Report on a Case by the Board of Ethical Review

Case No. 80-2

Brochure of Subsidiary Firm

Facts:
Engineer Black is the principal officer (president) of a consulting engineering firm, "Jones Consulting Engineers, Inc.," a division spun off from "Jones, Inc.," a large diversified firm which has engaged in contracting, design/construct, construction management, materials fabrication, materials supply, equipment rental, computer services, and other related commercial activities. Jones, Inc. has annual sales of approximately $100 million.

Jones Consulting Engineers, Inc., on its establishment as a separate division of Jones, Inc., published a brochure, titled, "Statement of Qualifications and Experience," featuring a cover of eight photographs depicting various industrial-type projects of the type constructed by Jones, Inc. The brochure itself shows the name on the cover only of Jones Consulting Engineers, Inc., but the first paragraph of the text explains clearly that Jones Consulting Engineers, Inc., is a division of the diversified company, Jones, Inc.

The contents of the brochure consisted of six sections: background and organization, firm personnel, work history of the firm, construction experience of Jones, Inc., completed Federal Form 254 to indicate the consulting firm's qualifications and experience, and photographs of recent projects of Jones, Inc. In the presentation of personnel experience the background of the engineering personnel covered activities predating employment by both Jones Consulting Engineers as well as Jones, Inc., without qualification.

Several engineers in private practice complained that the format and content of the brochure violated the Code of Ethics by the mixture of the background and experience of the two legal entities and tended to mislead the public as to the true qualifications of the personnel of Jones Consulting Engineers, Inc.

Question:
Was Engineer Black unethical in permitting the publication of a brochure presenting an integrated picture of the qualifications and project experience of the two separate entities and personnel experience predating the current association?

References:
Code of Ethics - 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."

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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:
The basic issue in these circumstances, then, is whether the brochure in question is "misleading," or "deceptive" by its combination of the background and activities of the two separate companies (even though existing under common ownership), thereby leading the reader of the brochure to believe that the consulting firm was responsible for and is credited with project accomplishments which were actually the work of the diversified firm.

As noted, the cover sheet of the brochure correctly gives the name only of the consulting firm, and the contents correctly factually state that the consulting firm is a division of the diversified company. However, the text also refers to annual sales of $100 million, in a context possibly leading the reader to believe that this scale of operation was reflective of the consulting firm's practice. Also, there could be the inference, intended or not, that the eight industrial-type facilities depicted on the cover of the brochure are projects handled by the consulting firm.

The pictures on the cover are not identified by project name or otherwise, and they may be only general pictures for graphic or artistic purposes. However, the reader of the brochure may be led to believe that the projects or facilities depicted were designed by Jones Consulting Engineers, Inc.

While it might be clear to the knowledgeable reader of the brochure that the contents reflect activities and scope of work of two different companies, it is not totally delineated in the contents and format just where the dividing line of responsibilities falls between the activities of each.

We cannot say that the brochure, taken as a whole, patently makes "false statements or claims," of the kind contemplated in 3 of the code in the sense that the statements in the entire text are not specifically untrue. However, we believe that in these circumstances the brochure, as a whole, can be said to be "misleading" and "deceptive."

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The dictionary tells us that to "mislead" someone is to lead the person astray, or to lead in the wrong direction. Applying that general definition, we believe that a prospective user of the services of Jones Consulting Engineers might be induced to select that firm over others because of the implication that Jones Consulting Engineers was responsible for all of the credits stated in the brochure. In some cases an experienced and sophisticated prospective user of the services of the consulting firm of this type might be able to recognize the differences between professional consulting service operations and the large-scale industrial type operations, but we do not believe that it is reasonable or proper to interpret the code to distinguish between experienced and inexperienced prospective users of engineering services. We must apply the same standard and criteria to all.

In situations of this kind it would be ethically preferable for the two entities to have completely separate literature. In any event brochures should avoid the use of pictures, text, or personnel experience records which might be misunderstood by those not experienced or sophisticated in the employment of engineers.

Left for decision is the individual ethical responsibility of the principal (president) involved as opposed to the corporate cloak perceived in the collective business sense. On this point, we note the following Note, which is published at the end of the Code of Ethics. Although not a part of the code itself, we quote it for information and as an expression of Society policy which is entitled to consideration in balancing the ethical relationship of the individual engineer to the corporate responsibility.

Note: "In regard to the question of application of the Code to corporations vis-à-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer and it is incumbent on a member of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code."

Conclusion:*
Engineer Black was unethical in permitting the publication of a brochure presenting an integrated picture of the qualifications and project experience of the two separate entities and personnel experience predating the current association.

*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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