Report on a Case by the Board of Ethical Review

Case No. 73-5

Advertising - Directory

Facts:
A national publication which circulates widely to the engineering profession and the construction industry has proposed to issue a directory of design firms. The directory will be in the form of two full (8½ x 11 inch) pages for each firm, with the two pages containing factual information about the firm, names of partners or officers, background of the firm, statement of range of services, summaries of typical projects, and such other similar text material as may be desired by each firm. In addition, each firm listed in the directory may choose to publish one or more photographs depicting firm projects within the two pages. In addition to the firm listings, the directory will include an alphabetical index of the participating firms, a geographical index, a series of alphabetical indexes listing firms that perform particular major types of projects, and a listing of the ranking of firms by size. The directory will not include any commercial advertising. The estimated cost to each firm is $895 for the two-page spread. Planned distribution of the directory will include executives of large corporations, officials in government with construction responsibilities, and elected public officials. The directory will also be available for public purchase.

Question:
Would it be ethical for engineers or their firms to be listed in the directory as described above?

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

"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.

"2. Signs on equipment, offices and at the site of projects for which he renders services, limited to firm name, address, telephone number, and type of services, as appropriate.

"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.

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"4. Listings in the classified section of telephone directories, limited to name, address, telephone number, and specialties in which the firm is qualified."

Discussion:

We first observe that the publication of directories of engineering firms is a longstanding practice of a number of engineering societies, usually in the form of a brief listing of members of the particular society engaged in private practice, and usually restricted to name and address of the firm, names of officers or partners, type of practice, and possibly, as in the case of the directory published by the Professional Engineers in Private Practice Division of NSPE, separate sections to indicate geographical location and a breakdown of firms by engineering specialties. In this type of directory the amount of space allocated to each firm usually does not exceed one inch of space or 50 words of descriptive material other than name, address, and telephone number.

The basic distinction which raises the question regarding the proposed directory, then, is whether it is within the contemplation of the usual type of directory indicated above, or whether its format and proposed distribution convert it into a form of advertising for the firms choosing to be included. Heretofore, it has been widely assumed that directories, such as that published by the PEPP division, were not for the purpose of advertising and did not fall within the limits of the code stated in Section 3(a). That section of the code permits professional cards and "listings" under stated conditions, and it has been assumed to date that the normal society type of directory is permitted as a "listing."

We turn, then, to the first question under the mandate of Section 3(a) which prohibits the advertising of engineering services to determine whether the proposed two-page spread for each participating firm should be considered as an advertisement or a listing. In Case 62-15, later quoted with approval in Case 72-1, we said that advertising means "... a form of public notice ... which is ... intended to aid directly or indirectly in the sale of a commodity, in securing employment, etc." Under that dictionary definition (treating "commodity" to include professional services), it would appear that the two-page spread would be intended to have the primary purpose of promoting the sale of the services of the firms choosing to be included. This assumption of purpose is bolstered by the intent to make a broad distribution of the directory to those outside of the profession who make decisions to retain particular engineering firms.

Conversely, however, we may consider that if the directory is not an advertisement, whether it may properly be considered a "means of identification" and thus permitted under Section 3(a) by regarding the two-page spreads as "listings in recognized and dignified publications," or as "professional cards" as permitted under Section 3(a)(1). We have not heretofore been called upon to define what is meant by a "professional card," but in practice that term has been contemplated to be a relatively small insertion with just enough information to identify the engineer or firm and briefly indicate the respective fields of practice.

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Even if we could see our way clear to hold that a two-page spread is a professional card, however, we would be bound to find in this case that such a "card" would be in conflict with the limitations in Section 3(a)(1), confining the information in a professional card to firm name, address, telephone number, appropriate symbol, names of principal participants, and the fields of practice in which the firm is qualified. Here, the information which may be included exceeds those limits by permitting statements on the background of the firms, a statement of range of services (as distinguished from a listing of fields of practice), summaries of typical projects, other text material, and the use of pictures. Hence, even under the broadest interpretation we cannot hold that the two-page spread would be a professional card.

