Report on a Case by the Board of Ethical Review

Case No. 72-2

Conflict of Interest - Use of "Free Engineering" from Manufacturer

Facts:
Engineer A, a sales engineer for the XYZ Company, which manufactures and sells terminal units (devices which determine the final temperature control in the air conditioned space) used in heating, ventilating, and air conditioning systems, offers to Engineer B, a consulting engineer, a computerized design developed by the XYZ Company for complete air distribution systems. The computer printout specifies not only terminal units, but also duct size, duct fittings, air quantities, static pressure, noise levels, sound absorption, and insulation requirements. This information is based upon input supplied by Engineer B.

Questions:
1. Is it ethical for Engineer B to utilize the services provided by the XYZ Company without his independent analysis of the data furnished and consideration of alternatives?

2. Is it ethical for Engineer A to offer these services to Engineer B?

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(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.

Discussion:
The duty of the engineer under Section 8 is to ensure to the fullest extent possible that his client receives the best in goods and services consistent with the requirements of the projects, including budget limitations, as determined by the independent professional judgment of the engineer. As long ago as Case 59- 3, we stated in connection with the specification of one type of product over another:

It is the duty of the consulting engineer to decide that a particular project is best served by the choice of certain materials in certain places. The specification in the example eliminates the use of wood, reinforced concrete, or masonry, and it is in the best

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interests of all concerned that the engineer make the decision as to the basic material before designing the project. Rule 14* should not be interpreted to eliminate such decisions, but after the decision has been made. Rule 14 does prohibit the inclusion of special requirements which may be met by only one company out of many, unless such limitation is required by the special function of the structure or project. (* Rule 14 of the now-defunct NSPE Rules of Professional Conduct provided: "His plans or specifications will not be such as to limit free competition, except with his client's consent.")

We believe that the substance of the old Rule 14 and the principle stated in the quoted extract from Case 59-3 are embodied in Section 8(a) of the present code.

The evil in the case before us is not necessarily that the computerized data will be unreliable or incorrect, or even that the engineer is accepting and using "free" technical data. (We might well question, however, whether the services provided by the manufacturer should be considered "free" as their cost must necessarily be built into the price of the products.) The real evil is that the engineer has placed himself in the position of using a short-cut method of fulfilling his duty to the client with the danger of specifying a less-than-best product for the purpose. The influence on the engineer to go along with the product indicated by the manufacturer's computer printout is obvious. The free service offered by the manufacturer is intended to enhance the sale of his products, and the engineer utilizing that service must be charged with constructive knowledge of that fact of commercial life. Even if the engineer truly and sincerely believes that the products of the XYZ Company are superior to those of competitors for the needs and interests of the client, he has placed himself in an awkward position by allowing suspicion to exist that his independent professional judgment was compromised.

At the least, under the mandate of Section 8(a), the engineer under these circumstances must advise his client of his intention to utilize the free computer printout services, and the resultant expectation that the printout will likely call for the products of the XYZ Company. If the client authorizes the engineer to utilize the XYZ printout the engineer is still obligated to make an independent evaluation of the products specified by the XYZ printout compared with competitive products and then fully advise his client of his reasons for choosing the XYZ products, if that be his decision. What we have proposed is a time- consuming and expensive duty for the engineer, and we believe it can and should be avoided by following normal procedures in the evaluation of competing products and materials for each project. Consistent with his ethical duties as discussed herein, we further believe that the engineer will find that reliance on normal methods of obtaining computer services not related to proprietary products will best serve the interests of both the engineer and his client.

With regard to Engineer A, it is clear that Section 9(e) prohibits his offer because the services offered to Engineer B are not restricted to the products of XYZ Company, but are general engineering data related to the design of the entire system.

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Conclusions:

1. It is not ethical for Engineer B to utilize the services provided by the XYZ Company without making an independent analysis and considering alternatives.

2. It is not ethical for Engineer A to offer these services to Engineer B for the complete system design.

***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.

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