Report on a Case by the Board of Ethical Review

Case No. 74-8

Brochures - Format and Content

Facts:
Example 1: XYZ Consultants, Inc., utilizes a brochure of the type usually published by consulting engineering firms consisting of a history of the firm, its principal areas of practice, text and pictures of previous projects, background of key personnel, and the like. The brochure contains a preface reading as follows:

"XYZ Consultants, Inc., invites your careful review of this brochure in the hope that you will find your needs for engineering services can best be fulfilled by our firm. We are a firm of outstanding specialists and a superior staff of engineering and other technical personnel with a record of great success in serving our clients.

"As set forth in detail in the following pages, we have wide experience in a broad variety of civil engineering projects and have been the recipients of many letters of commendation from our clients over the years. We will be glad to provide copies of these testimonials for your interest.

"If your requirements for engineering services are of the particularly difficult variety and dictate that you secure first-rate engineering services which will provide the basis for your needs within your budget limitations we would be pleased to hear from you and to provide further information as to our capabilities to meet those requirements."

Example 2: An engineer in private practice utilizes a brochure consisting of a single sheet of heavy paper folded down into a pocket size (91/2x4 inches). The cover sheet, in two colors, contains an artistic drawing of a building and the name of the consultant, followed by the legend, "soil, foundation and geological engineering." The inside contains a picture of the consultant followed by a statement on the nature and importance of soil mechanics and his signature. The next two parts list major areas of the kinds of engineering and geotechnical services provided by the engineer and the final inside portion lists six previous projects of varying types performed by the engineer with a brief description of each such project. The other portions of the document list the professional education, qualifications and experience of the consultant in two columns, and the back page portion includes the name and address and telephone number of the consultant and a further artistic rendering of a tower, coupled with a literary quotation from a well-known author related to the importance of foundations.

Questions:
Example 1: Is a brochure containing the type of material and preface statement as quoted permitted by the Code of Ethics?

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Example 2: Is a brochure of the type described permitted by the Code of Ethics? References: Code of Ethics-Section 3-"The engineer will avoid all conduct or practice likely to discredit or unfavorably reflect upon the dignity or honor of the profession." Section 3(a)-"The engineer shall not advertise his professional services but may utilize the following means of identification: (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."

References:
Code of Ethics – Section 4 – “The engineer will avoid all conduct or practice likely to discredit or unfavorably reflect upon the dignity or honor of the profession.”

Section 3(a) – “The engineer shall not advertise his professional services but may utilize the following means of identification:

(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:
We have heretofore considered cases involving the use and content of brochures only under the then-existing Canons of Ethics and Rules of Professional Conduct (Cases 62-2 and 63-8). We have not had occasion under the prevailing Code of Ethics to indicate the permissible nature of brochures as to format or content.

In Case 63-8 it was held that the brochure in question was not ethically proper because the section on organization of the firm contained certain references and words to indicate that the firm's staff had special and particular attributes of expertise and that these statements were not "factual" as required by the then-rule that brochures set forth only "factual information concerning the engineer's qualifications by training and experience and references to past accomplishments and clients." The second objectionable feature of the brochure in that case was the inclusion of a series of letters of commendation for the work of the firm from its previous clients.

Section 3(a)(3) of the now-applicable code permits the use of brochures by specific reference but does not include the same limiting language as to content found in the earlier rule as above noted. However, the code language authorizing the use of brochures, business cards, and letterheads goes on to permit ". . . other factual representations of experience, facilities, personnel, and capacity to render service ..."

Under that language, taken in context, we believe that it can reasonably be understood that the standard prevailing under the earlier rule-that the brochure must be limited to factual statements-is applicable under the present code authorization for brochures.

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Accordingly, we think it is abundantly clear that statements in the preface of the brochure of the XYZ firm are not "factual" and are self-laudatory statements of opinion.

There is less guidance as to form or style of brochures permitted under the present code language or by precedent under the previous rule. We find no basis to conclude that a brochure must follow a certain size or style, subject to the proscriptions of §3. It may be in such form as the engineer or firm believes will best present to prospective clients the factual information pertinent to that engineer's or firm's services. In the brochure described in Example 2 there are no statements other than of a factual nature as to the engineer offering his services. The statement on the nature and importance of soil mechanics to clients is not strictly "factual" in that it is an expression of opinion and viewpoint, but its premise is to point out the advantages of recognizing the importance of professional soil mechanics aspects of a facility, rather than a statement of opinion extolling or intending to promote the self-interest of the consultant. To this extent we believe that the restriction to "factual" material in a brochure relates only to the importance of good engineering to the welfare of clients.

Conclusion:*
Example 1: The brochure containing the type of material and preface statement as quoted is not permitted by the Code of Ethics.

Example 2: The brochure of the type described is permitted by the Code of Ethics.

***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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