

Advertising — Use of Business Cards – P.E. Designation

Case No. 04-11

Facts:

Situation 1. Engineer A is licensed in States B, C, and D. Engineer A participates in a business meeting in State E and hands out a business card indicating that he is a P.E. The business card lists Engineer A's name, phone, fax, and e-mail address but does not list a mailing address, nor does it identify the states in which Engineer A is licensed.

Situation 2. Engineer A is licensed in States B, C and D. Engineer A is invited to a business meeting in State E and hands out a business card indicating that he is a P.E. The business card indicates that Engineer A is licensed in States B, C and D and lists Engineer A's mailing address, etc. in State E.

Situation 3. Engineer A's business card notes that Engineer A's offices are in State B but that Engineer A is licensed in State C only. Engineer A resides and performs non-engineering consulting services in State B. Engineer A hands out his business card in State C.

Situation 4. Engineer A is licensed in State B and his business card contains only State B information. On a *social* visit to State C, Engineer A provides his business card to a non-engineer Friend X. Friend X shares the card with Engineer D, telling Engineer D that Engineer A recently gave Friend X the card while visiting State C. Engineer D reports Engineer A to the State C engineering licensure board.

Question:

Were Engineer A's actions ethical in situations (1), (2), (3), and (4)?

References:

Section I.5.	-	NSPE Code of Ethics:	Engineers shall avoid deceptive acts.
Section II.5.a.	-	NSPE Code of Ethics:	Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments.
Section III.3.	-	NSPE Code of Ethics:	Engineers shall avoid all conduct or practice that deceives the public.
Section III.3.a.	-	NSPE Code of Ethics:	Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.
Section III.8.a.	-	NSPE Code of Ethics:	Engineers shall conform with state registration laws in the practice of engineering.

Discussion:

The manner in which engineers advertise, represent themselves, or offer their services to the public has long been a subject of NSPE Board of Ethical Review opinions. Opinions have ranged from classified advertising to the use of the Engineers' Creed in political advertisements, to calendars and pencils, to direct mail solicitation, and more. In fact, the BER *Consolidated Reference Table* identifies over 30 previous cases directly dealing with advertising considerations. Clearly, the subject of advertising has been among the most examined ethical issues considered by the NSPE Board of Ethical Review.

It is also appropriate to observe that opinions about the ethics of professional advertising have changed over time. As a result of legal challenges to professional society codes of ethics during the 1960s and 1970s, the examination of ethical issues relating to advertising are now tempered with strong cautions relating to commercial free speech and antitrust considerations. In particular, BER case numbers 79-6, 82-1, and 84-2 incorporate this perspective.

This Board believes that contemporary questions about the ethics of advertising can be addressed relative to two primary considerations identified in the NSPE Code of Ethics. First, a fundamental principle is that such advertising must be conducted in a manner that is truthful and not misleading or deceptive. Second, such activities must conform to state registration laws and rules of practice. In both cases, the engineer's obligation is not just to satisfy the letter but also the spirit of the Code, consistent with upholding the dignity and integrity of the profession.

Other observations also have a direct bearing on the ethics of advertising relative to the use of business cards. With respect to regulation of the practice of engineering, this Board recognizes that the states have laws which restrict engineering practice to those persons who are duly licensed in that particular state. Further, some states have regulations which prohibit engineers or engineering firms from seeking or performing work in a particular state unless the engineer or engineering firm is duly licensed or registered in that state. Thus, relative to business cards, the ethics – or more correctly, the legality – of advertising might seem, in certain contexts, to turn on establishing what constitutes an offer to do business or perform work.

This Board openly acknowledges and celebrates the fact that engineers are persons engaged in the business of engineering, and thus, the business card has multiple purposes. From a personal perspective, business cards serve the function of what were formerly known as calling cards, this purpose being to provide basic identification and contact information. From a functional perspective, the business card is used to promote the business and facilitate further business contact. Taken together, it is the

view of this Board that business cards today represent a customary and accepted means by which engineers introduce themselves in contexts both business and social.

