STATE OF VERMONT
BOARD OF
PROFESSIONAL ENGINEERS

In re: Bradford Dexter Lefavour
License No. 018-0004300

Docket No. PE 03 0304

Board of Professional Engineering
Daniel Dupras, P.E.
Michael Quaid, P.E.
Robert Kischko, P.E.
Bonnie Giuliani
Colin Taylor, P.E.

Appearances:
Petitioner, State of Vermont: Robert H. Backus
Respondent: Bradford Dexter Lefavour

Vermont Department of Taxes: Intervenor, by Timothy Collins

Presiding Officer: Larry S. Novins

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER

The Board of Professional Engineering held a hearing in the above matter on November 4, 2004 at 81 River Street in Montpelier.

The prosecution has the burden of proof in this matter. To prevail on any unprofessional conduct charge, it must be prove its case by a preponderance of the evidence.

Background

The State alleges in its specification of charges that Mr. Lefavour has not paid taxes to the State of Vermont. Failure to comply with provisions of state statutes is unprofessional conduct upon which the Board may impose disciplinary action. 3 V.S.A. § 129a(a)(3).

Findings of Fact

Based on the evidence presented, the Board makes the following findings:

1. Mr. Lefavour is an engineer holding License number 018-0004300 issued by this Board.
2. The Vermont Department of Taxes has by written request asked the Board to revoke Mr. Lefavour’s professional engineering license for not being in good standing with the Department of Taxes. The Department of Taxes gave Mr. Lefavour until February 10, 2004 to get into good standing. Exhibit #3. This letter from the Department is prima facie evidence of its contents. 32 V.S.A. § 3113(f).

3. Mr. Lefavour had, as of March 2004 failed to pay his Vermont business income tax for the year 2000 in the amount of $4,519.76.

4. Mr. Lefavour’s tax liability is not under appeal.

5. Mr. Lefavour admitted in his answer dated June 22, 2004 that he was not in good standing with the Department of Taxes. Exhibit #1.

4. Before November 4, 2004 Mr. Lefavour had not achieved “good standing” with the Department of taxes.

5. On November 4, 2004 Mr. Lefavour and the Department of Taxes executed an agreement which puts Mr. Lefavour in “good standing” with the department.

6. Mr. Lefavour is in good standing with the Department of Taxes.

7. The parties agree to argue to the Board whether it should condition Mr. Lefavour’s license to ensure compliance with his agreement with the Department of Taxes.

Conclusions of Law

Vermont law provides in 32 V.S.A. §3113(f):

Upon written request by the commissioner and after notice and hearing to the licensee as required under any applicable provision of law, an agency shall revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person if the agency finds that taxes administered by the commissioner have not been paid and that the taxpayer's liability for such taxes is not under appeal. For purposes of such findings, the written representation to that effect by the commissioner to the agency shall constitute prima facie evidence thereof. The commissioner shall have the right to intervene in any hearing conducted with respect to such license revocation or suspension. Any findings made by the agency with respect to such license revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license revocation or suspension. Any license or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the agency receives a certificate issued by the commissioner that the licensee is in good standing with respect to any and all taxes payable to the commissioner as of the date of issuance of such certificate.
Any person aggrieved by the decision of the agency may appeal therefrom in accordance with the provisions of chapter 25 of Title 3.

The Board does have authority to condition a license if immediate payment of the taxes due would cause an unreasonable hardship. 26 V.S.A. § 3113 (g).

By reaching an agreement with the Department of Taxes Mr. Lefavour is in good standing with the Department of Taxes.

This Board is obligated to “revoke or suspend any license...if [it] finds that taxes administered by the Commissioner have not been paid and that the taxpayer’s liability is not under appeal.” 32 V.S.A. § 3113(f).

Order

Because Mr. Lefavour is in good standing, the Board does not need to take any action against his license. The charge against him is therefore, dismissed.

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Professional Engineering. You may appeal this decision by sending a notice of appeal, in writing, to the Director of the Office of Professional Regulation, Vermont Secretary of State, 26 Terrace Street, Drawer 09, Montpelier, Vermont 05609-1106 within 30 days of the entry of this order.

BOARD OF PROFESSIONAL ENGINEERS

By: Daniel Dupras, P. E., Acting Chair

Dated: 11/04/04

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 11/8/04
IN RE: )
BRADFORD DEXTER LEFAVOUR ) Docket No.: PE03-0304
License No.: 018-0004300 )

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Bradford Dexter Lefavour:

Board Authority

1. The Vermont Board of Professional Engineering ("the Board") has authority to investigate and adjudicate complaints of unprofessional conduct pursuant to 3 V.S.A. §§129, 129a and §814(d); and 26 V.S.A. §§1172, 1191 and 1192; and the Rules of the Board of Professional Engineering.

2. Upon written request by the commissioner and after notice and hearing to the licensee as required under any applicable provision of law, an agency shall revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person if the agency finds that taxes administered by the commissioner have not been paid and that the taxpayer’s liability for such taxes is not under appeal. For purposes of such findings, the written representation to that effect by the commissioner to the agency shall constitute prima facie evidence thereof. 32 V.S.A. §3113(f).

3. Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession is unprofessional conduct upon which the Board may base disciplinary action. 3 V.S.A. §129a(a)(3).

Statement of Facts

4. Bradford Dexter Lefavour (the "Respondent") of Middlesex, Vermont is a Professional Engineer holding License Number 018-0004300 issued by the State of Vermont.

5. Respondent’s license was originally issued on February 8, 1983 and Respondent’s license is currently set to expire on July 31, 2004.

6. On or about March 17, 2004, Timothy Collins, Attorney for the Vermont Department of Taxes filed a Specification of Charges requesting that the Board
7. Upon information and belief, the Respondent has not come into good standing with the Vermont Department of Taxes to date.

Charges

8. By committing the above act(s), circumstance(s) and/or omission(s), the Respondent has committed unprofessional conduct pursuant to:
   i. 32 V.S.A. §3113(f); and
   ii. 3 V.S.A. §129a(a)(3).

Relief Requested

WHEREFORE, the license of Bradford Dexter Lefavour should be revoked, suspended, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 14th day of May 2004.

STATE OF VERMONT
SECRETARY OF STATE

By
Robert H. Backus
State Prosecuting Attorney