BER Case 90-1

APPROVED BY BER
November 9, 1990

Section I.4. - Code of Ethics
Section III.1. - Code of Ethics
Section III.1.f. - Code of Ethics

EXPROPRIATION OF MONEY BY STATE SOCIETY TREASURER

FACTS:

A state engineering society has adopted a code of ethics which follows the NSPE Code of Ethics. Under the state society constitution and bylaws, each chapter is bound by the Code. The treasurer of a local chapter is accused of improperly expropriating a sum of cash from the local chapter's bank account.

QUESTION:

Does the action of a local chapter treasurer in improperly expropriating a sum of cash from the local chapter's bank account constitute a violation of the Code of Ethics?

REFERENCES:

Preamble -Engineering is an important and learned profession. The members of the profession recognize that their work has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. In the practice of their profession, engineers must perform under a standard of professional behavior which requires adherence to the highest principles of ethical conduct on behalf of the public, clients, employers and the profession.

Section I.4. -Engineers, in the fulfillment of their professional duties, shall act in professional matters for each employer or client as faithful agents or trustees.

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Section III.1.	-Engineers shall be guided in all their professional relations by the highest standards of integrity.
Section III.1.f.	-Engineers shall avoid any act tending to promote their own interest at the expense of the dignity and integrity of the profession.

DISCUSSION:

The sole question to be determined in this case is whether the action of a local chapter treasurer in improperly expropriating a sum of cash from the local chapter's bank account falls within the provisions of the Code of Ethics or whether the action, because it does not involve the actual practice of engineering, can be properly considered under the Code of Ethics.

The NSPE Code of Ethics was developed in an effort to provide ethical guidance on various matters pertaining to the practice of engineering. Over the years, the vast majority of Board of Ethical Review opinions have related to circumstances involving the actual practice of engineering and the ethical issues which arise within that practice. However, in some instances, cases heard before the Board of Ethical Review have involved matters which do not relate directly to the actual practice of engineering, but rather to situations involving the overall operations and workings of a state or local society.

A good example of a case in which the Board's interpretation of the Code was not based upon facts and circumstances involving the practice of engineering is BER Case 73-9. There, a state highway department proposed routing a new state highway through a city via route X. A group of local citizens who believed they would be adversely affected by the proposed routing employed Engineer A to study the proposed route. Engineer A concluded that route Y would be a superior route. Engineer B, a partner in the same firm as Engineer A, appeared before the local chapter of the state society of which he is a member, explained the circumstances of the project, answered all questions asked of him and asked the chapter to publicly endorse route Y. In holding that it was ethical for members of the local chapter to take a public position on a controversial question in which a member of the chapter is involved, the Board ruled that:

"It would be highly destructive of a major function of a chapter if the Code were construed to prevent the local membership from expressing an opinion on a matter of local concern of an engineering nature because one or more members were involved on behalf of a particular interest group. We believe it is a reasonable and fair assumption that the members of the local chapter would not be unduly influenced in favor of the opinion offered by those who hold membership in the chapter. We prefer to believe that the local chapter members would not be swayed by that fact alone or even influenced by that connection standing alone. Rather, it is basic to the professional concept of peer judgment that the other members of the profession would exercise independent judgment without regard to personal relations through membership in a professional organization."

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The Board has also rendered opinions involving the personal misconduct of engineers both inside and outside of their professional practice. In BER Case 68-7, an Engineer employed by a manufacturing company was discharged by his employer for being drunk on several occasions while in the performance of his duties. The discharge of the engineer and the reasons received some local newspaper publicity. The local chapter of the state professional engineering society, of which the engineer was a member, proposed to bring charges of unethical conduct against him and take appropriate disciplinary action if the charges were sustained. In ruling that personal conduct of the type indicated was a violation of the Code, the Board stated:

"We believe that personal misconduct within and during the engineer's performance of professional duties is inexorably tied to the requirement for the performance of professional services on the basis of integrity and as a faithful agent of the employer. It is axiomatic that a drunk person cannot perform at the high level required of him. Such a condition would necessarily raise at least a doubt that the engineer could perform his duties with full recognition of the obligations imposed upon him to protect the public safety and the interests of his employer."

The Board made an important distinction, noting:

"We do not deal in this case with the question of whether personal misconduct separate and apart from the performance of professional services would be a violation of the Code. That would raise a somewhat different issue and would require a determination of whether such personal misconduct reflected upon the honor and dignity of the profession."

Later, in BER Case 75-5, the Board addressed the question of whether personal misconduct separate and apart from the performance of professional services would be a violation of the Code. In one fact scenario of that case, an engineer was charged with the criminal offense of theft in the first degree and pleaded guilty. He was sentenced to a short jail term and five years of supervised probation and to make restitution. During his period of probation he was employed as an engineer by another firm and while so employed he engaged in the writing and cashing of fraudulent checks. In determining that the personal misconduct of the types described was a violation of the Code of Ethics, the Board stated:

"It would be incongruous if the (Code of Ethics) were construed so as to ignore the type of personal behavior which is bound to bring disrepute to the entire profession for the acts of a few without any attempt to impose whatever corrective action is possible so that the public may know that the profession recognizes its obligations to justify public confidence in the profession.

"This concept is recognized in the laws governing professionals. The state engineering registration laws similarly follow these precepts in authorizing the state registration board to discipline a registrant upon conviction for **any** felony or **any** crime involving moral turpitude. This broad authority, including suspension or revocation of license, is intended to go beyond transgressions related to the practice of engineering because another part of the state board authority provides for reprimand, suspension or revocation of license for 'misconduct in the practice of his profession'."

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In the instant case, we believe the engineer's improper activity falls within the provisions of the Code of Ethics. Basic to the operation of any professional society is the integrity and honesty of its officers and directors in the performance of their functions as trustees of the society. Officers of the society hold a "trust" for the benefit of the society and its members. They are duty-bound to perform their responsibilities in a manner which is beyond reproach. Their failure to uphold the highest standards of conduct, particularly where the motive is personal gain causes serious damage to the society, its members and the profession as a whole. Here, the engineer's action does great damage to the trust relationship which should exist among engineers and with their professional society.

It appears significant to highlight the language in the Code's Preamble which we believe establishes a prelude for Fundamental Cannons, Rules of Practice and Professional Obligations set forth in the document. Of particular significance is the final sentence, "In the practice of their profession, engineers must perform under a standard of professional behavior which requires adherence to the highest principles of ethical conduct on behalf of the public, clients, employees and the profession". These basic and fundamental values should be interpreted broadly as applying to the conduct of their day to day activities. For that reason, consistent with the Preamble, we believe it is vital for engineers to recognize and appreciate the Code as applying universally in a variety of circumstances.

Although action in the present case does not directly involve the practice of engineering per se, as with BER Case 73-9 the action relates to peer relationships among engineers and falls within the context of professional activities among practicing engineers. For that reason, we believe the Code of Ethics applies. Moreover, BER Case 75-5 provides sufficient justification for finding a violation in the present case. While BER Case 75-5 involved personal misconduct of a purely personal nature, here, the facts involve wrongdoing within the professional setting and therefore there appears to be even stronger grounds for considering this case under the Code of Ethics.

CONCLUSION:

The actions of local chapter treasurer in improperly expropriating a sum of cash from the local chapter's bank account constitutes a violation of the Code of Ethics.

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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