Advertising—Promotion in Lieu of a Fee

Case No. 12-10

Facts:

Engineer A is the owner of PQR Structural Engineering, a small structural engineering firm. Client X, a local not-for-profit organization, is in need of the structural engineering services offered by PQR Structural Engineering, but only has limited funding. Client X proposes to include PQR Structural Engineering's name and logo in their advertising materials in exchange for the structural engineering services.

Question:

Would it be ethical for Engineer A to agree to Client X's proposal to include PQR Structural Engineering's name and logo in their advertising materials in exchange for the structural engineering services?

References:

Section II.3.	-	*NSPE Code of Ethics:*	*Engineers shall issue public statements only in an objective and truthful manner.*
Section II.5.	-	*NSPE Code of Ethics:*	*Engineers shall avoid deceptive acts.*
Section III.2.	-	*NSPE Code of Ethics:*	*Engineers shall at all times strive to serve the public interest.*
Section III.5.a.	-	*NSPE Code of Ethics:*	*Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.*

Discussion:

Professional advertising and the appropriate conduct relating to advertising has long been an issue within the field of engineering ethics. Throughout the history of the NSPE Board of Ethical Review, the Board has had to occasionally decide a wide variety of cases relating to this issue. It is important to note at the outset, however, that as a general matter, the NSPE Code of Ethics or other restrictions on nondeceptive advertising have been found to be unlawful by the United States Supreme Court and federal enforcement agencies. Therefore, it is clear that this Board may only offer opinions on advertising that is clearly deemed to be non-truthful or at the very least misleading and deceptive on its face.

As noted, while the issue of advertising has long been a subject of this Board, many if not most of this Board's opinions relating to advertising were decided under an earlier version of the NSPE Code of Ethics, which at the time deemed as unethical certain types of advertising determined to be unprofessional, including "self-laudatory comments." A historical example of such language was the early BER Case No. 64-8, where an engineering firm inserted in a magazine, circulated primarily to business

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subscribers, a full-page advertisement consisting of text and one simple illustration intended to depict savings in capital costs which could be accomplished by retention of an engineering firm. In deciding that the advertisement by the engineering firm in its original form and the reprint containing the added objectionable statements were unethical, the Board noted that the language was not in accord with the mandate of the NSPE Code because it was self-laudatory in tone and implied superiority and tended to reflect unfavorably upon the dignity and honor of the profession.

We cite this early case to illustrate the dramatic changes that have occurred within the field of engineering since the Board's rendering of its opinion in BER Case No. 64-8. In addition to changes in the legal landscape that render earlier NSPE Code language and BER opinions invalid, many other changes have occurred within the field of engineering that would raise significant questions regarding the propriety of such earlier BER opinions. Engineering practice has become much more commercial, competitive, and market-driven, with marketing, sales, and advertising playing an increasingly important part. With the increasing globalization of engineering practice and the heightened use of technology to deliver engineering services, it can be anticipated that this trend will continue for some time. It is clear that earlier notions about the propriety of advertising have become somewhat antiquated, almost quaint, and not in keeping with the current times.

More recently, in BER Case No. 03-11, the Board considered a case involving Engineer A, a principal in Topp-Flyte Engineering, a medium-sized engineering firm in South Northville, a medium-sized town. Engineer A's firm's engineers had received professional recognition by several South Northville engineering and technical organizations in the past year and in previous years. Recently Engineer A's firm ran the following ad in a local newspaper:

> *"It says a lot when South Northville engineers recognize three members of one engineering firm in one year. It says even more when the same firm's engineers are recognized for 18 years running. If you need engineering services, call the engineers other engineers have called the best: 'Topp-Flyte Engineers,' the best in engineering…"*

In deciding that it would be ethical for Engineer A's firm, Topp-Flyte Engineering, to run the advertisement in a local paper, the Board, noting the aforementioned modern analysis of advertising restrictions, indicated that it was not convinced that there was any basis to believe that the claims made by Engineer A and Topp-Flyte Engineering involved non-truthful or misleading and deceptive advertising claims as the Board understands the term and as it had been interpreted as a matter of law. Said the Board, "there is nothing in the NSPE Code of Ethics that prohibits 'self-laudatory' advertising as may have been the case in the past. Moreover, based upon the facts that (a) Topp-Flyte Engineering has earned recognition for its achievements for many years, and (b) there

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is no indication in the facts noting that its statements are factually incorrect, the Board cannot conclude that anything in the Topp-Flyte advertisement constitutes non-truthful or misleading and deceptive advertising claims."

The Board recognizes its continuing role to carefully evaluate situations involving non-truthful or misleading and deceptive advertising claims and notes that this will need to be determined on a case-by-case basis—following a careful evaluation of all of the facts and circumstances. Under the facts presented, it is the Board's view that there is nothing that would express or imply anything unethical or improper for Engineer A and PQR Structural Engineering, either to agree to perform the services in exchange for promotional considerations by Client X or to advertise in the publications of Client X.

The Board would note that, unlike earlier advertisement cases considered by the Board (such as the previously discussed Case Nos. 64-8 and 03-11), there is no indication under the facts as to the specific content of the proposed advertisement. Clearly, within the parameters outlined in the Board's earlier discussion, such advertisement should not contain misleading or deceptive material, but beyond that caveat, as the Board has stated on previous occasions, the NSPE Code of Ethics for Engineers contains no other limitations on professional engineers or engineering firms engaging in advertising.

Conclusion:
It would be ethical for Engineer A to agree to Client X's proposal to include PQR Structural Engineering's name and logo in their advertising materials in exchange for the structural engineering services so long as any advertisement by Client X is not misleading or deceptive.

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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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