Advertising—Role of Public Officials

Case No. 05-7

Facts:
Engineer A has a medium-sized engineering firm and advertises the services of her firm in various industry publications. Many of the firm's clients are cities, counties, and towns. Included in the ads are photographs of firm employees with locally elected officials. In one of the ads, Engineer B, a government engineer from a jurisdiction that had earlier retained the services of Engineer A, is photographed with firm employees.

Questions:
1. Is it ethical for Engineer A to advertise using locally elected officials and government engineers?
2. Is it ethical for Engineer B, a government engineer, to participate in the ads?

References:

Section II.3.c.	-	*NSPE Code of Ethics:*	*Engineers shall issue no statements, criticisms, nor arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking and by revealing the existence of any interest the engineers may have in the matters.*
Section II.4.a.	-	*NSPE Code of Ethics:*	*Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.*
Section II.5.a.	-	*NSPE Code of Ethics:*	*Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent nor exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.*
Section III.3.	-	*NSPE Code of Ethics:*	*Engineers shall avoid all conduct or practice that deceives the public.*
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:
Promotion and advertising of engineering services has long been part of the engineering business practice. While at one time promotional activities and advertising were frowned upon as unprofessional, today such activities are considered a basic part of the sales, marketing, and promotion of any engineering firm. Moreover, a series of court decisions since the 1970s settled legal questions relating to commercial-free speech and antitrust issues, thereby, removing any remaining restriction that might prevent professional advertising, other than ads that might be misleading or deceptive.

Since most of the earlier BER opinions in this area have been superseded and made moot by court decisions, it would not appear to be particularly productive for the Board to consider the facts in the present case through the lens of those earlier cases. Suffice to say that the advertisement in question—an engineering firm advertisement that includes a photo of a government engineer working with the subject engineering firm—is not ethically objectionable, since it is (1) truthful and (2) nondeceptive. Using government officials and employees as references is normal and having prospective clients obtain telephone comments or letters from past clients is an important way for them to learn about the quality of services provided. Using print ads in a similar way is a good marketing technique. These ads run routinely in various publications.

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A related question involves appearances that may be engineered by photos of government employees in the advertisement in question. While there is no indication that any payment has been made to any party for their inclusion in the advertisement, the Board can speculate regarding the potential public perception of a publicly employed engineer appearing in an advertisement for a private engineering firm. From such an appearance, the public might draw an inaccurate conclusion regarding the relationship that exists between the engineering firm and the public agency that employs the government engineer appearing in the advertisement. In addition, there also may be an implication by the presence of the government engineer in the ad that the government engineer or the government engineer's agency is endorsing or showing undue favoritism toward the engineering firm.

The Board must conclude that the government engineer's participation in the ads were a violation of the NSPE Code of Ethics. Arguably, Engineer B's participation is a reflection of the fact that Engineer B and its agency is a satisfied customer, willing to give appropriate credit where credit is due by acknowledging the qualifications and contributions of the engineering firm. However, while verbal praise, a letter of acknowledgement, and consideration on future work, are legitimate methods of recognition, the Board does not believe that Engineer B's acknowledgement of Engineer A's firm's contributions in this more public way is ethically acceptable. Without some clarification of the potential implication, the apparently open-ended endorsement seems to violate Code sections II.3.c. or II.4.a.

Conclusions:

1. It is ethical for Engineer A to advertise using photos of locally elected officials and government engineers.

2. It is unethical for Engineer B, a government engineer, to participate in the ads.

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