This Board does not take the position that handing out a business card, in whatever setting, is tantamount to offering to do work. Rather, this Board believes that other documents exist expressly for the purpose of securing work, such as statements of qualifications, proposals, contracts and the like, and those documents are the customary and accepted means by which engineers and engineering companies offer to do business. While acknowledging that not all business is conducted using formal written agreements, it is the opinion of this Board that the act of an engineer handing out a business card is an expression of accepted business etiquette and does not, *ipso facto*, rise to the level of an offer to do work, either personally or on behalf of an engineer's firm.

With these considerations in mind, the Board can examine the cited fact situations.

Situation (1) presents a circumstance that could easily raise questions concerning Engineer A being perceived as a "professional engineer" in a state where he/she is not licensed, *e.g.*, State E. In recognition that engineering licensure falls within the jurisdiction of the states, it is the opinion of this Board that, to avoid confusion or any appearance of deception about licensure, business cards should identify a physical address for the engineer. The business card in Situation (1) does not identify a physical address, and for this reason the scenario is not acceptable.

In Situation (2), Engineer A identifies his residence as State E, the state in which he is attending the business meeting, and also identifies the states in which he is licensed. The clear representation is that Engineer A is not licensed in State E even though his business address is there. Under the NSPE Code of Ethics, Engineer A's actions are truthful and not deceptive. The view of this Board is that a conventional assumption prevails; namely, that the engineer whose name and "P.E." designation appears on a business card is licensed in the state indicated by the physical address on the card. If the engineer is not licensed in the state where he/she resides (or where his/her business resides) as per the physical address, then the card should clearly indicate the state(s) in which the person is licensed. Such is the case in Situation (2); there is no deception. By the same line of reasoning, Situation (3) also describes an ethically acceptable practice.

As noted previously, this Board does not view the act of handing out a business card by an individual who is not licensed in a state as unethical as long as there is no deception and the engineer is conforming with state registration laws and rules and practice. The Board acknowledges that engineering licensure board rules and regulations in certain states prohibit engineers or engineering firms from soliciting work unless those persons

are duly licensed in those states. It is the opinion of this Board that it is within the bounds of ethical activity for a representative of an engineering firm – for example, an engineer who focuses on business development – to tender business cards at both business and social functions in such states, even if that person is not personally licensed in the state, provided that the firm which the person represents does have engineers who are duly licensed in the state and who will represent the firm in its engineering activities there. Similarly, this Board feels it would not be ethical for this same (business development) engineer to engage in business development activities if that person's firm did not have engineers who were duly licensed in the state. This type of situation amounts to deception and goes beyond the fact of tendering a business card. Under such circumstances, prospecting for work would not appear to satisfy the intent of the state's engineering laws and regulations and therefore would not be ethical.

Finally, as to Situation 4, the Board can see no violation of the NSPE Code. Clearly Engineer A's distribution of his business card during a social occasion was entirely proper and was not intended as a representation that Engineer A was licensed in State C. However, the Board notes in passing that it would appear that Engineer D did not exercise appropriate judgment and discretion by bringing this matter to the State C engineering licensure board.

In closing, the Board would note that engineers and engineering companies have an obligation to make sure that the information they use to market and communicate services to their clients and to the public (e.g., business cards, brochures, Web sites, etc.) are accurate, truthful and not deceptive. These items should be maintained and updated as necessary in order to avoid public misunderstanding about their, or their firm's qualifications. In today's electronic world, the time and cost associated with updating this material is markedly reduced. Engineers and their firms should strive to keep this information as accurate and current as possible.

Conclusions:

- Situation 1. Engineer A's actions were not consistent with the NSPE Code of Ethics.
- Situation 2. Engineer A's actions were consistent with the NSPE Code of Ethics.
- Situation 3. Engineer A's actions were consistent with the NSPE Code of Ethics.
- Situation 4. Engineer A's actions were consistent with the NSPE Code of Ethics.

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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 must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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