**Report on a Case by the Board of Ethical Review**

**Case No. 73-3**

**Ethical Conduct by Engineer-Members of Public Body**

**Facts:**
Engineer A filed a complaint and related documents with the state engineering registration board alleging that Engineer B had practiced in an incompetent manner in connection with a particular project and requested the board to hold a hearing on his complaint. The registration board considered the complaint informally, as permitted by law, without calling a hearing wherein the complainant could appear before the board to offer testimony or evidence and where expert testimony on the technical subject matter could be heard. The members of the registration board reached the conclusion to dismiss the complaint without formal action on the basis of the board's review of the material submitted and informal discussions with several consultants it deemed to be qualified to comment on the technical subject matter. Engineer A alleges that the action of the members of the registration board in refusing to hold a hearing under these circumstances was unethical.

**Question:**
Was it a violation of the Code of Ethics for engineers, as members of a state registration board, to dismiss a complaint of incompetence against an engineer registered by the board without a formal hearing?

**References:**
Code of Ethics-Section 5-The Engineer will express an opinion on an engineering subject only when founded on adequate knowledge and honest conviction.

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:**
The action of Engineer A in filing his charges against Engineer B with the state registration board was clearly within the mandate of the second sentence of Section 12 of the code. What is not so clear, however, is what duty the code imposes upon engineers who are members of the registration board in the disposition of the complaint.

We are not concerned here with the merits of the complaint or the lack of same. In fact, there is not nearly enough information at hand for us to indicate any judgment even if we were so disposed. Further, we are concerned only with ethical considerations not legal considerations.

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Before applying the code to the facts at hand, we feel obliged to face the question: Does the code apply to engineers acting in the capacity of members of a state engineering registration board? We answer this question in the affirmative. While it is true that such public officials have the first and foremost duty of meeting the requirements of the law they have sworn to uphold, nonetheless, they are bound by the code, in the absence of any contravening provisions of the state statutes, just as firmly in their public office as in the usual practice of their profession.

We turn now to the code. Other than the general principles enunciated in the Preamble and in Sections 1 and 3, the only section that bears on the case at hand is Section 5 and even then the connection is somewhat tenuous. The requirement of Section 5 is that members of the registration board must have "adequate knowledge" and "honest conviction" before expressing "an opinion on an engineering subject."

We consider the matter of resolving the charge of incompetence against an engineer an engineering subject. Since no engineer may be expected to be an expert in every field of practice, the customary procedure to obtain adequate knowledge in such an instance is to consult with experts in the particular field. This procedure was followed by members of the board who apparently were satisfied they possessed adequate knowledge after reviewing the complaint and related documents and conferring with the several consultants. This determination was within their prerogative and authority. In the absence of any fact to the contrary, we must assume the members of the registration board each had an honest conviction.

The board expressed the opinion, at least implicitly, that the information submitted was not sufficient to warrant any further action. None of the facts submitted to us indicate that this opinion was not based on adequate knowledge or honest conviction.

**Conclusion*:**
It was not a violation of the Code of Ethics for engineers, as members of a state registration board, to dismiss a complaint of incompetence against an engineer registered by the board without a formal hearing.

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