Employment—Awareness of Possible Financial Improprieties

Case No. 11-8

Facts:

Engineer A works for Company X which is owned by Engineer B. Company X is currently experiencing financial problems and Engineer B recently created another company, Company Y. Engineer A has learned that Engineer B recently advised clients of Company X to remit payments for work performed by Company X and its employees to Company Y.

Question:

What are Engineer A's ethical obligations under the circumstances?

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.*
Section III.7.	-	*NSPE Code of Ethics:*	*Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.*

Discussion:

Engineers and engineering companies engage in professional practice through a variety of business structures, including sole proprietorships, partnerships, professional corporations, business corporations, limited liability companies, and various other types of entities. The nature of the business structure employed will be based upon a variety of factors, including number of employees, professional practice risk considerations, management control issues, desire for business flexibility, transferability, perpetual existence, and many considerations. These considerations are based upon the requirements of state and/or federal law, and engineers and engineering companies are expected to adhere to those requirements in their professional practice.

The NSPE Board of Ethical Review has considered cases involving what might appear to be certain questionable, even illegal, activities on the part of engineering firm management. In this connection, two cases come to mind, BER Case Nos. 76-4 and 08-1.

In Case No. 76-4, XYZ Corporation had been advised by a State Pollution Control Authority that it had 60 days to apply for a permit to discharge manufacturing wastes

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into a receiving body of water. XYZ Corporation was also advised of the minimum standard that must be met. In an effort to convince the authority that the body of water, after receiving the manufacturing wastes, would still meet established environmental standards, the corporation employed Engineer Doe to perform consulting engineering services and submit a detailed report. After completion of his studies but before completion of any written report, Engineer Doe concluded that the discharge from the plant would lower the quality of the receiving body of water below established standards. He further concluded that corrective action would be very costly. Engineer Doe verbally advised the XYZ Corporation of his findings. Subsequently, the corporation terminated the contract with Engineer Doe with full payment for services performed and instructed Engineer Doe not to render a written report to the corporation. Thereafter, Engineer Doe learned that the authority had called a public hearing and that the XYZ Corporation had presented data to support its view that the present discharge meets minimum standards. In deciding that Engineer Doe had an ethical obligation to report his findings to the authority upon learning of the hearing, the Board acknowledged that the termination of Engineer Doe's contract with full payment for services rendered is a business decision which the Board presumed was permitted by the terms of the engineering services contract between Engineer Doe and his client. However, the Board also concluded that Engineer Doe had reason to question why the corporation specifically stipulated that he not render a written report. Upon learning of the hearing, Engineer Doe was squarely confronted with his obligations to the public concerning its safety, health, and welfare and that his duty to the public was paramount.

More recently, BER Case No. 08-1 involved Engineer A, who was a recently hired software engineer recruited from college by HyTechCo, a global software company. As part of his first assignment, Engineer A's supervisor, Engineer B, requested that Engineer A write software to provide security for e-mailed documents within HyTechCo. After completing the project, Engineer A read a news story on an IT industry Web site about an individual with another company who had made similar software available to overseas clients and was being investigated by the government because of U.S. laws that required that such software not be sent overseas because of national security concerns. Engineer A learned that the software he developed for HyTechCo had been sent overseas by HyTechCo's IT department for use by HyTechCo's offices abroad. Engineer A informed Engineer B, who responded without the benefit of consulting legal counsel that since HyTechCo was a U.S.-based company (i.e., not a threat to U.S. national security) and will be using the software solely for internal purposes, not selling it, there would be no problem. Engineer A agreed but later learned that one of HyTechCo's overseas offices had been permitting company contractors to use the software to exchange secured e-mail documents. The Board decided that Engineer A had an obligation to discuss this matter with Engineer B and provide all of the facts and circumstances to Engineer B's attention. The Board noted that while it may be anticipated that Engineer B will carefully look into this matter to verify Engineer A's concerns, in the event that Engineer B does not take this action, it would be ethically

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proper for Engineer A to either seek an appeal of this matter at a higher management level within HyTechCo or recommend that Engineer B seek a written opinion from HyTechCo's legal department regarding this matter and that Engineers A and B may want to consider documenting the actions and discussions taken by them. The Board also noted that that for a young engineer just beginning his or her professional career, it is often difficult to challenge superiors in matters involving professional practice and that there is often a tendency to "go along," "not question authority," and "be loyal to the company." However, it was the Board's view that the most loyal action a young engineer or any engineer within a company can take is to communicate the fact that the company may be taking a risky path by pursuing an action that will fall outside of the bounds of the law or cause great embarrassment for the company.

The facts in the instant case are a bit more difficult to decipher since they are somewhat limited. It is arguable that there may be legitimate reasons why Engineer B created Company Y and advised his clients of Company X to remit payments for work performed by Company X and its employees to Company Y. However, it appears from the facts that there is not a sufficient level of transparency either between Engineer A (and possibly other employees of Company X) and Engineer B regarding the reasons for this procedure and possibly between Engineer B and the clients of Company X. Engineers have an affirmative obligation to avoid associating with engineering or other companies that they suspect may be engaged in fraudulent or dishonest practices. While it is not unusual for businesses, including engineering companies, to establish new business entities as a risk management mechanism, the diversion of revenue from one company experiencing financial problems to another new company raises possible concerns.

The Code of Ethics' Paragraph III.7 is instructive in helping the engineer to appropriately evaluate an ethical dilemma such as this one. Although Engineer A may harbor a reasonable belief that Engineer B may be engaged in an illegal activity, he must be careful not to unjustly injure the reputation of Engineer B. Thus, Engineer A must be prepared at the outset to make efforts to satisfy his concerns that no deceptive activity is taking place. If, after discussing these concerns with Engineer B, Engineer A's concerns are not satisfied, he may then consider stronger measures, including possibly taking his suspicions to the licensing board.

Conclusion:

Engineer A is concerned about the possible unethical action by Engineer B and Engineer A's association with that action. Engineer A has an ethical obligation to attempt to determine if there is a basis for his concern by seeking clarification of Engineer B's intentions. If Engineer A is not convinced that Engineer B is operating his business in an ethical and legal manner, he should disassociate himself from Company X, i.e., resign, in order to remove his name from possible unethical and illegal actions by Engineer B. Further, he may consider bringing his concerns to the state licensing board.

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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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