Report on a Case by the Board of Ethical Review

Case No. 61-8

Subject:
Disclosure of Technical Process of Former Employer
Canon 14- Canons of Ethics

Facts:
An engineer employed by the ABC Company is assigned by his supervisor to develop processing equipment for the manufacture of certain chemical products. In his previous employment with the XYZ Company, the engineer had participated in the development of similar equipment. The technical information concerning the equipment has not been published in the technical press, or otherwise released. By virtue of his previous involvement in its development the engineer is familiar with the equipment and the principles of its design. His superiors in the ABC Company suggest that this knowledge will be useful in developing similar equipment for their use and expect him to make his knowledge concerning the particular equipment available to the ABC Company to aid in the development of the similar equipment.

Question:
May the engineer ethically apply his knowledge to the development of equipment for his employer based on experience and information gained in similar work for a previous employer, without the consent of the latter?

References:
Canons of Ethics-Canon 14- "He will disclose no information concerning the business affairs or technical processes of his clients or employers without their consent."

Discussion:
General professional knowledge gained by experience accrues to the individual and is carried with him in the course of his career to be used by him in the performance of his work for any client or employer. The situation here, however, refers not to general professional knowledge, but to a specific process or equipment of a former employer. The facts indicate that the particular equipment of the XYZ Company is in the nature of a "trade secret" and hence may not be disclosed to other persons without consent.

The courts have often been called upon to distinguish between general knowledge and trade secrets. The guiding principles in drawing the line have been stated as follows:

"While it has been said that an exact definition of a trade secret is not possible, the courts nevertheless define a trade secret to be a plan or process, tool, mechanism, or compound, known only to its owner and those of his employees to whom it is necessary to confide it in order to apply it to the uses for which it is intended. ***Like any other secret, a trade secret is nothing more than a private matter; something known only to

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one or a few and kept from the general public, and not susceptible to general knowledge. There must exist a substantial element of secrecy, and the term 'trade secret/ is not applied to matters of public knowledge, or of common knowledge to a trade, or of general knowledge in an industry, or to matters which are completely disclosed by the goods which are marketed." (79 C.J.S 935)

Conclusion:
Most employers of engineers accept the obligation of permitting their engineers to decide for themselves what information they can carry and use from job to job, recognizing the ethical duty of the engineer not to disclose confidential information of a former employer. (See, "A Survey of Employer Practices and Expectations Concerning the Safeguarding of Proprietary Rights," published by Engineers Joint Council.)

Inasmuch as the equipment developed for the XYZ Company had not been made known to the public or the industry, it is in the nature of a "trade secret" and the engineer who participated in its development may not ethically use or impart that particular knowledge to another employer without the consent of his former employer, although he may ethically apply general knowledge and general engineering principles gained in his former employment to solving the problems of his present employer.

Board of Ethical Review L. R. DURKEE, P. E. PHIL T. ELLIOTT, P. E. A. C. KIRKWOOD, P. E. MARVIN C. NICHOLS, P. E. EZRA K. NICHOLSON, P. E. PIERCE G. ELLIS, P. E., Chairman

Note: Member W. S. Nelson did not participate in the consideration or decision of this opinion.

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