Report on a Case by the Board of Ethical Review

Case No. 76-10

Brochure—Distribution through Reader Service Card

Facts:
ABC Engineering Associates has provided to various publications an illustrated brochure on water quality management and related subjects. The brochure also includes background information on the firm and its services in the water quality management field. A magazine circulating to persons interested in water quality management and related engineering activities carries a notation on the availability of the pamphlet under its "free literature" section, followed by "Circle No. 193 on Reader Service Card." The magazine's summary of the brochure indicates its discussion of both technical material and the firm's services. Those readers who return the reader service card with that number circled subsequently are sent a copy of the ABC brochure.

Question:
Is the described method of circulating a brochure, including material on the services of the firm, an ethical method of promotion?

Reference:
Code of Ethics-Section 3(a)-"The Engineer shall not advertise…but may utilize…(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:
This case is a "first cousin" to two earlier cases which are closely related, but involve facts which may be distinguished and thereby affect the conclusion. In addition, the two earlier cases are at face value in conflict and are further compounded by virtue of dissenting opinions by two members in each earlier case. Even though the distinctions are fine in the earlier cases and in this case, we have undertaken a further review of the basic issue in an attempt to reach a clear guideline for future reference.

In Case 71-11 we dealt with a paid professional service card of a kind widely utilized b consulting firms which also included under the card a similar reference to a reader service card number for the purpose of the reader receiving a brochure from the firm by sending in the card with the appropriate number circled. A majority of the board concluded that such an arrangement was not unethical, but two members dissented on the primary ground that such a form of brochure distribution was indiscriminate and therefore proscribed by §3(a)(3).

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Thereafter, in Case 75-6 the facts were substantially different in that the engineering firm directly mailed to potential clients a pamphlet (treated as a brochure), including an attached return card for the recipient to complete and return for the purpose of having the firm contact the prospective client. A majority held that this form of solicitation was unethical because "it smacks of the kind of promotion utilized for products as distinguished from professional services." The majority felt that a firm's promotional pamphlet should be limited for contact purposes to name, address, and telephone number, leaving it to the recipient to make direct contact if interested in the firm's services.

The two dissenting members argued that the majority conclusion was contrary to the conclusion in Case 71-11, claiming "it is difficult to fathom how the board can give is 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 [the magazine] 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."

We come then to the fine line distinguishing this case from the earlier ones. Here the promotional method is neither a professional card nor a direct mailing of a brochure to prospective clients . Under the instant facts, we take it for our purposes that the brochure contains valuable technical information on water quality management and related engineering subject matter, and to that extent is properly made known to engineering and other publications. And we further take it that the magazine on its own initiative has chosen to summarize the brochure in its "free literature" section without cost to ABC. If the facts stopped there we would perceive no ethical problem in the ABC firm sending copies of the brochure to interested readers who return the reader service card for that purpose.

However, when the brochure also includes promotional material about the ABC firm, even though we assume that the information on the background and services of the firm is factual and not misleading, its motive goes beyond the furnishing of valuable engineering information and embraces a self-serving purpose as a method of soliciting work. This returns us to the single issue of "indiscriminate" distribution of a firm's brochure. Under a dictionary approach, "indiscriminate" contemplates a "sweeping" approach, or a "wholesale" approach, or a "reaching out so as to bring all or everything within its range." We believe that these definitions reflect the intent of the framers of the code; a desire to avoid mass distribution of promotional brochures without regard to any direct showing of interest or desire from the recipients. If that is a correct reading of the spirit and purpose of the "indiscriminate" reference in §3(a)(3), we can arrive at a general guideline that firm brochures may be properly distributed to those who affirmatively request them.

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In contradistinction, the guideline would prohibit the direct mailing of firm brochures to a list of any kind on the mere guess that those on the list might be interested. Under the facts of this case the brochure was furnished only to those who particularly were interested in water quality management and related engineering services and specifically requested a copy of the brochure.

Conclusion:*
The described method of circulating a brochure, including material on the services of the firm, is ethical.

**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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