Finally, could the two-page spreads be considered as listings? (We do not question that the proposed directory would be within the category of a "recognized and dignified publication"). There are many dictionary definitions of the word "listing," the most pertinent one seeming to be "a roll or catalogue, as of names of items; a register." It would seem apparent on the surface that a two-page spread goes far beyond that concept of a listing, and we are not constrained to stretch the usual meaning of words to bring what may be a generally valuable and helpful directory to the profession and the users of its services within the language of the code.

From what has been said above, it may be seen that we have some reluctance in arriving at the conclusion that the proposed directory listings would be in conflict with the code, but we are forced to that conclusion by any process of logical reading of the words of Section 51 3(a) as they stand. For a number of years the NSPE code permitted advertising of engineering services which was not "self-laudatory" and provided the advertising was "circumspect" and was in media which were "dignified, reputable, and characteristically free of any factor or circumstance that would bring disrepute to the profession or the professional using them." After many cases interpreting this overly broad and generalized language, we recommended that the time had come for the engineering profession to take a clear and definitive stand against all advertising but permitting what were considered items of identification as enumerated in the present Section 3(a). This advice was followed by the NSPE Board of Directors, and the code was amended on this point in July 1968.

It may well be that the advertising position now in the code is not sufficiently clear. If so, the question should again be considered on its merits by the Ethical Practices Committee in cooperation with other societies which likewise have not found a completely satisfactory answer to the ethical aspects of the advertising question. If this is to be done, we would only caution that some better guidelines than "circumspect," "self-laudatory," and "dignified" should be sought. Whatever may be the result of further consideration of the basic question our only authorized role is to interpret the code as it stands.

Conclusion:*
It would not be ethical for engineers on behalf of their firms to be listed in the directory as above described. "Note-This opinion is based on data submitted to the Board of Ethical

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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. 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 Joseph N. Littlefield, P.E.; James D. Maloney, P.E.; Donald C. Peters, P.E.; Robert E. Stiemke, P.E.; William R. Gibbs, P.E., chairman.

Additional views:
I have refrained from joining the majority of the board because the language of the code is so imprecise as to permit contrary conclusions to be drawn from the facts of this case depending upon which section or subsection of the code the conclusion is based. Until this situation is rectified, it is my judgment that the Board of Ethical Review should remain silent when confronted with such a dilemma.

Quite correctly, the board lists Section 3(a) of the code as the section in the light of which this case must be considered. The troublesome thing is that after this commendable start the board then focuses its attention solely on Section 3(a)(1) to the exclusion of the remainder of 3(a). This simplifies the problem, but it hardly leads to an equitable conclusion. The board's conclusion in this case is not necessarily in error. The point is that under the code the conclusion is simultaneously correct and incorrect. This should not be.

It is significant that the discussion starts with an apologia for the PEPP directory. After bestowing its blessing on the PEPP directory (not before) a thrice endorsed definition of advertising is introduced. Then the distribution of the directory under consideration is viewed unfavorably with no reference to the similar distribution of the PEPP directory. Finally, the directory in question is scrutinized as a professional card and as a listing. Small wonder that the board arrives at its conclusion with "some reluctance." Section 3(a)(3), which quite specifically condones brochures, is ignored throughout the discussion.

The definition of advertising adopted by the board is quite reasonable. I do not propose to reject a precedent of over a decade's standing. In light of this definition, however, it can be fairly asked: Who can seriously maintain that the code incorporates a "no advertising" posture? The PEPP directory was conceived in the hope that it would be a vehicle whereby the firms therein would be retained by potential clients. It strains credibility to assert that a brochure, even with the restrictions imposed by Section 3(a)(3), is not intended to at least aid indirectly in the sale of professional engineering services; ergo, by definition it is advertising.

As the board so succinctly states, its "only authorized role is to interpret the code as it stands." Concedat. The best that can be done along this line in the case at hand is to turn

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to the broad principle enunciated in Section 3 from which Section 3(a) is supposed to flow. Section 3 states "The Engineer will avoid all conduct or practice likely to discredit or unfavorably reflect upon the dignity or honor of the profession." In the case under consideration it is difficult to imagine that the directory would be a breach of this dictum. Yet it must be admitted the majority has conjured a deft argument. This emphasizes the need to revise the code so that it is internally consistent and representative of a consensus of the profession.

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