Statements Made During Negotiations

Case No. 05-5

Facts:
Engineer A is acting as the chief negotiator in the sale of a small engineering subsidiary to Engineer B. Engineer A wants to move the negotiations forward to finalize the deal but Engineer B has been stalling. Engineer C had expressed some initial interest in buying the subsidiary, but following consideration, Engineer C decided she was definitely not interested in purchasing the subsidiary. In an effort to move the negotiations forward, referring to Engineer C's earlier interest, Engineer A tells Engineer B, "Another company has expressed an interest in buying our subsidiary, so you had better move quickly if you are interested."

Question:
Was it ethical for Engineer A to make the statement to Engineer B in an effort to move the negotiations forward?

References:

Section I.3.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall issue public statements only in an objective and truthful manner.*
Section II.3.a.	-	*NSPE Code of Ethics:*	*Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.*
Section II.5.	-	*NSPE Code of Ethics:*	*Engineers shall avoid deceptive acts.*
Section III.1.	-	*NSPE Code of Ethics:*	*Engineers shall be guided in all their relations by the highest standards of honesty and integrity.*
Section III.1.e.	-	*NSPE Code of Ethics:*	*Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.*
Section III.3.a.	-	*NSPE Code of Ethics:*	*Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.*

Discussion:
The obligation of professional engineers to be honest, truthful, and forthcoming in their professional dealings is a critical ethical principle to which all engineers should adhere. As a general matter, the public, employers, clients, and colleagues rely upon the honesty and integrity of the professional engineer in professional matters. For that reason, engineers always need to be mindful of their statements as well as their actions. As the expression goes, one's words are one's bond and it is often by one's words how an individual will be judged.

The NSPE Board of Ethical Review has had occasion to review cases relating to the statements made by engineers. For example, in BER Case No. 72-11, the Board considered a case involving engineer John Doe who had been employed as a design engineer in an aerospace company for 12 years. During that time Doe had been assigned to the performance of highly technical and complex engineering design work. Along with thousands of other engineers in the aerospace industry, Doe was laid off when contracts with his company were terminated and new work was not forthcoming. After many months of seeking a new job in his specialized field with no success, Doe was advised by an employment counselor that Doe's only opportunity lay in finding a position involving management and administration of engineering

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work. Doe previously had some managerial and administrative experience of a minor nature in connection with his former employment, but felt he could perform satisfactorily at a higher level in that related field of technical activity if given the opportunity. After being turned down repeatedly for technical managerial or administrative positions because his resume showed a lack of such experience, Doe devised a new resume, which played down his technical design experience and expertise and emphasized his minor managerial and administrative function in his former employment as an important responsibility. As a result, Doe was able to obtain a new job that involved responsibilities in his general field of technical expertise. In deciding that Doe was not in violation of the code for rewriting his employment resume to emphasize his managerial and administrative experience and playing down his technical experience in order to obtain new employment, the Board noted that under the circumstances stated, "we are inclined to the more charitable view that his action can be condoned as something less than an 'exaggeration' in that it more nearly might be considered a degree of emphasis. This is an established and accepted form of sales technique in which the seller proclaims all of the virtues of his product and conveniently ignores its less desirable features." The Board continued by noting that the purpose of the language in the Code (in this context) is "to protect a prospective employer from being deceived as to the competence of an engineer-applicant in order that the employer not be tricked into entrusting important engineering decisions to one not qualified to make them."

Later in BER Case No. 86-6, the Board reviewed a case involving Engineer A who was seeking employment with Employer Y. As an employee for Employer X, Engineer A had been a staff engineer along with five other staff engineers of equal rank. This team of six was responsible for the design of certain products. While working for Employer X, Engineer A along with five other engineers in his team participated in and was credited with the design of a series of patented products. Engineer A submits his resume to Employer Y and on it implies that he personally was responsible for the design of products that were actually designed through a joint effort of the members of the team. In deciding that it was unethical for Engineer A to imply on his resume that he was personally responsible for the design of the products, the Board indicated that although Engineer A did not specifically state that he was personally responsible for the work in question, Engineer A implied such in a manner intended to obscure truth to a prospective employer. Such statements, said the Board, are intentionally designed to mislead a potential employer by obscuring the truth.

Turning to the facts in the present case, the Board is of the view that the two earlier cases and the present case are different in a variety of ways. But, importantly, the Board believes that Engineers A's comments to Engineer B, were misleading and are of a nature that merit the rebuke of the Board. The Board is of the view that Engineer A's comments were artfully misleading comments made during a business negotiation with potential purchaser intended to move discussions off "dead center." This Board strongly believes that honesty and truthfulness are hallmark qualities of a practicing engineer. The facts of this case suggest potential material harm to an interested party during negotiations.

the Board would note that if Engineer A had fully disclosed the full circumstances relating to Engineer C, the Board's conclusion would have been different.

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Conclusion:
It was unethical for Engineer A to make the statement to Engineer B in an effort to move the negotiations forward.

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