BER Case 91-1

APPROVED BY BER
November 1, 1991

Preamble - Code of Ethics
Section II.4. - Code of Ethics
Section III.11.e. - Code of Ethics

## EMPLOYMENT -- WITHDRAWAL OF OFFER

FACTS:

Smith, an unemployed graduate engineer who recently received certification as an Engineer-Intern, is seeking employment with a consulting firm. Smith is contacted by Engineer A, a principal with a large consulting firm. After a long discussion including such matters as working conditions, salary, benefits, etc. Engineer A offers and Smith accepts a position with the firm. Smith cancels several additional job interviews with other individuals.

Two days later, in a meeting with other principals of the firm, it was agreed by the firm's management, including Engineer A, that the vacancy should be filled by an engineering technician. Not until a week and a half later did Engineer A contact Smith and rescind the firm's offer.

QUESTION:

Did the actions of Engineer A in his relations with Smith constitute unethical conduct?

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 II.4 -Engineers shall act in professional matters for each employer or client as faithful agents or trustees.

Copyright © 1991 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 III.11.e. -Engineers shall provide a prospective engineering employee with complete information on working conditions and proposed status of employment, and after employment will keep employees informed of any changes.

DISCUSSION:

Circumstances relating to the employment of engineers has long been an issue of consideration by the Board of Ethical Review. The Code of Ethics contains a variety of provisions which addresses numerous matters relating to the employment situation. While there are a multitude of provisions in the Code which address various aspects of employment, those which are referenced above appear to be most pertinent to the case at hand. A fundamental intent of the Code's Preamble is for engineers to be honest, equitable, impartial and fair in their professional dealings and transactions. This requires adherence to the highest principles of ethical conduct.

The language in Section II.4. appears to be intended to remind engineer employees of their basic duty of loyalty to their employer (i.e., to perform their services in a professional manner and not commit acts which may discredit the employer). Section III.11.e. imposes upon those professional engineers who employ other engineers the ethical obligation to disclose fully all information on working conditions and other conditions of employment.

The Board has had numerous occasions to interpret the above-cited provisions of the Code. In particular, two BER cases have related directly to the recruitment of engineering personnel, although the facts and circumstances are somewhat different than those presently before the Board.

In BER Case 68-4, engineering firm A sent to all engineers in engineering firm B a form letter reciting the history and policies of firm A concluding with the statement, "...we enclose for your consideration a summary of the aims and objectives of our firm, as well as the various advantages offered those who join us. We hope you will read and perhaps refer to us those men whose professional philosophy matches our own." The enclosure referred to a 20-page booklet covering the history, aims, benefits and rules of firm A. In ruling that the recruitment of engineering personnel through this method was consistent with the Code of Ethics, the Board first noted that one of the major problems of consulting engineering firms and other employers of engineers is the recruitment of qualified personnel. The Board noted that large amounts (of resources) are expended in direct personnel advertising, recruitment teams to visit college campuses, payment of expenses for prospective employees to visit the offices of the prospective employer, participating in exhibits and conventions and similar promotional techniques. It acknowledged that under the facts, firm A had appeared to comply with its duty to provide complete information to the prospective employee.

Copyright © 1991 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).

More recently, BER Case 89-2 involved the recruitment by a city for a new city engineer/public works director. During the interview process, the candidate presented himself as being extremely committed to the new position, but after several delays in establishing a starting date for the new position, informed the city that he would not accept the position. In ruling that it was unethical for the engineer to deal with the city in the manner described, the Board noted that:

> "While the Code's mandate to act in professional matters for each employer as faithful agent and trustee relates to the employer-employee relationship, the Board does not feel constrained in applying this provision to the pre-employment relationship where the employer and the employee are negotiating the terms and conditions of employment. For only in an atmosphere of faith and trust can a proper foundation be laid for a successful relationship."

The Board continued by noting that while the Code's language in Section II.4. is limited to the duties of the employee to the client or employer, it should be read with other provisions of the Code which clearly place an obligation on the employer to deal fairly and honestly with the engineer/employee. Concluding, the Board asserted that "...Obviously, the employment relationship is intended to place obligations upon both the employee and the employer."

It is clear that the Board's reasoning in BER Case 89-2 can lead us to only one reasonable conclusion. While the facts and circumstances in the present case are quite different than those in BER Case 89-2, there can be no doubt, based upon the referenced Code provisions as well as earlier board decisions, that just as a prospective engineer employee has an obligation to act in good faith with a potential employer, an engineer employer owes a duty to deal honestly, fairly and openly with a prospective engineer employee.

Under the facts of this case, Engineer A knowingly made commitments to Smith which were relied and acted upon by Smith. It would also appear that Engineer A, as a principal in the firm, knew or should have known all necessary facts and circumstances involved in filling the vacancy in the firm.

The circumstances were further exacerbated by the fact that Engineer A let a week and a half pass before informing Smith that the offer had been rescinded. Unquestionably, Engineer A had an affirmative obligation to notify Smith at the earliest possible time that the firm had decided to fill the position in a different manner. Smith not only accepted the position offered, but also took appropriate actions which reduced his prospects for employment elsewhere.

While it certainly must be acknowledged that in difficult economic times employers of engineers must make difficult decisions that are frequently unpleasant and incur human cost, this fact should not in any way diminish the basic and fundamental obligation and responsibility of all engineers and employers of engineers to be mindful that such actions, if taken in a more careful and conscientious manner, could result in less hardship and embarrassment for all parties involved.

The Board would also note in passing that there may also be legal issues which may arise under the facts and circumstances of this case. However, the Board's inquiry involves the ethical and not legal consideration that might arise in this case.

Copyright © 1991 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).

CONCLUSION:

The actions of Engineer A, in his relations with Smith, constituted unethical conduct. Furthermore, the involvement of all the principals of the firm, in connection with the withdrawal of the employment offer, constituted unethical conduct.

BOARD OF ETHICAL REVIEW

John F. X. Browne, P.E.
William A. Cox, Jr., P.E.
Herbert G. Koogle, P.E.-L.S.
William W. Middleton, P.E.
William F. Rauch, Jr., P.E.
Otto A. Tennant, P.E.

Robert L. Nichols, P.E., Chairman

**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.

Copyright © 1991 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).