

## Report on a Case by the Board of Ethical Review

### Case No. 67-11

#### Public Disclosure of Names in BER Case

##### **Facts:**

In Case No. 67-3 of the Board of Ethical Review, it was held that "Engineer A" was ethically obligated to provide the original or copies of certain 1956 plans to a municipality which had requested them in order that "Engineer B," who had subsequently been retained by the municipality for the second phase of a related project, could utilize them and thereby avoid the unnecessary additional expense which would result if Engineer B were required to investigate the work performed by Engineer A some years earlier.

Following distribution of the BER case, Engineer B gave a copy of it to the city commission in support of his position that Engineer A had an ethical duty to provide the original or copies of the 1956 plans. Engineer B disclosed to the city commission the actual name of the firm which was Engineer A in the BER case. Subsequently, a local newspaper carried a story naming the firm which was Engineer A in the case, and attributed to Engineer B a statement that Engineer A (by actual name) was "unethical." The local newspaper, which apparently obtained the full text of the BER opinion from Engineer B or from the city commission as given to it by Engineer B, published the entire BER case in conjunction with its story on the city commission meeting at which the subject was discussed.

##### **Question:**

Was Engineer B in violation of the Code of Ethics in publicly disclosing the actual name of Engineer A and in publicly stating that Engineer A (by actual name) was unethical?

##### **References:**

Code of Ethics-Section 11 - "The Engineer will not compete unfairly with another engineer by attempting to obtain employment or advancement or professional engagements by competitive bidding, by taking advantage of a salaried position, by criticizing other engineers, or by other improper or question able methods."

Section 12-"The Engineer will not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects or practice of another engineer, nor will he indiscriminately criticize another engineer's work in public. If he believes that another engineer is guilty of unethical or illegal practice, he shall present such information to the proper authority for action."

##### **Discussion:**

Many cases decided by the Board of Ethical Review are based on actual situations and controversies between engineers or between engineers and their actual or prospective

clients. However, the opinions of the Board are not adjudications of actual controversies, hence they are always reported as hypothetical cases without the use of actual names. It should be apparent that this must be the procedure because the Board bases its opinions on the facts submitted by only one party to the controversy, and there is no opportunity for the other party or parties in interest to submit their version of the facts or to offer their side of the case. In addition, the Board may alter the submitted facts to make the case as broadly applicable as possible to the point or points involved. The opinions of the Board are not punitive or for disciplinary purposes; they are intended to be educational and informative for assistance to the profession in understanding the meaning of the Code as related to defined circumstances. Disciplinary action against individuals is the responsibility of the state professional engineering societies under a procedure which allows for due process for all concerned persons, including the right to present their version of the case, to offer a defense to the charge, to cross-examine witnesses and to present other evidence.

It was therefore manifestly unfair for Engineer B to identify Engineer A in this situation. Engineer A had no opportunity to be heard before being publicly exposed to criticism and an allegation of unethical conduct. This is the very opposite of the basic principles of due process. Under these circumstances, we think Engineer B was in clear violation of that portion of Section 12 of the Code which prohibits indiscriminate criticism of another engineer. Section 12 of the Code further specifies the correct procedure which should have been followed by Engineer B if he believed Engineer A was guilty of unethical conduct. He should have presented the information, which could include the BER opinion in Case 67-3, to the state professional engineering society for consideration and appropriate action. The city commission is not a "proper authority" within the scope of Section 12. We must conclude that Engineer B was motivated by a desire to injure the professional reputation of Engineer A.

What we have said does not prevent Engineer B and others similarly situated from presenting to a public body an opinion of this Board in support of a position under dispute. The failure here on the part of Engineer B is in naming Engineer A when he was not named in the BER case.

Although there was apparently no direct question of whether the city commission would retain Engineer A or Engineer B for a particular project, we read Section 11 as applying to the case in the sense that Engineer B was attempting to compete unfairly with Engineer A by holding him up to public scorn for alleged unethical conduct. At the least, under the language of Section 11, Engineer B criticized other engineers by "improper or questionable methods."

**Conclusion:\***

Engineer B was in violation of the Code of Ethics by publicly disclosing the actual name of Engineer A and in publicly stating that Engineer A (by actual name) was unethical.

**\*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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