Report on a Case by the Board of Ethical Review

Case No. 75-6

Brochure—Text and Built-in Reply Card

Facts:
Engineer A on behalf of his consulting firm issues and mails to local government officials and other prospective clients in his geographic area a document which folds into a three-part pamphlet. The cover sheet shows the name and address of the firm. The text pages describe the services of the firm and make statements on the need for engineering services by municipalities. Some of the text language pertinent to the case reads:

"The organization (firm) offers top professional engineers, planners, designers, draftsmen, technical aids, surveyors and supporting staff. . ." "(Name of firm) personnel have amassed nearly a hundred years of experience. . ." "The experience of our construction management personnel is wide and varied. . ." "Few engineering and planning firms possess the broad experience and complex varieties of special training which (name of firm) can bring to bear on client engineering problems."

In addition, the document includes on the last page a perforated card, postage-paid and self-addressed to the firm, for use by a prospective client to have Engineer A contact him to discuss the capabilities of Engineer A's firm.

Question:
1. Is the text of the document as stated ethical?

2. Is the use of the built-in reply card ethical?

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:

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."

Discussion:
Although the document as described is not a brochure of the type normally utilized by consulting firms, we will treat it as a brochure for the purposes of this case.

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Taking the text portion of the case first, we must again deal with the meaning of "factual" in the context of material which may ethically be used in brochures. We dealt with this question in some depth in Case 74-8, laying down the principle that the statements in a brochure may not include self-laudatory statements of opinion. In that case the text referred to the firm having "outstanding specialists" and "a superior staff," and that the firm had a "record of great success."

The examples before us are of the same ilk and likewise fail to meet the test of factuality. It is sheer opinion for the firm to state that its personnel are "top" or that "few" engineering and planning firms have the equivalent experience and special training.

We need not pass upon every word and statement in brochures or other documents which may be submitted to us in future cases and will not do so. If those engineers and firms issuing brochures will simply apply a common-sense application of the word "factual," many of these problems can be avoided. This can usually be accomplished by shunning the temptation to use adjectives in describing the firm, its personnel and its work.

In Case 71-11 we considered a different but related situation in which a professional directory card included a key number a reader could circle and thereby have the magazine in which the professional card appeared forward the expression of interest to the engineering firm which, in turn, sent a brochure or other material to the interested reader. In that case a majority concluded that such a procedure was not unethical as a basis for distribution of the brochure of the firm. However, two members dissented, contending that such a method of distribution of brochures is "indiscriminate," and that a truly interested prospective client should be required to obtain the firm's material by a simple letter to indicate real interest.

A similar question arises in this case with regard to the use of a built-in reply card to the firm from those who may receive the document we have chosen to regard as a brochure. The built-in card technique offends the professional approach to the offer of engineering services. It smacks of the kind of promotion utilized for products as distinguished from professional services. It should be sufficient for the firm to show its name, address and telephone number and expect truly interested prospective clients to contact the firm if additional information is desired. A commercial card technique is contrary to the ethical requirement that conduct by engineers be dignified and not likely to discredit the profession.

On balance, considering the extravagant statements in the text coupled with the use of the built-in card, we believe that the services of the firm are being offered on a promotional basis rather than to make available factual information about the firm and its capabilities to truly interested potential clients.

Conclusion:*

Q. 1. The text of the document is unethical.

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Q. 2. The use of the built-in reply card is unethical.

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Board of Ethical Review William R. Gibbs, P.E., Donald C. Peters, P.E., James F. Shivler, Jr., P.E., Louis W. Sprandel, P.E., Robert E. Stiemke, P.E., Chairman.

Dissenting Views–We concur with the conclusion of the majority with regard to Question 1. However, we are impelled to dissent with the conclusion reached by our distinguished colleagues in the matter of Question 2.

The majority states, and we concur, that the answer to Question 2 pivots around whether or not the sales technique in question—using a "built-in reply" card—offends against the dignity or honor of the profession as proscribed in §3 of the code. We think not. What offends against the honor or dignity of the profession is a matter of subjective judgment and like beauty must be found in the eye of the beholder. As with any subjective matter, we are forced to make comparisons in order to arrive at reasonable conclusions. We concur with the majority that Case 71-11 is a pertinent point of departure.

In Case 71-11 the Board considered the use of a "reader service" card whereby a reader of a magazine could solicit a brochure or other sales material from an engineering firm by circling a number keyed to the firm's published professional card. The majority opinion in that case was that the use of such a device was ethically permissible. Section 3 of the code was not cited as a reference and the case turned on the consideration of the "distribution" clause in §3(a)(3).

It is difficult to fathom how the Board can give its approbation to the use of a "reader-service" card and condemn the use of a "built-in reply" card. In the former instance the card is mailed to an intermediary and the reader receives the material previously noted. In the latter instance, now under consideration, the prospective client requests a direct contact with the engineer. If either technique transgresses against the dictum of §3, it would seem the "reader-reply" card would be more likely to do so. This is not to say that we refute the majority finding in Case 71-11. We endorse it. But we refer to it in the present instance in order to reinforce our view that the "built-in reply" card does no violence to either the dignity or honor of the profession.

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Section 11 of the code concerns itself with engineers competing unfairly by "improper or questionable means." We have scrutinized this section and find not the slightest indication that "improper or questionable means" includes, or can be extrapolated to include, the use of a "built-in reply" card.

It is true the "built-in reply" card technique is different from the usual methods of soliciting prospective clients. But surely being different is not objectionable per se. As a matter of fact being different is the hallmark of a successful sales effort. Admittedly the code imposes restraints on the engineer in his search for a different approach. The use of a "built-in reply" card violates none of these restraints.

In light of the foregoing, we therefore conclude: The use of a "built-in reply" card is ethical.

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