Report on a Case by the Board of Ethical Review

Case No. 66-8

Subject: Contractual Relationship Between Engineers
Section 9-Code of Ethics; Section 11(d)-Code of Ethics.

Facts:
Engineer "A" was retained by a municipal client for a project in connection with the acquisition of an existing privately owned electrical system, and the construction of certain improvements related thereto. Engineer "A" retains Engineer "B," who is particularly qualified to evaluate electrical systems, to provide an evaluation. The two engineers did not reduce their agreement to writing.

The municipality later decided not to proceed with the acquisition of the private electrical system, and Engineer "A" advised Engineer "B", upon being billed for his services, that he could not pay any fee inasmuch as the work performed by both of them did not result in any compensation, and that he considered the services rendered as "promotional."

Question:
Is it ethical for one engineer to retain another under the circumstances described and decline to pay for services rendered on the ground that the services were "promotional" in nature?

References:
Code of Ethics-Section 9-"The Engineer will uphold the principle of appropriate and adequate compensation for those engaged in engineering work."

Section 11 (d) -"He shall not solicit or accept an engineering engagement on a contingent fee basis if payment depends on a finding of economic feasibility, or other conclusions by the engineer."

Discussion:
It would appear that both engineers were guilty of poor business practices in not having a meeting of the minds, preferably reduced to writing, to define their several interests, duties, and agreement on compensation. Apparently Engineer "A" considered the entire venture a business risk in providing services up to a certain point in the hope that the project would be implemented and that he would be retained for the required engineering services. Engineer "B", on the other hand, apparently considered his retention to be on a normal professional fee basis.

We are not confronted with the question of the propriety of Engineer "A's" contract with the municipal client, since the question asked is the relationship between Engineers "A" and "B."

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Engineer "B" was retained for an engineering service of a specific nature and was entitled to a proper fee from Engineer "A", whether or not Engineer "A" had or had not undertaken to perform his service on a risk or contingent basis.

We do not need to deal at this time with the question of whether Engineer "B" would have been in violation of Section 11 (d) had he agreed to perform his services on a contingent basis, because it is apparent that such was not his intention or understanding.

Conclusion:
Engineer "A" was in violation of the Code of Ethics in retaining Engineer "B" for professional engineering services without paying a fee for services performed.

BOARD OF ETHICAL REVIEW CASE REPORTS: The Board of Ethical Review was established to provide service to the membership of the NSPE by rendering impartial opinions pertaining to the interpretation of the NSPE code of ethics.

BOARD OF ETHICAL REVIEW FOR THESE CASES: T. C. Cooke, P.E., C. C. Hallvik, P.E., James Hallett, P.E., N. O. Saulter, P.E., Sherman Smith, P.E., Kurt F. Wendt, P.E., Waldemar S. Nelson, P.E., Chairman.

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