Report on a Case by the Board of Ethical Review

Case No. 75-12

Promotional Seminar

Facts:
An Engineering firm undertakes to sponsor an event called a "Local Government Open Seminar," inviting to its office state and local public officials in its geographical area of operations. The invitation defines an "open seminar" as follows:

"Rather than have complete formal talks by experts in fields of interest to local government, we propose to make these experts available to you at various locations throughout our office. *Key Topics* in each expert's field will be posted at his table in order to stimulate questions from those in attendance."

The invitation letter also states that the purpose of the seminar is to assist the public officials to keep up with state and federal regulations related to public works. The subjects to be discussed will be such matters as solid waste management, sewerage planning, storm drainage planning and various administrative procedures of importance to public officials in dealing with public works management. Following the discussions the firm will hold an "open house" of its facilities "to demonstrate the wide range of engineering and comprehensive planning services (name of firm) can provide to local government." The invitation letter adds that during the open house "our key personnel will be available to discuss any engineering oriented questions you might have."

Question:
Is the "Local Government Open Seminar" procedure, as described, a violation of the Code of Ethics?

References:
Code of Ethics–Section 1(g) – "He will avoid any act tending to promote his own interest at the expense of the dignity and integrity of the profession."

Section 2(b) – "He shall seek opportunities to be of constructive service in civic affairs and work for the advancement of the safety, health and well-being of his community."

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) – "(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."

Copyright © 1975 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

Section 11 – "The Engineer will not compete unfairly with another engineer by attempting to obtain employment or advancement or professional engagements by competitive bidding, by taking advantage of a salaried position, by criticizing other engineers, or by other improper or questionable methods."

Discussion:
This is a successor case to Case 75-9 in which we discussed the ethical propriety of an engineering firm issuing a monthly newsletter to clients and potential clients, generally consisting of reports on pending legislation related to certain public works programs and also including factual reports on current activities of the firm. We said in that opinion that such a newsletter was ethically permissible, even though recognizing that it was a form of promotion for the firm. And we further commented that our conclusion would be the same even if the newsletter had included some statement or invitation for the recipients to contact the firm regarding its possible services.

The facts before us raise substantially the same basic issue, the only important differences being the format of the contact with the public officials and a more direct and open indication that one of the purposes of the seminar is to interest public officials who may attend in the services of the firm.

In Case 75-9 we did not comment on the relevance of §2(b) of the code as it may relate to or be in conflict with the limitations of the code under §3. We believe it is appropriate to recognize that the promotional activity employed in Case 75-9, and even more clearly in the facts before us, may have a dual purpose. Even though we have no doubt that the firm has a promotional interest and motive in sponsoring the seminar, and has made no attempt to conceal this purpose in the letter of invitation, it does not follow that the seminar may not also serve a constructive purpose in providing valuable information to public officials for the benefit of the community.

Inasmuch as the code does not address itself directly to restraints on promotional techniques or procedures, we have treated such questions under the broad language of §3 and its subparts governing the advertising of engineering services. As we quoted in Case 75-9 from the earlier Case 75-2, §3(a) barring the advertising of engineering services is to be treated as applying to ". . . only those forms of promotion of services which are of a degree and type which amount to a 'commercial" approach to the offer of services, e.g., a display advertisement, a neon sign, a billboard, etc. . ."

If the code as now written and construed is believed to leave too wide open other forms of promotion of the services of engineers then the further restrictions on promotional techniques will have to be developed and adopted by the Board of Directors. We can conceive that some forms of pro- motion may extend into techniques which are ethically offensive, but the only other provisions of the code which may be called into play to deal with overly aggressive promotional activities are §1(g) which limits self-interest activities to those which do not jeopardize "... the dignity and integrity of the profession," and even

Copyright © 1975 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

more pertinently §11, which cautions to avoid the use of "improper or questionable methods."

