

EMPLOYMENT – INFORMATION GAINED FROM ABET VISITATION

Case No. 01-12

Facts:

Engineer A is an engineering educator who serves as an evaluator on an ABET visitation team reviewing an engineering program at State X University. Due to a pending decision by Engineer B to depart for a position at another university, it is possible that State X University may have an opening in the position of chair of its chemical engineering department. Because it is unsure of Engineer B's decision, State X University has not advertised or announced the opening. Engineer A visits State X University with an ABET visitation team in October. During the ABET visit and interviews with the dean, department chairs, and engineering faculty, it becomes apparent to Engineer A and others on the ABET team that Engineer B might depart and a chemical engineering chair position at State X University might open. She completes her evaluation and has no further influence on the report or the final action by ABET. In June, Engineer A formally learns of the chair position opening, applies for the position, is selected by a search committee, and accepts the appointment as chair of the State X University chemical engineering department.

Question:

Was it ethical for Engineer A to apply for the position of chair at State X University?

References:

- Section II.3.a.* - *Code of Ethics:* *Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.*
- Section II.5.* - *Code of Ethics:* *Engineers shall avoid deceptive acts*
- Section III.1.e.* - *Code of Ethics:* *Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.*
- Section III.2.a.* - *Code of Ethics:* *Engineers shall seek opportunities to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health and well-being of their community.*
- Section III.4.a.* - *Code of Ethics:* *Engineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the Engineer has gained particular and specialized knowledge.*
- Section III.6.* - *Code of Ethics:* *Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.*
- Section III.7.b.* - *Code of Ethics:* *Engineers in governmental, industrial, or educational employ are entitled to review and evaluate the work of other engineers when so required by their employment duties.*

Discussion:

As with any other professional group, it is not uncommon for engineers to learn about employment opportunities through professional activities such as participation in technical or

professional committees and teams. In fact, the Board has long encouraged engineers to be active in professional and civic activities for the enhancement of the profession and the protection of the public health, safety, and welfare. At the same time, where such information is revealed to an engineer, questions may arise as to whether the engineer has some obligation to fully advise or disclose information to other interested parties.

While the Board has not had an opportunity to address a case of a nature as the one before us, an early BER case involved circumstances that have some bearing on the matter at hand. In BER Case No. 65-15, a professor of engineering shared his time at the university between teaching and research projects under contract between the university and a government agency. The professor also owned an interest in a research and development company in the community and devoted evenings and weekend time to the interests of the company. The private R&D company and the university, as well as others, were invited by a federal agency to submit proposals for a project, the technical content of which was based in large part upon the research performed by the university for a different federal agency in which the professor participated.

In deciding that it was ethical for the professor to participate in the preparation of a proposal for the university, the Board noted that the professor is first an employee of the university and, as such, has a primary responsibility to the university. His interest in and work for the private R&D company, while neither necessarily inappropriate nor unethical, must be treated as secondary to his responsibilities to the university. Under the circumstances described, it was obligatory for the professor to advise both the university and the R&D company of his interest and previous work in connection with the project in behalf of the university and insist that these facts be made known to the government agency requesting the proposal. Based on BER Case No. 65-15, the R&D company could only submit a proposal if the university did not submit a proposal.

BER Case No. 65-15 illustrates that as a general proposition, the NSPE Code recognizes that the first responsibility of engineering educators is to their university.

More recently, in BER Case No. 91-5, Engineer A, a professional engineer on unpaid leave from his employer, was a post-graduate student at a small private university, and was enrolled in a for-credit research class taught by a mechanical engineering professor at the university. The research being performed by Engineer A involved the use of an innovative technology. The university was in the process of enlarging its facilities and the professor, a member of the university's building committee, was charged with responsibility for developing a request for proposal (RFP) in order to solicit interested engineering firms. The professor planned to incorporate an application of the innovative technology into the RFP. The professor approached Engineer A and asked if he would personally serve as a paid consultant to the university's building committee in developing the RFP, reviewing proposals, etc. Engineer A's employer, ZYX Consultants, previously indicated it would not be submitting a proposal and was not averse to having Engineer A submit a proposal. Engineer A agreed to serve as a paid consultant and subsequently developed the RFP and reviewed submitted proposals.

