Report on a Case by the Board of Ethical Review

Case No. 71-11

Advertising Use of Brochure Tied to Professional Directory Card

Facts:
A magazine which circulates generally to users of engineering services in a specialized field carries a regular section for professional service cards. A number of engineering firms carry cards in the section, which are within the criteria for such cards prescribed in Section 3(a)(1) of the Code of Ethics. However, under each such card there is a line which states: "Circle (No.) on Reader Service Card." There is a different number for each card. The reader service cards are self-addressed to the magazine which, in turn, forwards the information on the card to the firm. The firms which receive the card may then forward their brochures with or without other literature or letters to the inquirer.

Question:
Is it unethical for an engineering firm to carry a professional card in a publication under an arrangement which relates that card to a reader service which is to be forwarded to the firm as a request for a brochure or other information?

References:
Code of Ethics-Section 3(a)-"The Engineer shall not advertise his professional services but may utilize the following means of identification:"

Section 3(a)(1)-"Professional cards and listings in recognized and dignified publications, provided they are consistent in size and are in a section of the publication regularly devoted to such professional cards and listings. The information displayed must be restricted to firm name, address, telephone number, appropriate symbol, name of principal participants, and the fields of practice in which the firm is qualified."

Section 3(a)(3)-"Brochures, business cards, letterheads, and other factual representations of experience, facilities, personnel, and capacity to render service, providing the same are not misleading relative to the extent of participation in the projects cited, and provided the same are not indiscriminately distributed."

Discussion:
The code clearly authorizes the use of professional cards under the conditions stipulated in Section 3(a)(1). The cards in question comply with the limitations, except with regard to the line under each card, which is not a part of the card itself. However, we assume that the firms are aware of the use of the line under the card as inserted by the magazine and by continuing their cards have acceded to the arrangement.

Likewise, the code specifically permits the use of brochures within prescribed limitations, one of which is that the brochures may not be "indiscriminately distributed." Thus, the

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question here is whether sending a brochure to prospective clients on the basis of a showing of interest through the reader service card is tantamount to indiscriminate distribution.

In an earlier case (62-2) we held, with one member dissenting in part, that it was not unethical to distribute a brochure to persons who had attended a meeting in connection with a particular type of project, noting that the ethical standard at that time was that the distribution of brochures was limited to "interested and potential clients." Accordingly, it was held that those receiving the brochure qualified as interested or potential clients by reason of their attendance at the meeting. The dissenting member, however, stated the view that mere attendance at a meeting on a certain type of project was not sufficient to warrant the conclusion that they were potential clients.

The standard on distribution of brochures is now more definitive, particularly in that Section 3(a)(3) states that brochures may not be "indiscriminately distributed." We hold that there is little difference in mailing a brochure on the basis of an interest expressed through a reader service card or by responding to a letter to the firm from a potential client asking for more information about the firm. Certainly the latter is a permissible use of a brochure.

Conclusion*:
It is not unethical for an engineering firm which carries a professional card in publications to permit the use of reader service card numbers as a basis for distribution of the brochure and other information of the firm.

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Board of Ethical Review: Joseph H. Littlefield, P.E.; James D. Maloney. P.E.; Robert E. Stiemke, P.E ; Albert L. Wolfe. P.E.; Frank H. Bridgers. P.E., chairman.

Dissenting Opinion:
We disagree with the majority opinion for two basic reasons. The first involves the language of Section 3(a)(3) of the Code of Ethics; e.g., "provided the same (brochures) are not indiscriminately distributed." We perceive a difference between a letter from a potential client asking for information about a firm and the use of a reader service card. It is a relatively simple, almost mechanical, act for a person to circle a number on a card and drop it in a receptacle on a desk for ultimate mailing. The purpose may be quite

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proper and may reflect the interest of the respondent in knowing more about a particular firm for consideration for providing engineering services. Or it may be a matter of general curiosity having no particular relationship to a proposed engagement. A letter request, on the other hand, is more likely to indicate a real interest and some degree of intent to consider the use of the firm. If the intent to use the firm is not demonstrated, we believe the distribution of the brochure becomes to some degree "indiscriminate."

Balancing the practical aspects of the use of the brochure as a means to reach potential clients and the restriction against their "indiscriminate" distribution, we feel that the weight must be on the side of avoiding making the availability of brochures too easy. It should not be too much to expect a truly interested potential client to write a simple letter to the firm in which he might have a true interest, indicating to a reasonable degree the nature and extent of his interest as a basis for the firm to respond more specifically as to its qualifications through the use of its brochure or other means.

We cite also the general terms of Section 3, "The Engineer will avoid all conduct or practice likely to ... unfavorably reflect upon the dignity ... of the profession." Utilizing the reader service card approach, which heretofore has been utilized for products of every description and value can hardly be considered consistent with quoted language of the code.

Further examination is indicated also on the nature of the publication in which the card and reader response card are carried as several examples have been noted in publications which are unbound. give-away types carrying nothing but advertisements of products and services which are offered for sale. W.R. Gibbs, P.E.; Sherman Smith, P.E.

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