Report on a Case by the Board of Ethical Review

Case No. 78-2

Employment of Former Convicted Engineer

Facts:
John Smith, a registered engineer at the time involved, was head of a state agency which administered a large public works program. He and James Jones, his assistant, also a registered engineer, were charged with establishing dummy agencies within the state to receive funds from the program. Those funds were channeled into the personal accounts of Smith and Jones. Smith and his colleague were fined and convicted of fraud and embezzlement and sentenced to prison terms. Subsequently, the state registration board revoked the licenses of Smith and Jones.

While serving the last several months of his prison term, Smith has been found qualified for a work-release program under state law whereby he is permitted to work during the day. returning to prison each night. The XYZ Engineering Firm, located in the area of the prison where Smith is serving his term, proposes to hire Smith as a technician. Smith will not be in responsible charge of engineering or sign or seal engineering documents.

Question:
Is it ethical for the engineering principals of the XYZ firm to hire Smith under the condition stated?

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:
In Case 75-3, we considered a case in which an engineer had been reprimanded for violating the Code of Ethics, and subsequently another engineer proposed to engage in a joint venture with that engineer. In discussing that issue under 13, involving a less serious breach than is present in this case, we observed 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

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found to have violated the mores 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.

In that case our resolution was that the two engineers might ethically engage in a joint venture on the condition that the future conduct of the reprimanded engineer be closely observed by the other engineer to assure that further unethical conduct will not develop during the joint venture.

The case before us is quite different, of course, in that there is no question of association of two engineers in the context of joint activities as principals or firms. Rather, the question could be put in this case in the form of whether an engineer, once convicted of a crime, should forever be barred from employment related to engineering by a reputable or ethical engineering firm.

There might be little question of the application of 13 if the question is whether Smith is to be employed in a capacity which would require a license as defined in the state registration law. That is not possible, of course, under the circumstances because Smith's license to practice engineering has been revoked. And we need not consider at this time what the result might be in this regard if his license should ever be restored, as is possible under at least some of the state registration laws. It is not necessary or desirable to interpret the "association" aspect of 13 to mean that an ethical engineer or firm may not employ a person convicted of a felony in employment related to engineering.

Any other conclusion under the circumstances of this case would offend the generally accepted social philosophy of redemption and be a disservice to the purpose of the state legislature in establishing a work release program to help those who have violated its laws to gain orderly return to society on a self-supporting basis. The principals of the XYZ firm may indeed suffer some loss of their prospects of practice by those who take a harsh, unforgiving attitude. For this willingness to help return one who has strayed from the standards of society they should be commended for applying the true spirit of ethical behavior.

Conclusion:
It is ethical for the engineering principals of the XYZ firm to hire Smith under the conditions stated.

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Board of Ethical Review: William J. Deevy, P.E.; Robert R. Evans, P.E.; James G. Johnstone, P.E.; Robert H. Perrine, P.E.; Donald C. Peters, P.E.; James F. Shivler, Jr., P.E.; L.W. Sprandel, P.E., chairman

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