Report on a Case by the Board of Ethical Review

Case No. 68-10

Hiring Employees Of Another Firm

Facts:
Engineer "A" had been employed by Engineer "B", a consulting engineer, for several years. Engineer "A" terminated his employment with Engineer "B" to start his own practice as a consulting engineer. Subsequently Engineer "B" learned that some of his sub-professional employees were doing work for Engineer "A" on their own time. Engineer "B" is of the opinion that the outside work of his sub-professional employees is of such extent that it adversely affects their work for him.

Question:
Was Engineer "A" acting ethically in employing the sub-professional employees of Engineer "B" under the conditions stated?

References:
Code of Ethics-Section 11- "The Engineer will not compete unfairly with another engineer by attempting to obtain employment or advancement or professional engagements by competitive bidding, by taking advantage of a salaried position, by criticizing other engineers, or by other improper or questionable methods."

Section 12-"The Engineer will not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of another engineer, nor will he indiscriminately criticize another engineer's work in public. If he believes that another engineer is guilty of unethical or illegal practice, he shall present such information to the proper authority for action."

Discussion:
There are several sections of the Code of Ethics which prohibit or limit engineers from engaging in activities which would be detrimental to their employer or client. These provisions are not cited or discussed, however, because in this case the employees in question are not engineers, hence the Code does not apply to them.

The Code does apply, however, to Engineer "A", and it is his activity under these facts that must be scrutinized. It is not stated in the facts that Engineer "A" knew that his extensive use of the sub-professional employees of Engineer "B" was adversely affecting their performance for Engineer "B". But as an experienced engineer in private practice and one faced with the consideration of efficient use of employees, he can be held to have constructive knowledge that such extensive use might have this effect.

Section 12, while not directly in point, forbids an engineer from injuring the professional practice of another engineer, either directly or indirectly. We believe it can fairly be said

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that Engineer "A" has injured the practice of Engineer "B" by indirect, even if unintentional, methods.

Section 11, while not directed specifically at this point, is written in the conjunctive and can properly be read under these circumstances to hold that an engineer will not compete unfairly with another engineer "... by ... improper or questionable methods." While it is not stated whether Engineer "A" is a direct competitor of Engineer "B", this is unimportant. He can properly be considered a "competitor" in a general sense. By using the employees of Engineer "B" in the manner indicated, Engineer "A" is "competing" by "improper or questionable methods."

We can and do say that when this is done it is ethically incumbent upon the engineer hiring such employees for extra periods of time to contact the engineer-employer, advise him of his intentions, and inquire if there is any objection or if such activity will adversely affect the practice of the other engineer.

Conclusion:*
Engineer "A" was acting unethically in employing the sub-professional employees of Engineer "B" under the conditions stated.

***Note**-This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

NOTE: Chairman Cooke did not participate in the decision of this case.

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BOARD OF ETHICAL REVIEW Frank H. Bridgers, P.E., James Hallett, P.E., C. C. Hallvik, P.E., N. 0. Saulter, P.E., Sherman Smith, P.E., Kurt F. Wendt, P.E., T. C. Cooke, P.E., Chairman.

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