BER Case 94-12

APPROVED
May 9, 1995

Section II.2.	-	Code of Ethics
Section II.2.a.	-	Code of Ethics
Section II.2.b.	-	Code of Ethics
Section II.2.c.	-	Code of Ethics
Section III.11.	-	Code of Ethics

P.E. REQUIREMENT FOR STATE AGENCY POSITION

FACTS:

Engineer A is a PE in the electrical engineering field, and is employed by a state government agency as a computer systems engineer with some management responsibilities. Although educated and trained to perform customary engineering services and licensed as a professional engineer, Engineer A's work experiences have never involved technical and design issues involved in the field of environmental services. Later, as part of a restructuring of the agency, his direct supervisor, Engineer B, recommends that Engineer A accept a position that is offered to him in another state governmental agency responsible for environmental services.

The position requires a P.E and involves engineering analysis and design responsibilities and Engineer A would be working as part of a team of engineers. Engineer A refuses to accept the position, citing state board regulations requiring him only to perform work in his area of competence and claiming that he cannot accept the position because he lacks the competence to perform the work. Thereafter, Engineer A is terminated.

One year later, during an administrative hearing involving reinstatement to his former position and back pay, Engineer B testifies that Engineer A was qualified to accept the position offered in the Department of Environmental Services.

QUESTIONS:

1. Would it have been ethical for Engineer A to decline to accept the position with the Department of Environmental Services?

2. Would it be ethical for Engineer B to testify that Engineer A was qualified to accept the position offered to Engineer A in the Department of Environmental Services?

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REFERENCES:

Section II.2. - Engineers shall perform services only in the areas of their competence.

Section II.2.a. - Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved.

Section II.2.b. - Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control.

Section II.2.c. - Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers who prepared the segment.

Section III.11. - Engineers shall cooperate in extending the effectiveness of the profession by interchanging information and experience with other engineers and students, and will endeavor to provide opportunity for the professional development and advancement of engineers under their supervision.

DISCUSSION:

The Board of Ethical Review has had occasion to consider several cases involving facts similar to those in the present case. In BER Case 85-3 a local county ordinance required that the position of county surveyor be filled by a P.E. The first appointee to the position was not a P.E. and was therefore deemed unqualified to continue in the position. The county commissioners met and decided to appoint a P.E. with experience and educational background solely in the field of chemical engineering. The duties and responsibilities of the position of county surveyor included oversight of surveying reports and highway improvement projects but did not include actual preparation of engineering or surveying documents.

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The Board considered the question of whether it was ethical for the P.E. to accept the position of county surveyor and concluded it was not, noting that it would be extremely difficult, if not impossible, for a county surveyor with no background or expertise in surveying to perform effective oversight of surveying reports and highway improvement projects for the county. The Board did not see any way in which Engineer A could be in accordance with Section II.2.b. under these facts because whatever course of action he took would result in unethical conduct and compromise his role as county surveyor. We noted that it may seem plausible that Section II.2.c. would provide some ethical avenue through which the P.E. could perform the job as county surveyor. While it was true that he met the legal requirements for the position because he was a licensed professional engineer, we noted that professional ethics required an engineer to go beyond what is specifically permitted by the law.

Later in BER Case 87-1, the Board considered a case remarkably similar to the present case. There, a professional engineer was employed by the Army Corps of Engineers. Because of a substantial decrease in the work load, he was informed that his position with the Corps' River Basin Planning Section was being abolished and that he would be reassigned. He was asked to accept a position with the Coastal and Special Studies Section as a staff engineer where he would be supervised by an experienced engineer.

He accepted the new assignment even though he lacked the technical expertise to perform the required duties. In determining that it was ethical for him to accept the new assignment even though he lacked the technical expertise to perform the required duties, the Board indicated that BER Case 85-3 could be properly distinguished from the facts in BER Case 87-1. Whereas 85-3 involved an engineer who was responsible for personally performing supervisory functions and administering the operations of a technical services department within a governmental body, in BER Case 85-3, the engineer had to possess the knowledge, experience, and background in surveying to direct and manage the technical aspects of his department.

