EMPLOYMENT PRACTICES – SOLICITING COMPETITOR'S EMPLOYEES

Case No. 99-5

Facts:

Engineer A's firm is attempting to increase its staff capacity and after publishing a series of advertisements in local and national job classified publications, decides to send out recruitment postcards to engineers in the local and state engineering community. Using the state board registry of professional engineers, the firm sends the unsolicited postcards out to individual engineers at the address listed in the directory announcing Engineer A's firm's interest in recruiting new engineer employees. Such mailings are not prohibited by the state board. Many of the cards are sent to the individual engineers at their firm's address.

Question:

Was it ethical for Engineer A's firm to send postcards out to individual engineers in the manner described?

References:

Section III.3.	-	*Code of Ethics:*	*Engineers shall avoid all conduct or practice which deceives the public.*
Section III.3.a.	-	*Code of Ethics:*	*Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.*
Section III.3.b.	-	*Code of Ethics:*	*Consistent with the foregoing, Engineers may advertise for recruitment of personnel.*
Section III.7.	-	*Code of Ethics:*	*Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other engineers. Engineers who believe others are guilty of not ethical or illegal practice shall present such information to the proper authority for action.*

Discussion:

In today's employment environment, with employers of engineers scrambling to maintain a competent workforce, many employers are attempting more aggressive employment recruitment and retention approaches. As has been noted on numerous occasions, it appears that in times of heightened competition, whether for engineering services or for engineering employees, sometimes ethical considerations are minimized and even lost as firms attempt to do what is necessary to stay in business and prosper. However, failing to maintain reasonable standards of ethical conduct ultimately reflects poorly both

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on engineers who engage in such conduct, and also on the engineering profession as a whole.

The Board of Ethical Review has considered the issue of employment recruitment on numerous occasions. As early as BER Case No. 60-4, the Board noted that it was ethically proper for an engineer to discuss employment with another company, regardless of whether his company and the company are competitors, and to take such employment if in his professional interest. BER Case No. 60-4 involved a number of companies that required engineers for the design and development of their products and found it difficult in recent years to recruit a sufficient number of qualified engineers. As one means of contacting engineers interested in their type of work, these companies individually maintained temporary recruiting facilities in connection with various industrial exhibitions and meetings of professional and technical societies to interview those engineers in attendance who might be seeking employment or a change of employment.

Later in BER Case No. 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 a 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 it and perhaps refer to us those individuals 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 reviewing the NSPE Code and the facts, the Board concluded that the recruitment of engineering personnel through this method was ethical. In reaching its result, the Board suggested that this type of direct unsolicited contact with large numbers or employees of other firms who have not indicated any interest or desire to change employment is not in keeping with desirable professional standards and the proper relationship between firms within the profession.

Over the past decades, the culture of employment has changed from steady progression within a single company or firm to one where young engineers must plan on a substantial number of employment changes in the course of their careers. Employers, in an age of increasing competition, increasingly rely on relatively short term hiring of professionals to meet changing market demands. Free and open communication of available positions is critical in meeting today's market demands.

Reflecting this changing culture, since the 1970s, the Code has placed increasingly less emphasis on the style and methods of recruitment while steadfastly maintaining standards of integrity of recruitment statements. The facts in this case do not include any improprieties in the contents of the postcards. Instead, they center upon the method of distribution to prospective clients. Nevertheless the method used does raise at least two potential problems. By sending out a mass unsolicited mailing to an engineering licensure board list of professional engineers in the state, Engineer A would invariably be sending the solicitation in at least some cases to the business addresses of those

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professional engineers. The Board does not believe this type of solicitation crosses the line and employer should be expected to accept incoming correspondence from competing firms soliciting its employees for positions with that competing firm. Using company resources and time to process such material is a minor inconvenience which any employer can be expected to tolerate. This is much different than situations where employees use equipment, supplies, laboratory, or other office facilities of an employer to carry on an outside business. The Board does not believe the actions by Engineer A's firm rises to the level which allows the employer's place of business to be used as a "staging ground" for the "raiding" of its employees.

By sending unsolicited letters to firms of various sizes, Engineer A's actions might have the unintended effect of causing unknowing employers in firms receiving the letters to conclude, without more information, that their employees are soliciting information or actively seeking employment elsewhere and doing so on company time. This could have the effect of straining relations within the firm and cause misunderstanding and mistrust within the firm. However, the Board does not believe this issue rises to an ethical violation.

Conclusion:
It was ethical for Engineer A's firm to send postcards out to individual engineers in the manner described.

BOARD OF ETHICAL REVIEW
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Each opinion is intended as guidance to individual practicing engineers, students and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole-proprietorships, government agencies, university engineering departments, etc.), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services -- which services must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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