was not adequately apprised of the fact he was not required to make "self-incriminating" statements. Disciplinary proceedings before this Board are civil in nature and "Miranda" type warnings are therefore neither necessary nor appropriate.

Fourth, Respondent maintains that the hearing examiner's role in these proceedings was "substantially prosecutorial in nature". The transcript of hearing reveals that the examiner's participation in adducing testimony of the Respondent was clearly intended to assist the Respondent in establishing for the record whatever defenses to the complaint may have existed.

Finally, Respondent argues that these proceedings should be barred by either an applicable statute of limitations or by the doctrine of laches. Wisconsin case law makes clear that the statutes of limitation are not applicable to occupational licensing disciplinary proceedings such as this one. (State v. Josefsberg, 275 Wis. 142). Further, the Board finds no lack of diligence in the prosecution of this case so as to invoke the doctrine of laches. While the original survey complained of was carried out approximately 14 years prior to these proceedings, the alleged error was not discovered until 1977. Moreover, the allegations concerning errors in the 1968 survey constitute only one of four counts contained in the Complaint.

Respondent also makes a number of arguments in support of his motion for rehearing. While a petition for rehearing would more appropriately be submitted subsequent to filing of the Board's final decision in this proceeding (Wis. Stats. sec. 227.12), the Board does have authority to remand a case to the hearing examiner for the taking of additional evidence if the Board feels the record brought before it is not complete. An examination of this record and of the offered bases for Respondent's motion do not, however, lead the Board to conclude that a remand would result in an evidentiary record significantly different from the one before it now. Based upon his motion, Respondent seeks rehearing in order to introduce evidence going to mitigation and bearing upon the severity of the discipline, if any, to be imposed. The Board finds that while Respondent was not represented by counsel at hearing, he was provided with more than adequate opportunity to present any available mitigating evidence on his own behalf, and was actively encouraged by the hearing examiner to do so. While the Board is cognizant of the possible benefits deriving from representation by counsel in proceedings of this type, the record reflects that Respondent was adequately familiar with the nature of the proceedings and carried out his defense with reasonable competence. The record also reflects that Respondent was repeatedly encouraged to seek legal counsel to assist him in defending this matter and repeatedly declined to do so. Near the conclusion of the hearing, Respondent made the following statement:

> "I will state one more fact which--if--if the Board deems it necessary to take my license from me, reprimand me for anything, it's up to them. If I think it's unjust, I will then go into debt, hire an attorney and we will go to court because I will not have my license taken away."

Respondent quite obviously recognized the possible ramifications of these proceedings and nonetheless made an informed decision to proceed on a pro se basis. Being now confronted with a proposed decision by the examiner which recommends that his license be suspended, Respondent seeks to be relieved of the effect his decision to defend himself. The Board finds no basis in the record for permitting him to do so, and Respondent's motion must therefore be denied.

Dated at MADISON, Wisconsin this 24th day of November, 1982.

Examining Board of Architects, Professional Engineers, Designers and Land Surveyors

By Percival T. Sprague
Percival T. Sprague
Chairman, Land Surveyors Section

WRA:kr
6046