
CHAPTER 4

The Electrical Board's established way of doing business is encountering challenges

Statutory mingling of roles creates organizational problems.

The Electrical Board (Board) and the Council on Fire Prevention and Electrical Safety in Buildings (Council) have considerable statutory responsibility, including rule making, oversight, and appeal functions. However, statute makes the Council a part of the Department while also directing the Council to investigate the Department; the Board is charged with ministerial functions such as issuing certain types of licenses and permits, but lacks staff of its own to perform those duties. This mingling of roles and responsibilities is creating problems for all three parties. Further, both the Board and the Council lack written policies and procedures; most members have not received training on governance and conducting appeals; and they struggle to carry out their duties under sometimes ambiguous statutory wording.

This chapter describes two recent examples, reciprocal licensing and approval of apprentice training programs, where statute requires the Board to carry out time-sensitive administrative duties and inconsistent practices by the Department and problems for the Electrical Board developed. We believe statutory changes are necessary to resolve these organizational relationship problems. While our examples pertain to the Board, we recommend statutory changes to clarify ambiguous provisions that affect both the Board and the Council. We also recommend more Department support for both bodies in providing new member training and policy development.

Statute assigns some electrical licensing duties to the Division, others to the Board

The Division of Electrical Safety and the Electrical Board carry out different responsibilities to ensure compliance with electrical code. The Board has rule making and appeal authority regarding electrical licensing, as well as some administrative duties retained from when it was purely a licensing board. These duties include

issuing reciprocal licenses, granting temporary work permits, and approving apprenticeship and continuing education programs.

Because the Board has no staff, Division staff review and issue applications for electrical licenses, renewals, and temporary work permits. They also compile applications and renewals for reciprocal licenses and apprentice programs for Board approval, and investigate licensing complaints. Figure 4.1 shows the statutory distribution of duties.

Figure 4.1

Selected responsibilities of the Board and Division

| | Approval or decision | Appeals |
|--|-----------------------------|----------------|
| Electrical licenses | Division | Board |
| Apprenticeship programs | Board | Board |
| Continuing education criteria, courses and instructors (in rule) | Board | Board |
| Reciprocal licenses | Board | Board |
| Temporary work permits | Board | Board |
| Code interpretation | Division | Board |
| Civil penalties | Division | Board |

Source: LSO summary of W.S. 35-9-119 through 130 and Board Rule Chapter 5

This statutory mix of roles creates problems in day-to-day administration as well as ensuring due process for appeal purposes. The Board meets an average of four times per year to deal with time-sensitive issues such as issuing licenses and work permits, and approving apprenticeship programs. In practice, as a matter of expedience, the Division has found it necessary to carry out some Board functions.

Regarding appeals, the Board is tasked with making *initial* decisions as well as hearing possible *appeals* on the same matters, such as apprenticeship programs, continuing education, reciprocal licenses, and temporary work permits. The Board relies on DFPES for information, analysis, to communicate decisions, and in some cases, to provide guidance. We see a potential conflict in the Board using the Department for its sole source of support, but

The Board makes the initial decision, also hears the appeal.

at the same time, needing to operate at arm's length in matters such as appeals. As well, the fact that the Board makes the initial decision and then hears appeals on its own decisions appears to be a violation of due process.

Recent appeals illustrate challenges

Licensing decisions can affect groups of electricians.

Normally the Board receives few appeals, but two appeals heard during an August 2008 meeting called attention to the influence different administrations have had on the way the Board conducts business: whether the Department or the Board makes decisions, how the Board makes them, and how decisions are communicated to stakeholders. Under the previous administration, certain activities requiring Board approval had been decided by the Division, and errors occurred in some of them. Moreover, although an appeal by an individual can affect groups of electrical licensees, the Board learned that the Division had not always communicated decisions to similarly-situated stakeholders.

One problem that arose involved reciprocal licensing

The Board is responsible for approving reciprocal licenses, or licenses issued to electricians from other states so they can work in Wyoming. The practice has been for Division staff to approve reciprocal licenses.

- **Journeyman electricians** Wyoming is one of 14 states in a multi-state reciprocal licensing agreement for journeyman electricians. Granting a reciprocal license to a journeyman with credentials from one of these states requires verification that the applicant passed a qualifying exam with a score of 70 percent or more, has had the license for a year or more, is in good standing, and can pay the license fee.
- **Master electricians** Idaho, South Dakota, and Utah are the only states with which Wyoming has a reciprocal arrangement for master electricians. To get a Wyoming master's license, a master from one of these states must have 75 percent or better score on their state's exam, have held the license for a year or more, be in good standing,

and pay the fee.

