Disclosure of Observations During Earlier Employment

Case No. 08-5

Facts:

Engineer A, a licensed professional engineer, is employed by a nonprofit industrial development agency (IDA) in a managerial position. This IDA, funded by federal and state grants and loans and managed by volunteer leadership from the community, has a good reputation for job creation. These grants and loans are accompanied by financial procedures regarding how to draw down revenue for the projects.

When Engineer A began working at the agency, he occasionally heard comments made by an IDA manager in the presence of the president and the director responsible for administering state and federal grants and loans programs used by the agency for development of infrastructure about "double-dipping" (being reimbursed more than once for the same expense from different funding sources). Engineer A expressed concerns that this was illegal as he had earlier worked on Department of Housing and Urban Development-funded programs where similar problems had occurred. The president said that the manager making the comment was just making fun of how the process worked, and he told Engineer A not to worry about it because the manager was not responsible for that area of the company. Engineer A accepted the president's explanation and thought no more about the comment until a few weeks later when Engineer A learned that the state auditor had placed an auditor in overall charge of all IDA's state economic development-funded programs.

About a year later, Engineer A accepted another job at a consulting engineering firm. A few months after leaving IDA, Engineer A was approached by two people on separate occasions who informed Engineer A that he was lucky to find another job since IDA was under a nonpublic investigation by the auditor general and the FBI.

Question:

Does Engineer A have an obligation to inform the members of IDA's volunteer leadership and/or law enforcement officials about this alleged investigation and his observations as an employee of IDA?

References:

Section I.6. - NSPE Code of Ethics: *Engineers, in the fulfillment of their professional duties, shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*

Section II.1.d. - NSPE Code of Ethics: *Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.*

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Section II.1.f.	-	*NSPE Code of Ethics:*	*Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.*
Section II.4.b.	-	*NSPE Code of Ethics:*	*Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.*
Section III.4.	-	*NSPE Code of Ethics:*	*Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.*

Discussion:

How engineers confront ethical and other wrongdoing in professional practice is among one of the fundamental ethical challenges. While engineers cannot turn a "blind eye" to such conduct because of the sensitive roles in which engineers sometimes find themselves, engineers must act in a prudent and sensible manner that recognizes all of the pertinent facts and circumstances

One example of this dilemma is BER Case No. 99-13. In that case, Engineer A was employed by SPQ Engineering, an engineering firm in private practice involved in the design of bridges and other structures. As part of its services, SPQ Engineering used a CAD software design product under a licensing agreement with a vendor. Under the terms of the licensing agreement, SPQ Engineering was not permitted to use the software at more than one workstation without paying a higher licensing fee. SPQ Engineering ignored this restriction and used the software at a number of employee workstations. Engineer A became aware of this practice and called a "hotline" publicized in a technical publication and reported his employer's activities. The Board found that it was not ethical for Engineer A to report his employer's apparent violation of the licensing agreement on the "hotline" without first discussing his concerns with his employer, but also concluded that that engineering firms acting through engineering managers who willfully ignore licensing agreement restrictions are in violation of the NSPE Code of Ethics. The Board noted its intent to recognize the right and the obligation of the engineer to report such violations as appropriate. At the same time, the Board noted its belief that as a professional, an engineer should always exercise judgment and discretion when confronting a situation such as the one presented under the facts of BER Case No. 99-13. The Board indicated that depending upon all of the facts and circumstances, an engineer should take reasonable steps to exhaust all appropriate alternatives before taking an extreme action, such as reporting an employer or a client for his or her actions, particularly where such actions do not appear to result in physical harm or danger to the public health or safety. At the same time, engineering managers acting for an employer who knowingly act in an unlawful manner or who take retaliatory actions against another engineer who brings such matters to their attention are ignoring the basic principles contained in the NSPE Code and are acting unethically.

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While the facts in the present case involve an ongoing investigation and do not indicate an admission of direct wrongdoing as was the situation in BER Case No. 99-13, the Board believes that measuring all of the facts and circumstances, Engineer A's ethical course of action is clear. In the present case, Engineer A had already taken reasonable and prudent immediate steps when Engineer A first learned of the possibility of wrongdoing. In hindsight, one may conclude that Engineer A should have gone further at that time, but as we know, "hindsight is often 20:20," and it would be unfair for the Board to judge Engineer A's failure to take more immediate action, particularly in light of the Board's discussion in BER Case No. 99-13.

It should also be noted that while there may at times be an ethical obligation on the part of the engineer to bring these matters to the attention of the volunteers, there may also be a legal obligation to do so. In the present case, there appears to be an investigation occurring, and while Engineer A is presumably not aware of the breadth and scope of the entire investigation, the information within his knowledge may be material and relevant to the investigation. At the same time, it is clear from the facts that Engineer A's knowledge of the facts is somewhat limited in scope.

It should also be said that while one can appreciate the concerns expressed by Engineer A, there was also a clear obligation on the part of the volunteer board to more carefully oversee and scrutinize the actions of the paid staff. While these matters are not always as they might first appear and while it is generally not a good idea to assume or speculate about what might or might not have happened, in view of the overall atmosphere and the facts and circumstances involved, acting in a passive manner does not appear to serve the best interests of IDA.

Conclusion:
In the absence of credible knowledge, Engineer A has no ethical obligation to convey his concern to either the volunteer leadership of IDA or law enforcement officials conducting the alleged investigation. However, it would be ethical for Engineer A to approach the IDA leadership with his concerns.

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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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