

Report on a Case by the Board of Ethical Review

Case No. 83-3

Using Technical Proposal of Another Without Consent

Facts:

Engineer B submitted a proposal to a county council following an interview concerning a project. The proposal included technical information and data that the council requested as a basis for the selection. Smith, a staff member of the council, made Engineer B's proposal available to Engineer A. Engineer A used Engineer B's proposal without Engineer B's consent in developing another proposal, which was subsequently submitted to the council. The extent to which Engineer A used Engineer B's information and data is in dispute between the parties.

Question:

Was it unethical for Engineer A to use Engineer B's proposal without Engineer B's consent in order for Engineer A to develop a proposal which Engineer A subsequently submitted to the council?

References:

Code of Ethics -Section III.7. - "Engineers shall not compete unfairly with other engineers by attempting to obtain employment or advancement or professional engagements by taking advantage of a salaried position, by criticizing other engineers, or by other improper or questionable methods."

Section III.10. - "Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others."

Section III.10.a. - "Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments."

Discussion:

The Board of Ethical Review operates on an "ad hoc" educational basis, and does not engage in resolving disputes of fact between parties in actual cases. That function is left to the state society if members are involved in judging whether a member has violated the Code of Ethics. Being solely educational, the function of the Board of Ethical Review is to take the submission of "facts" as the basis for analysis and opinion without attempting to obtain rebuttal or comment from other parties. On that basis, the reader of the opinions should always recognize that the Board of Ethical Review is not an adjudicatory body, but its opinions are intended to apply to actual cases only to the extent of the "facts", stated in the case.

This case presents a series of facts, some of which may be addressed by the Board of Ethical Review, others that may not. It appears from the facts that certain wrongdoings were committed by a non-engineer. However, the Board of Ethical Review does not review the conduct of non-engineers with respect to the Code of Ethics. Non-engineers, of course, are not covered by the Code and therefore it would be a meaningless act for this Board to review the conduct of Smith in the facts presented above. Instead, it is the duty of the Board to focus upon the actions of Engineer A.

In Case 64-7, the Board interpreted Section III.10.a. (then Sections 14 and 14(a)) to mean that individual accomplishments and the assumption of responsibility by individual engineers should be recognized by other engineers. "This principle," said the Board, "is not only fair and in the best interests of the profession, but it also recognizes that the professional engineer must assume personal responsibility for decisions and actions." Although the facts of that case were somewhat different from those in the case at hand, Case 64-7 reflects the view that each individual engineer has an ethical obligation to recognize and give credit to the creative products of other engineers. At a bare minimum, that ethical obligation includes securing the consent of that engineer, indicating on any reproduction of that creation the identity of the engineer and in some cases providing the engineer with remuneration for his work depending upon the surrounding circumstances. Each case must be decided upon its individual facts, as no two cases are alike. However, certain basic obligations exist that must be recognized in all cases.

If in fact Engineer A used the proposal, it is clear that such a use would be in violation of Section III.10.a. of the Code of Ethics. Although it may be argued that the Code provision is meant to address those situations where a supervising engineer fails to give credit to an employee responsible for a particular design, and not where "proposals" (which might in fact even be a matter of public record) are submitted by several firms and one engineer merely reviews another set of proposals to gain another firm's perspective of the project, we are convinced that the Code may properly be read to imply use and thus proscribe the conduct of Engineer A. The Board concludes from the facts that the general purpose of Engineer A's use of the proposal of Engineer B was to develop a proposal and thus be awarded the contract. That being the purpose, Engineer A had an obligation to (1) seek and obtain Engineer B's consent before using the plans as a basis for one's own proposal; (2) if granted consent, identify Engineer B in all cases of use of Engineer B's proposal; and (3) negotiate and pay Engineer B "fair and reasonable" compensation for using the proposal. By failing to fulfill any of those obligations, Engineer A clearly violated Sections III.10. and III.10.a. of the Code.

The actions of Engineer A suggest conduct unbecoming of a professional engineer. When offered the contents of Engineer B's proposal by Smith, Engineer A had an ethical obligation to refuse to accept the proposal. Instead, Engineer A accepted and also used the material. Because of the decision to actually use the material, we must further conclude that Engineer A violated Section III.7. of the Code by competing unfairly with Engineer B by attempting to "obtain . . . advancement. . . by . . . improper or questionable methods." Although that Code provision is broad and leaves a good deal of room for interpretation, we are convinced that the use of the proposal constituted unfair competition by improper and questionable methods. Whether there would have been a violation of Section III.7. had Engineer A not used Engineer B's proposal but merely reviewed it before developing the proposal is a debatable point that we will leave for another day. However, this Board is being asked to determine whether a violation occurred as a result of Engineer A's use of Engineer B's proposal. We think that Engineer A's use under the present facts constitutes unfair competition by improper and questionable methods and hence a violation of Section III.7. of the Code.

Conclusion:*

It was unethical for Engineer A to use Engineer B's proposal without Engineer B's consent in order to develop a proposal that was subsequently submitted to the council.

*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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