Report on a Case by the Board of Ethical Review

Case No. 76-7

Promotional Letter—Emphasis on Non-Insurance of Other Firms

Facts:
Engineer A sent a letter to various state and local public agencies in his area of practice as follows:

> "It has come to my attention that your agency has been using the services of engineers who do not carry professional liability (errors & omission) insurance. Such a practice, although not necessarily a violation of policy, is certainly not in the public interest. No one plans on mistakes, but if a costly error does occur, it is not likely you can recover losses from the personal or corporate resources of an uninsured consultant.
>
> There are only two reasons a consultant is not covered by professional liability insurance
>
> > The individual does not care to accept the expense of such coverage.
> >
> > He is uninsurable due to past experience.
>
> For those in the first category, the premium amounts to three to five percent of gross income. These persons are either receiving excess profits or they are billing at lower rates than those who carry the insurance.
>
> There are several qualified consulting firms in the area who carry adequate liability insurance; it is not necessary for your agency to risk public funds on the possible errors or omissions of an uninsured engineer. My solo practice is covered by $500,000 general liability and $500,000 professional liability insurance. In over four years of operation, I have not had a failure nor a claim filed against me. This, despite the fact much of my work is in the high risk areas of excavation support and landslide stabilization. Doesn't it make sense to go with a winner?"

Question:
Did Engineer A act ethically in using the quoted letter as a means to promote his practice?

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 3-"The Engineer will avoid all conduct or practice likely to discredit or unfavorably reflect upon the dignity or honor of the profession."

Copyright © 1976 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:

We considered a related situation in Case 73-8, involving a promotional letter casting doubt upon the ability and competence of other engineers in an engineer's area of practice. In concluding in that case that the engineer's promotional letter was unethical, we noted that the mandate of §11 extends not only to individual engineers, but also to "a group of engineers or the engineering fraternity in general." We further commented, "It is a fair reading of §11 in totality to arrive at the belief that its broad thrust is to hold competition among engineers to a plane of dignity, respect and honor. Here those virtues were breached by a self-serving statement which tended to degrade the entire profession." And we alluded to Case 65-17, recognizing that engineers may promote their services through direct mail solicitation if the material utilized is "dignified and circumspect," the applicable standard then prevailing.

The facts before us are even more offensive than the letters in the earlier cases. Here the engineer is not only indulging in self-serving statements, but is trying to capitalize on allegations which may or may not be true regarding other engineers carrying certain insurance. Whether or not an engineer carries professional liability insurance, or any other kind of insurance, is purely a business decision for him to make, and the failure to carry such insurance, for any reason, is not an attribute of professional standing or competence.

While it is not controlling on us, we note that NSPE Professional Policy No. 75, as quoted in full below, makes the specific point that the carrying of professional liability insurance should not be used for promotional purposes.

> "Professional liability insurance, as endorsed by NSPE, is intended to protect the interests of professional engineers, who, in the course of their practice, may be subjected to claims or lawsuits alleging negligence in the performance of professional duties. This protection is not intended, and should not be used, for promotional purposes in any way. It is improper to indicate on letterheads, brochures, or otherwise that such insurance is carried by the professional engineer.
>
> "Carrying of professional liability insurance should be a personal choice of the professional engineer. NSPE is opposed to the adoption of laws or regulations which require a professional engineer to carry such insurance."

We recognize that in some instances clients may insist that the engineering consultants carry professional liability insurance in stated amounts, contrary to the NSPE policy. That is a judgment for the client to make, and a judgment for the engineer to decide whether he wishes to comply with that condition. It is manifestly unfair to state or imply that an

Copyright © 1976 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).

engineer who does not carry such insurance is incompetent or wishes to dodge his responsibilities. The failure to carry such insurance as a business decision in no way protects the engineer from legal proceedings or judgments if he performs his services in a negligent manner.

In addition to the clear restriction of §11, we think that the cited letter directly offends the principles of §1(g) in that such unsavory methods to promote self-interest do so at the expense of the dignity and integrity of the profession. And likewise, §3 clearly proscribes this type of practice as a sad reflection on the dignity or honor of the profession.

Conclusion:*
Engineer A did not act ethically in using the quoted letter as a means to promote his practice.

**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.

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., P.E.; L. W. Sprandel, P.E.; Robert E. Stiemke, P.E.; chairman

Copyright © 1976 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).