Report on a Case by the Board of Ethical Review

Case No. 75-4

Advertising - Testing and Engineering Laboratory

Facts:
The "XYZ Testing and Engineering Laboratory," owned and operated by Engineer A, engages in various types of testing of construction materials, soils, equipment, and performs chemical analysis and similar work, utilizing field equipment as well as testing equipment and machines in the laboratory. The services provided clients include physical and performance testing, soils mechanics, product development, investigations and reports and court testimony. Reports include factual reporting of data such as drilling logs but also include the results of analyses requiring engineering judgment and expertise. The "XYZ Testing and Engineering Laboratory" carries a display advertisement in various professional and technical magazines which circulate to engineers and others who may be potential users of the service.

Question:
Is a display advertisement as described ethically permissible?

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

Discussion:
To answer the question we must revert to previous discussions and conclusions to determine whether the services being advertised are engineering services as proscribed in Case 731, recognizing there, as we do in this case, that there is a "gray" area of services which may often be performed by engineers or by business organizations under the direction of engineers, such as photogrammetry and construction management. We commented in that case that "it is not possible to establish a hard and fast line of demarcation as between engineering and non-engineering services of this type."

To aid us in this inquiry in Case 73-1 we also drew upon and quoted from NSPE Policy No. 10-G, which defines engineering services in another, but related context. "For the purpose of this policy, 'Engineering Services' includes professional services associated with the study, design and construction of real property improvements (public and private) including prefeasibility and feasibility studies, comprehensive and general planning, preliminary studies, preparation of drawings, plans, designs, specifications, cost estimates, other studies and preparation of manuals and reports, consultations, performance of surveys, inspection and development related to the preceding categories."

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Another test which may be helpful in dealing with these "gray" area cases is to ask the question whether the services involved may be legally performed by persons or organizations not qualified under the state engineering registration law. If the answer is that such person or organization is not required to adhere to the state engineering registration law it may be taken that the services in question are not engineering services for the purposes of §3(a). If we apply that test and use the definition of "practice of engineering" found in the "Model Law" published by the National Council of Engineering Examiners, and which is generally followed in the several state laws, we find that testing services alone are not identified or cited in the language of the definition. In the case before us, however, it is noted that reports prepared by the firm include "... the results of analyses requiring engineering judgment and expertise."

In examining this particular field we find that laboratories actually operate in three different ways. There are those which perform drilling, testing, and other services and provide factual data without analyses, interpretation, or recommendations based on the data. There are laboratory services which perform a minimal amount of physical work and provide principally engineering services based on their own physical data or that of others. Lastly, the most prevalent practice which is followed by a vast majority of testing laboratories is to provide a combination of non-engineering and engineering services. Since the final end result of these organizations is an engineering service, they are usually operated by professional engineers since the latter are very likely to be the persons involved whose qualifications must be the highest.

Based on careful examination of the type of services listed in this firm's advertisement, we believe that the "XYZ Testing and Engineering Laboratory" falls in the latter category of providing both types of services.

In Case 74-6 which had to do with the provision of title insurance services under the same firm name as that employed by a professional engineer engaged in survey and land development work it was recommended that non-engineering services be provided by an engineer through a different business arrangement or under a different firm name. An important consideration in that recommendation was the elimination of possible confusion on the part of the general public in the differentiation of engineering services vs. other types of business or commercial activity. Following that line of reasoning it would be logical to conclude that the non-engineering services provided by a testing and engineering laboratory should be conducted under a different firm style. To further support that conclusion the engineering and non-engineering services in this instance are so related that it is impractical or impossible for the general public to make a distinction between them.

In the case at hand, however, the very fact that the different services are so closely interrelated could impose a severe hardship if it were required that those services be separated through different firms. On balance it is recommended that any one organization offering the types of services involved in this case should be conducted

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under the controlling and more stringent rules of the higher type of service, in this instance a professional engineering service.

Conclusion:*
A display advertisement as described is not ethically permissible.

***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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