For journeyman and master electricians from all other states, the Board approves reciprocal licenses on an individual basis. W.S. 35-9-126(d) sets licensing criteria and stipulates that the other state's requirements must equal or exceed Wyoming requirements.

Under the previous administration, the Electrical Division issued reciprocal master licenses in error

Contrary to statutory authority, the Division had been approving reciprocal licenses. It also granted some licenses that did not meet the approved criteria, such as to Colorado master electricians. Wyoming and Colorado do not have a reciprocal agreement for master's licenses, and a Colorado master's license is not equivalent to its Wyoming counterpart. When a request to renew one of these licenses came to the agency, the current Division administrator caught the error and this license went to the Board for appeal. The Board denied the renewal.

Other questionable licenses may be potential appeals.

We found that this problem extends beyond the one reciprocal license and may result in additional appeals in coming years. Without reviewing paper files, we cannot be certain that all renewals for master electrician reciprocal licenses issued under the current administration have met the criteria. Thus, there is still a potential for appeals, and when we brought this issue to the Department's attention, officials estimated another 18 questionable licenses are coming up for renewal. The Board has not yet heard an appeal on an improperly-approved reciprocal journeyman's license, but we identified similar problems with them.

Approval of apprentice programs emerged as a second problem

Most electrical contracting companies in Wyoming employ apprentices, who must have supervised on-the-job training and complete classroom instruction time in Board-approved programs. Apprentice registration must be renewed annually on September 1st and is contingent on being in an approved program. At an August 2008 meeting, the Board decided to interpret classroom

requirements for these programs strictly, which had the effect of disapproving correspondence apprentice courses it had previously approved.

The Board noticed a trend in failure rates

Increasingly, apprentices are turning to on-line and correspondence classes for training, some of which have been approved. However, Board rules require “classroom instruction for all apprentice electricians” and that training be “conducted on a regular prescheduled basis” with “enough scheduled classes to accommodate the 144 hour per year requirement.” Rules do not specify whether on-line or correspondence courses qualify as classroom training.

The Board suspected problems with correspondence courses.

Since 2006 and advent of the Department’s new administration, the Board has been requesting that the Division provide data on licensing activities. Members noticed a trend of increasing failure rates by apprentices testing to become journeymen. They also learned of on-line classes, both for apprentices and continuing education, that allow students to finish in much less time than the Board requires and that for some on-line courses, answers are available for sale.

The Board suspended on-line courses at its August 2008 meeting and denied approval of a previously-approved apprentice program that did not include actual classroom time. Electrical firms relying on these programs were caught between a lack of options and a renewal deadline of September 1 for their apprentices.

After suspending courses, the Board is approving those that meet criteria.

As of this writing, the Board has gone on to approve one correspondence program and is considering others; it has also set criteria and authorized the Division to approve on-line courses. To date, one on-line apprenticeship and two continuing education courses have been approved. Because agency data is by apprentice, not by apprenticeship program, we could not calculate the number of programs not in compliance with Board requirements, or of renewals the Board is likely to disapprove.

Board decisions can have economic consequences

Decisions affect safety and livelihood.

The purpose of licensing is to protect the public by excluding unqualified individuals from the electrical trade. As it hears licensing appeals and carries out other duties, the Board is making decisions that can affect the entire electrical profession. Since they are electrical industry professionals, Board members are concerned about safety, and also are aware that their decisions and the manner in which they conduct business carry a potential for economic impact on Wyoming businesses and on individual livelihoods.

Contributing factors range from lack of Board training to ambiguous statutory wording

We believe several factors are disrupting the Board's established way of doing business, including a lack of Board member orientation, training, and policies; ambiguity in statutory language; and some unwise Division practices. The focus of the current Board and Department has been pragmatic, on getting work done correctly and remedying past errors in practice, but they also need to attend to careful delineation of respective roles.

Training is basic to understanding duties

Board members need to understand their duties as soon as they join a body and begin to cast votes. Understanding this, other state agencies provide orientation and training to new board members to familiarize them with agency procedures and staff.

State-provided training will help Board members understand their duties.

Members of the Electrical Board are practitioners in the profession and their understanding of the Board's role comes from experience, not from state-provided training. DFPES does not conduct orientation sessions and of the current Board members, only one has participated in the Governor's Board Training. Sessions such as that and the Attorney General Board Training Conference introduce new appointees to the foundations of board

governance and appeals procedures. While DFPES worked with the Attorney General's office recently to conduct a training on appeals for the Board and Council, we believe members need ongoing and more comprehensive training.

Policies should be written

Written policies could ensure consistent decisions.