Although deciding that it was ethical for Engineer A to be enrolled in a class for credit at the university and at the same time agree to serve as a consultant to the university, the Board cautioned that it was necessary to stress the importance for all involved in such actions to carefully delineate the scope of duties and responsibilities for those who serve in the capacity of both student and consultant. The Board said, “We can envision a set of circumstances in which misunderstandings could arise concerning the line of demarcation between student and consultant; therefore, we suggest such arrangements be prudently documented and communicated and that evaluations be made with these considerations in mind.”

Although the two cases cited relate to ethical dilemmas faced in a university setting involving somewhat different fact situations, the Board can glean some basic principles relating to exercising undue influence and gaining access to information, from both cases that are applicable to the case at hand. With these factors in mind, the Board believes that Engineer A’s actions may require scrutiny on a number of points. Among these include the questions of (1) whether Engineer A improperly gained specific information through her ABET visitation that gave her an unfair advantage in seeking the position, and (2) whether such information could have influenced Engineer A’s ABET evaluation of State X University? The Board believes that these are critical questions to examine in this matter. Based upon the facts as presented, the Board must assume that Engineer A did not improperly gain such information and was not influenced in the preparation of the report. Because nothing suggests that Engineer A engaged in any secretive or improper actions or was herself unduly influenced, the Board must conclude that Engineer A’s conduct in and of itself did not violate the NSPE Code. To determine otherwise would be to conclude that engineers in any sphere, who observe business or professional opportunities, must ignore such opportunities or else suffer ethical challenges. The Board does not believe that this is the intent of the NSPE Code. Engineers are professionals involved in business activities and are not and should not be expected to ignore normal opportunities that present themselves in their professional lives.

A related question to examine is whether Engineer A should have resigned from the ABET team or disclosed her interest in the position. The Board believes that under the facts, Engineer A did not have any obligation to resign from the ABET team or disclose her interest in the position. The facts clearly indicate that, although there were statements and comments about Engineer B’s possible departure from State X University, it was not until after Engineer A had completed her evaluation that she formally learned of the chair position opening and thereafter applied for the position. As indicated earlier, the facts do not indicate that Engineer A gained specific information through her ABET visitation that gave her an unfair advantage in seeking the position, or that such information, even if gained, influenced Engineer A’s ABET evaluation of State University X. Under the facts and the timing of events, the Board believes that the possibility that such information would have influenced Engineer A’s ABET evaluation of State X University is extremely remote and not an issue of concern.

Conclusion:

It was ethical for Engineer A to apply for the position of chair at State X University.

BOARD OF ETHICAL REVIEW

E. Dave Dorchester, P.E., NSPE
John W. Gregorits, P.E., F.NSPE
Louis L. Guy, Jr., P.E., F.NSPE
William D. Lawson, P.E., NSPE
Roddy J. Rogers, P.E., F.NSPE
Harold E. Williamson, P.E., NSPE
William J. Lhota, P.E., NSPE, Chair

NOTE: The NSPE Board of Ethical Review (BER) considers ethical cases involving either real or hypothetical matters submitted to it from NSPE members, other engineers, public officials and members of the public. The BER reviews each case in the context of the NSPE Code and earlier BER opinions. The facts contained in each case do not necessarily represent all of the pertinent facts submitted to or reviewed by the BER.

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.

This opinion is for educational purposes only. It may be reprinted without further permission, provided that this statement is included before or after the text of the case and that appropriate attribution is provided to the National Society of Professional Engineers' Board of Ethical Review.

Visit www.nspe.org and learn how to obtain volumes that include NSPE Opinions (or call 800/417-0348).