We believe the reasoning of the present case is not the same as that in BER Case 87-1. The Board reads the Code to prohibit Engineer A from accepting this new assignment if he believes he lacked the competence to perform the work. To do so would not limit the ability of engineers to expand their level of experience and knowledge. We believe the intent of Section II.2. et seq. is to limit individual engineers from undertaking assignments or positions of authority and responsibility where they lack adequate competence or experience. While we do not believe the Code's intent is to prohibit engineers from accepting new and different tasks and duties, thereby growing professionally, for the Board to decide otherwise would be to ignore the practical realities of engineering and impose overly flexible practice requirements on the profession and limit the autonomy, judgment and professional discretion of engineers.

We would emphasize that the Code contains the implicit obligation on all engineers to improve their competence through continuing education and professional development. While we recognize that engineers should acquire the necessary skills and experience in performing new duties, and that an engineer's supervisors have an ethical obligation to encourage and support him in

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that effort, this cannot mean that engineers can be placed in positions of responsibility for which they believe they lack professional competence.

We must take Engineer A at his word that the reason for his failure to accept the position offered was because he believed that he lacked the competence to perform the work, although he would not be performing the services in question independently but as part of a team and within a department of state government. As a professional engineer, in an environmental agency, Engineer A would presumably be placed in responsible charge of activities for which he lacked the necessary education, training and experience.

Having concluded that Engineer A could have ethically declined the position, we can conclude that it was ethical for Engineer B to testify as to Engineer A's qualifications to accept the position offered to Engineer A in the Department of Environmental Services. We base this on the assumption that Engineer B had a reasonable and good faith belief that Engineer A could perform the services in question.

CONCLUSIONS:

1. It would be ethical for Engineer A to decline to accept the position with the Department of Environmental Services.

2. It would be ethical for Engineer B to testify as to his opinion of Engineer A's qualifications to accept the position offered to Engineer A in the Department of Environmental Services.

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MINORITY OPINION ON QUESTION #2:

The facts state that Engineer A was educated as an electrical engineer and worked as a computer systems engineer with no work experience in the field of environmental services. Also, the facts state that the new position involved engineering analysis and design responsibilities in this area. Engineer B was his direct supervisor and as such must have had access to Engineer A's current and past background information. Therefore, Engineer B must have known that by neither education nor experience was Engineer A qualified for the engineering position involving engineering analysis and design responsibilities in the environmental area.

An engineer giving legal testimony, a public statement, may ethically offer an opinion about the qualifications of another engineer but that opinion, in order to be ethically and truthfully presented, must be made with at least some regard to facts. While it is vital that professional engineers practice only in their own area of expertise, it is equally vital that professional engineers make public statements based on at least one or more facts, if any facts exist (and they do in this case). The facts in this case fail to show any basis for testifying that Engineer A was qualified to accept the position. Thus, this testimony, which is a public statement, does not appear objective nor based on truth; thus, is in conflict with a fundamental cannon of our code. In fact, the testimony appears to be a deceptive act, in conflict with another fundamental cannon, designed to make the court believe that a license as a professional engineer qualifies the engineer to practice in any area of engineering.

If engineers testify in such a way that would lead the courts or others to believe licensed engineers are qualified to practice all areas of engineering, courts could require engineers, just in order to keep a job, to undertake engineering analysis and design responsibilities in areas in which the engineer has neither experience nor education. In such cases, the health, safety and welfare of the public would not be held paramount and in fact would most likely be placed in peril.

MINORITY CONCLUSION ON QUESTION #2:

Based on the facts presented in this case, it would be unethical for Engineer B to testify that Engineer A was qualified to accept the position offered to Engineer A in the Department of Environmental Services.

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