The Board's five members have staggered terms of six years, implying an expectation of Board consistency and a long view that supersedes administrative or staff changes. The Board has had no written policies or procedures to guide members in carrying out their responsibilities; instead, members have been devising ways to manage as they go along. This approach has the advantage of flexibility but can also produce inconsistencies over time. Written policies and procedures are necessary to help stabilize practice through changes of administration.

Some statutes need clarification

Statute places the Board and Council within the Department.

We identified several ambiguous or antiquated statutes that, if changed, can help clarify the role of the Board (and Council). Noting in particular the unusual statutory placement of the Board and Council *within* DFPES, we reviewed creation language for 90 Wyoming boards, councils and commissions. Only eight others were created "within" an agency or the Office of the Governor (see Appendix F).

An example of the confusion this structure creates for DFPES is the statute directing the Council to investigate agency Divisions. The Council has no resources of its own with which to undertake an investigation; moreover, it is not clear what sort of remedy this provision was intended to provide. Figure 4.2 summarizes ambiguous or inconsistent statutes that pertain to the roles and responsibilities of the Department, Board, and Council.

Figure 4.2

Statutes related to the roles of DFPES, the Board, and the Council

| Excerpt from statute | What is problematic |
|---|---|
| 35-9-103 (a)(i) through (iv) There is created within the department: the division[s],... the council on fire prevention and electrical safety in buildings [and] the electrical board. | How can a Board and Council exist “within” DFPES? What are their roles and how are they meant to relate to one another? |
| 35-9-106 (b) The council shall investigate the conduct of the divisions, shall have access to records of the divisions and may require written or oral information from any officer to employee of the department. | How can a Council that is part of an agency investigate that same agency - especially when it has no staff with which to do so? |
| 35-9-107 Duties and powers of the state fire marshal. (a)(ii) Enforce regulations promulgated by the council. | Are Board and Council rules comprehensive enough to cover all agency functions, or does DFPES also need rule making authority? Which body enforces Board rules? |
| 35-9-126 Licensing (c) The board shall issue temporary permits to engage in the work of a journeyman electrician... (d) The board may issue a reciprocal license. | Why are temporary work permits and reciprocal licenses segregated from other licensing responsibilities that go to the agency? |
| 35-9-127 Apprentice (a) ...The board may monitor the apprenticeship programs and receive necessary progress reports. [And approves programs equivalent to the Federal Bureau of Apprenticeship and Training (BAT) programs.] | Why is the Board responsible for approving apprenticeship programs? |

Source: LSO analysis of W.S. 35-9-103 through 127

Board and Division roles also need clarification

Since the livelihoods of electricians depend on proper licensure, Board approvals of reciprocal licenses, temporary work permits, and apprenticeship programs are time-sensitive. The Board meets only four times per year and thus finds it challenging to make every decision in a timely manner. One solution might be to hold phone conference calls, but we have concerns that making decisions in that way or by postcard ballot may not be consistent with the Board’s intent to hold open meetings. While the Board delegates some licensing responsibilities to the agency, we heard different opinions as to whether this is legally permissible.

Recommendation: DFPES should request that the Legislature revise unclear statutory provisions.

After decades of piecemeal legislative amendments, unintended ambiguities can develop within an agency's authorizing statute; this clearly is the case with DFPES. As the Department's statutory responsibilities have changed, the roles of the Board and Council, too, have evolved. The Board was at first a licensing board only, while the Council initially was advisory; by statute, both now have many more responsibilities. We urge the Department to work with the appropriate interim committee to draft legislation to resolve the problems we outline, as well as others that may be identified.

Ministerial duties should be assigned to the Electrical Division.

We recommend placing ministerial duties such as licensing, temporary work permits, and apprenticeship program approval with the Electrical Division. This will allow the Board to focus its professional skills and time on setting standards and policy and resolving appeal issues. We believe some of the statutory clarifications and changes shown in Figure 4.2, such as the last two, are relatively straightforward, while the first three may require more in-depth study and discussion.

Recommendation: DFPES should assist the Board and Council in developing written policies and procedures, and provide member orientation and training.

While this chapter focuses on the Board, we recognize the Council also has the same deficit of policies, procedures and training. Because members of the Board and Council have done business for so long without written policies and procedures, their relationship with DFPES has been influenced and sometimes strained by each change and style of administration. Recognizing that the three entities are interdependent, and to help the other two be more productive parts of the whole, DFPES needs to develop

an orientation program for members. It should also provide the support needed for each to develop policies, and assist them in defining their roles so that, for example, policy decisions will be effectively communicated to stakeholders.