Report on a Case by the Board of Ethical Review

Case No. 75-3

Ethical Association with Other Engineers

Facts:
Engineer A, president of an engineering consulting firm, was charged with and found to have violated a section of the state society code of ethics and was publicly reprimanded for the offense. Subsequently, an engineering consulting firm headed by Engineer B proposes to engage in a joint venture with the firm headed by Engineer A, but raises the question whether such an association would conflict with the Code of Ethics.

Question:
May the firm headed by Engineer B ethically engage in a joint venture with the firm headed by Engineer A?

Reference:
Code of Ethics—Section 13—"The Engineer will not associate with or allow the use of his name by an enterprise of questionable character, nor will he become professionally associated with engineers who do not conform to ethical practices, or with persons not legally qualified to render the professional services for which the association is intended."

Discussion:
Our previous discussions of §13 of the code have all related to various factual situations generally involving the offer or furnishing of engineering services by persons or companies not authorized to engage in engineering practice (Cases 61-4, 63-10, 69-6 and 69-9). We have not heretofore been required to pass on the meaning of § 13 when an engineer has been disciplined for unethical conduct.

Section 13 actually embraces three different aspects in its entirety. The first part deals with an enterprise of a questionable character (see Case 69-6 as an example). The third part involves relationships with persons not legally qualified to offer or provide professional services (see Case 61-4 as an example).

We are now confronted with the second portion of § 13, which on the face of the language would appear to absolutely rule out an association with any engineer who has violated the Code of Ethics. However, we do not believe that such a harsh and unyielding interpretation of the language is required and justified in all circumstances. One semantic problem to be first resolved is whether the words "who do not conform to ethical practices" were intended to mean that an engineer found guilty of one violation of the code, no matter of what degree of severity, should be "read out" of the profession or considered an unethical engineer for all time to the extent that ethical engineers must shun him forever. Such a reading would be contrary to the spirit of our laws and traditions that redemption is a cherished virtue and that a person found to have violated the mores

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of society should "go forth and sin no more." Even the hardened criminal under our moral concepts may be accepted back into society as a useful citizen after he has paid the penalty for his transgressions. We believe that a proper reading of the language on this point should be construed to mean that an ethical engineer will not associate with an engineer who is known to habitually violate the code and who has shown no evidence of avoiding such unethical conduct as he may have engaged in previously after he has been duly "brought to book" for his past action.

Another troublesome aspect of the question before us involved the oft noted fact that the code is written in terms of personal conduct, whereas in the real world a large part of engineering practice is carried on by firms, whether partnerships or corporations, often comprising many hundreds of engineers as officers, partners, or employees. We cannot believe that the framers of the code could have meant to ban association with an entire firm because one of its officers or partners (to say nothing of engineering employees) had at one time violated some part of the code. The effect of such an interpretation would be to penalize many other engineers who were unaware of and not a party to any such violation. This would be a form of "guilt by association."

But if these readings of the language we must deal with are correct, what is the true meaning of the restriction? Does it mean that the firm of Engineer B may engage in the joint venture with the firm of Engineer A only if there is some assurance that Engineer A will not personally participate in the endeavor? Or does it mean that Engineer B must satisfy himself that Engineer A has undertaken to cease and desist from further unethical conduct in order to have him participate? Suppose that Engineer A was a partner, a member of the board of directors if the firm is incorporated, an individual practitioner, or an employee of a large firm in a management-level position, or an employee in a subordinate position? Does the relative rank of Engineer A in the firm make a difference?

We must confess that there are no easy or simple answers to the kinds of questions we have asked ourselves, and we are loath to conclude that the middle portion of §13 is without substantive meaning. On balance, we are constrained to read into the language the following principles:

1. A single transgression of the code by itself does not necessarily bar an engineer from future association with other engineers, depending upon the severity of the transgression.

2. A pattern of violation of the code by an engineer is grounds for other engineers to shun him in professional associations.

3. If it is determined that an engineer has committed a serious offense under principle No. 1, or has engaged in a pattern of violations under principle No. 2, he is deemed to be an unethical engineer, and his status in the firm is a material factor. If he is in a position to influence or control operational policies of the firm, ethical engineers and their firms should not associate with the firm of the offending

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engineer. It would be misleading to distinguish between unethical individual engineers and their firms so as to rationalize that ethical engineers could associate with firms under the policy control or influence of unethical engineers.

Applying the above principles to the facts before us, and on the stated record that Engineer A was found to have engaged in an ethical violation on only one occasion for which he received a reprimand and in the absence of any evidence that he had engaged in a pattern of unethical conduct, we believe that the firm of Engineer B may ethically engage in a joint venture with the firm of Engineer A, but is required to maintain a careful scrutiny of the operation of the firm of Engineer A to assure itself to the extent possible that further unethical conduct will not develop during and with respect to the joint venture.

Conclusion:*
Subject to the constraints noted above, the firm headed by Engineer B may ethically engage in a joint venture with the firm headed by Engineer A.

***Note**-This opinion is based on data submitted to the Board of Ethical Re- view 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 re- printed without further permission, provided that this statement is included before or after the text of the case.

Board of Ethical Review: William J. Deevy, P.E.; William R. Gibbs, P.E.; Joseph N. Littlefield, P.E.; Donald C. Peters, P.E.; James F. Shivler, Jr.; Louis W. Sprandel, P.E.; Robert E. Stiemke, P.E., chairman

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