The procedure employed in this case admittedly involves a major promotional purpose. As such, it raises some serious reservations and doubts and, unless carefully controlled, could lead to ethical abuse. The firm might be better advised, for instance, to not include the "open house" portion of the program, which may be considered an "improper or questionable" method of solicitation as a form of commercialism. The engineers providing information must carefully avoid any statements calculated or which could be interpreted by the public officials as a device for the sponsoring firm to supplant a firm already engaged for a particular project. And we would even suggest that the sponsoring firm might better serve its purposes by conducting the discussions outside of its office. If the self-serving aspect rests upon an impression of expertise in certain subject matter that impression would be bolstered by its demonstration apart from a direct promotional effort.

We recognize that there is a valid public service aspect of the program and as such it is to be commended. However, an acceptable and more common method of providing this kind of public service is to have the program sponsored by all or a number of firms in the area, or even better by the local chapter of the professional society with the financial assistance and expertise provided by the firms in the area. While we have an obligation, as part of the Board's prescribed function, to point out potential ethical abuses inherent in any particular situation, we are not 108 free to equate a potential violation of the code to a violation of the code. If we were to follow the latter course, we could find ourselves declaring all political contributions unethical because someone might contribute more than a nominal amount or declaring all forms of competition unethical because someone might employ "improper or questionable methods."

Our analysis of the totality of both the good and bad, or potentially bad, implications of a two-purpose program of this type leads to the need to finally determine the meaning of such undefined words as "dignity," "integrity," "improper," and "questionable." We leave to future cases those potential or actual promotional schemes which may run afoul of the ethical limitations indicated above, or such more specific ethical limitations on promotional activities which may be adopted by the Board of Directors.

Conclusion:*
The "Local Government Open Seminar," as described, is not a violation of 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.

Copyright © 1975 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

Board of Ethical Review: William J. Deevy, P.E., Joseph N. Littlefield, P.E., Donald C. Peters, P.E., L. W. Sprandel, P.E., Robert E. Stiemke, P.E., Chairman

Dissenting Opinion: A basic principle inherent in the promulgation of ethical standards is the avoidance of situations and circumstances whereby the temptation and potential for practices likely to discredit, or reflect unfavorably upon the dignity or honor of the profession will be present. This principle recognizes the human frailties inherent in mankind to which engineers are not immune.

In the case before us the admitted primary purpose of the "seminar" is a major promotional effort "to demonstrate the wide range of engineering and comprehensive planning services (name of firm) can provide to local government." To make this objective more palatable the "seminar" is thinly veiled as a public service.

In the absence of facts indicating otherwise we must assume that a number of the public officials invited and attending the program are clients of other engineers in the area. In this situation, we are impelled to conclude that the resulting atmosphere and circumstances will bring into question whether an effort is being made, either directly or indirectly, to supplant one or more engineers already engaged for particular projects.

In Case 65-10 relating to the use of hospitality suites as a promotional device it is stated, "We view the language of the code to indicate that while an engineer may engage in promotional activities under certain conditions and limitations there is a line, shadowy though it may be, beyond which the general atmosphere and circumstances will at least bring into question whether it is dignified."

In this case we do not question the dignity of the procedure, but view the promotional program in the light of the language of §11 that "The Engineer will not compete unfairly with another engineer ... by other improper or questionable methods."

There is another danger however which lurks beyond the first occurrence, and approval as an ethical procedure of such promotional effort. Other engineers observing that the seminar approach appears to be successful very probably will be induced to try a similar procedure. The natural, human inclination under such circumstances would be to "improve" the effort and to outdo previous performances. Thus, the profession may move toward the commercial or unseemly practices warned against by the Supreme Court in the statement concerning professional practices, "The community is concerned with the maintenance of professional standards which will insure not only competency in individual practitioners, but protection against those who would prey upon a public particularly susceptible to imposition. . . . And the community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would en- large the opportunities of the least scrupulous." Admittedly we are dealing in a gray area in this case; however, on balance we believe that the shadowy line of Case 65-10 has been crossed. Further the potentially bad implications of the two purpose program described violates the prohibition against competing unfairly with another engineer by questionable methods. We conclude that the "Local Government Open Seminar" as described is a violation of the Code of Ethics. *William R. Gibbs, P.E. James F. Shivler, Jr., P.E.*

Copyright © 1975 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).