Report on a Case by the Board of Ethical Review

Case No. 64-11

Subject Engineering Services Included as Part of Material Promotion and Sales
Section 8-Code of Ethics; Section 8(a)-Code of Ethics; Section 9(a)-Code of Ethics; Section 9(e)-Code of Ethics; Section 10(a) -Code of Ethics.

Facts:
A government agency programs the construction of a bridge. It retains a consulting engineer to design the total structure. An engineer who is a sales representative of Firm A, which produces and sells pre-stressed concrete bridge members, contacts the consulting engineer and requests him to consider using Firm A's material. The engineer of Firm A indicates that his firm will provide the design of the superstructure incorporating its product at no charge to the consulting engineer, and that this design will be performed by licensed professional engineers.

Questions:
1. Is it ethical for the engineer employed by Firm A to make such an offer?

2. Is it ethical for the consulting engineer to accept such an offer?

References:

Code of Ethics-Section 8-"The Engineer will endeavor to avoid a conflict of interest with his employer or client, but when unavoidable, the Engineer shall fully disclose the circumstances to his employer or client."

Section 8 (a) - "The Engineer will inform his client or employer of any business connections, interests, or circumstances which may be deemed as influencing his judgment or the quality of his services to his client or employer."

Section 9 (a) -"He will not undertake or agree to perform any engineering service on a free basis, except for civic, charitable, religious, or eleemosynary nonprofit organizations when the professional services are advisory in nature."

Section 9 (e) - "If in sales employ, he will not offer, or give engineering consultation, or designs, or advice other than specifically applying to the equipment being sold."

Section 10 (a)-"He will not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product."

Discussion:

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Section 9 (a) states that the engineer "will not undertake or agree to perform any engineering service on a free basis" (except for types of organizations not involved in this case).

Section 9 (e) specifies further that, "If in sales employ, he will not offer, or give engineering consultation, or designs, or advice, other than specifically applying to the equipment being sold."

In the present context, we understand "equipment" to include manufactured products, such as pre-cast pre-stressed concrete units; and this might be extended to other manufactured materials. This is indicated by Section 10(a), which states the engineer ". . . will not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product."

The engineer of Firm A is in violation of Section 9 (a). Under Section 9(e) he might offer advice about the characteristics and properties of the product being sold by his firm, but is clearly prohibited from executing the design of the superstructure incorporating the product being sold without a contract for an appropriate fee with the consulting engineer for such engineering service.

Under the circumstances in the facts, the consulting engineer is in violation of Section 10(a) and would also appear to violate his responsibility to be honest and impartial.

If, on the other hand, the consulting engineer believes the construction material (product) proposed by Firm A is best in the client's interest, and proposes to contract for an appropriate fee with Firm A for the necessary engineering design, he must under Sections 8 and 8 (a) disclose such activity to his client.

Conclusions:

1. It is unethical for the engineer employed by Firm A to make such an offer which involves "free" engineering service.

2. It is unethical for the consulting engineer to accept such an offer under the circumstances stated in the facts.

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