Report on a Case by the Board of Ethical Review

Case No. 79-3

Public Communications—Exhibit at Trade Show—Tour of Construction Site

Facts:
Example 1: Engineering Firm A had an exhibit at a trade show at which a large number of attendees were from companies which were likely to have the need for consulting engineering services. The exhibit of Firm A consisted of a display board with enlarged portions of the firm's brochure, a slide show of the firm's activities, and a space for visitors to sit and converse with representatives of the firm. The firm estimates that the exhibit, not counting staff time, cost about $8000, and stated it was pleased with the results in securing "leads" for possible future project assignments. The firm's principals stated that the results provided a more advantageous return than similar expenditures for display advertising.

Example 2: Engineering Firm B has been invited to share a booth of a similar nature with a local area utility company at an international meeting of companies and individuals interested in the development of solar energy. Each party is to pay half the cost of the booth space and to pay its own costs for displays and literature.

Example 3: Engineering Firm C is engaged in a large project which has reached the construction phase. In connection with a convention of individuals and companies involved in the manufacture of construction materials, Firm C organizes a tour of the construction project to show those attending the convention, including press representatives, the state of the construction and to have its personnel point out to those who attend the conducted tour the role of Firm C in the project. Firm C provides transportation and a luncheon for the guests, including having a representative of the firm at each table to discuss the project, the role of Firm C and to answer questions.

Questions:
1. May engineering firms ethically participate in trade shows through the use of booths and displays?

2. Was Firm A unethical in the use of its exhibit, as described?

3. Was Firm B ethical in sharing a booth, as described?

4. Was Firm C unethical in sponsoring the tour, as described?

References:
Code of Ethics - Section 3 - "The Engineer will avoid all conduct or practice likely to discredit the profession or deceive the public."

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Section 3(a) "The Engineer shall not make exaggerated, misleading, deceptive, or false statements or claims about his professional qualifications, experience, or performance in his brochures, correspondence, listings, advertisements, or other public communications."

Section 3(b) "The above prohibitions include, but are not limited to, the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep the statement from being misleading; statements intended or likely to create an unjustified expectation; statements containing prediction of future success; statements containing an opinion as to the quality of the Engineer's services; or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format."

Discussion:
We have combined these several cases into one as a basis for a general review and commentary on the allowable ethical limits of self-promotion under the current applicable portions of the code, quoted above.

Prior to the current quoted part of the code, as adopted in July 1978, these kinds of cases would have been mainly treated under the previous provisions governing the advertising of engineering services. Prior to the July 1978 amendment, the code proscribed advertising by engineers, but allowed certain forms of identification, such as professional cards, listings in publications, project signs, brochures, business cards, and the like. That approach was discarded, however, in light of the Supreme Court decision holding that a blanket prohibition on advertising of professional services violated the First Amendment right of free speech. As a result, NSPE and the professional societies in other recognized professions revised their ethical standards to permit advertising within stated limits as permitted by the Court decision. Under the previous standard, we held in Case 74-5 that it was not ethical for engineers to participate in exhibits and displays of the type generally along the line stated in this case for promotional purposes. We must now reexamine that previous holding in view of the substantially revised ethical standard.

The pertinent part of the current code provisions is the language in 3(b) to the effect that the public communication not be ". . .intended or likely to attract clients by use of showmanship, puffery, or selflaudation...." We proceed on the assumption from the stated facts that in none of the above examples was there any form of misrepresentation, omission of material facts, or statements intended or likely to create unjustified expectations or predictions of future success. However, it is not as clear in our understanding of the facts, in the absence of the actual detailed material, whether there may have been some elements of statements of opinions as to the quality of the engineers' services in the projects described through the material displayed to the visitors.

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In Example 1, the use of a slide show and a display board with enlarged portions of the firm's brochure borders on the line regarding "showmanship." Even though we hold that the current code language now permits participation in trade shows through exhibits, it does not open the door completely to any and all forms of promotion, thus caution must be exercised to avoid the impression of commercialism at the expense of professionalism.

We find no particular significance in Example 2 regarding the sharing of a booth with a local utility company having a similar interest. Presumably, there is a valid reason for that particular sharing in terms of some form of joint activity between the engineering firm and the utility in past or planned solar projects.

Turning to Example 3, the more precise question is whether a conducted tour, complete with an organized luncheon and a firm representative at each table, plus representation from the press, offends the restriction against "puffery" or "self-laudation," or whether such a format might be considered a "sensational ... ..format." The quoted words are necessarily subjective and must be interpreted in light of the surrounding circumstances. If we take the dictionary definition of "puffery," ("exaggerated praise, as in advertising") we do not think under these facts the format falls within that classification. Assuming that the primary purpose of the tour under these facts was to show attendees new and interesting technical developments, recognizing that a secondary motive was to promote the firm's interest for future work, nevertheless this would not constitute prohibited self-laudation.

We recognize that we are dealing with shadowy lines and difficult shades of meaning in the interpretation of the revised 3 of the code, but this is unavoidable if the profession is to maintain a proper sense of decorum and dignity under the relaxed rules dealing with advertising, as now imposed on the professions. The other learned professions are also now engaged in similar drawing of fine lines in their respective fields of practice. The only general test which the profession may follow in trying to define the proper boundaries in the new era of public communications for professional services is the basic principle of 3 that each engineer must consider and act consistently with that form of communication which will not discredit the profession by allowing self-interest to override public concern for the integrity of the profession.

Conclusions:*

1. Engineering firms may ethically participate in trade shows through the use of booths and displays, subject to the restrictions of 3(b) of the code.

2. Firm A was not unethical in the use of its exhibit, as described.

3. Firm B was ethical in sharing a booth, as described.

4. Firm C was not unethical in sponsoring the tour, as described.

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