

**Misrepresentation –
Charging of Engineer’s Time to a Budget Unrelated to Engineer’s Work**

Case No. 14-6

Facts:

Engineer A works for an engineering firm, WXY Engineering, that performs professional engineering services for both private and governmental clients. Engineer A is working on a project for a private company, Company X. The engineering fees on the project have exceeded the estimated budget amount agreed to between the engineering firm and Company X. Engineer B, Engineer A’s direct supervisor at WXY Engineering, advises Engineer A to charge his future time on the project for Company X to the budget of Company Y, which was well under budget. Although the engineering services for Company X and Company Y are not related, neither Company X nor Company Y are a governmental agency, the budgets involved do not relate to any public funds, and it is not anticipated that the additional charges will cause the WXY Engineering to exceed its budget with Company Y.

Questions:

1. Would it be ethical for Engineer A to charge his time for Company X to the budget of Company Y?
2. Was it ethical for Engineer B to direct Engineer A to charge Engineer A’s time for Company X to the budget of Company Y?

NSPE Code of Ethics References:

Section II.1.d. Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.

Section II.3.a. 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.4. Engineers shall act for each employer or client as faithful agents or trustees.

Section II.5. Engineers shall avoid deceptive acts.

Discussion:

The ethical obligations of professional engineers clearly go beyond merely the technical aspects of engineering practice. Those obligations extend to the professional and business aspects of engineering. Over the years, the Board of Ethical Review has considered many cases that reinforce this basic and essential point.

As an example, BER Case No. 08-1 involved Engineer A, who was a recently hired software engineer recruited from college by HyTechCo, a global software company. As part of his first assignment, Engineer A's supervisor, Engineer B, requested that Engineer A write software to provide security for e-mailed documents within HyTechCo. After completing the project, Engineer A read a news story on an IT industry website about an individual with another company who had made similar software available to overseas clients and was being investigated by the government because of US laws that prohibited sending such software overseas because of national security concerns. Engineer A learned that the software he developed for HyTechCo had been sent overseas by HyTechCo's IT department for use by HyTechCo's offices abroad. Engineer A informed Engineer B, who responded without the benefit of consulting legal counsel that since HyTechCo was a US-based company (i.e., not a threat to US national security) and will be using the software solely for internal purposes, not selling it, there would be no problem. Engineer A agreed but later learned that one of HyTechCo's overseas offices had been permitting company contractors to use the software to exchange secured e-mail documents. The Board decided that Engineer A had an obligation to discuss this matter with Engineer B and provide all of the facts and circumstances to Engineer B's attention. The Board noted that while it may be anticipated that Engineer B will carefully look into this matter to verify Engineer A's concerns, in the event that Engineer B does not take this action, it would be ethically proper for Engineer A to either seek an appeal of this matter at a higher management level within HyTechCo or recommend that Engineer B seek a written opinion from HyTechCo's legal department regarding this matter and that Engineers A and B may want to consider documenting the actions and discussions taken by them. The Board also noted that young engineers just beginning their professional careers often find it difficult to challenge superiors in matters of professional practice; often there is a tendency to "go along," "not question authority," and "be loyal to the company." However, it was the Board's view that the most loyal action a young engineer or any engineer within a company can take is to communicate the fact that the company may be taking a risky path by pursuing an action that will be illegal or cause great embarrassment for the company.

More recently, in BER Case 11-8, Engineer A worked for Company X, which was owned by Engineer B. Company X was experiencing financial problems and Engineer B created another company, Company Y. Engineer A had learned that Engineer B advised clients of Company X to remit payments for work performed by Company X and its employees to Company Y. The Board decided Engineer A had an ethical obligation to attempt to determine if there was a basis for his concern by seeking clarification of Engineer B's intentions. The Board noted that if Engineer A was not convinced that Engineer B is operating his business in an ethical and legal manner, Engineer A should disassociate from Company X, (i.e., resign), in order to remove his name from possible unethical and illegal actions by Engineer B. Further, the Board noted that Engineer A may consider bringing his concerns to the state licensing board.

Turning to the facts in the present case, the Board is troubled by the invoicing practices of WXY Engineering. Based on the facts, there does not appear to be any justification for assigning engineering services charges attributable to work on behalf of Company X to the budget of Company Y. Without further justification under the facts present, the Board can only assume that these charges are at a minimum a misrepresentation and could constitute fraudulent activity. It is wholly immaterial that these charges do not involve a governmental agency, or that the budgets involved do not relate to any public funds, or that it is not anticipated that the additional charges will cause the WXY Engineering to exceed its budget with Company Y. Such practices are unacceptable regardless of whether they involve private clients or public agencies.

Engineer A should express his strong concerns to Engineer B, and if Engineer B insists that Engineer A attribute his time on engineering services for Company X to Company Y and that view is sustained within the management of WXY Engineering, the Board believes the guidance in BER Case 11-8 applies to these facts: If Engineer A is not convinced that Engineer B is operating in an ethical and legal manner, Engineer A should disassociate from WXY Engineering, that is resign, in order to remove his name from possible unethical and illegal actions by WXY Engineering. Further, Engineer A must bring his concerns to the proper authorities, such as the state attorney's office.

Conclusions:

1. It would be unethical for Engineer A to charge his time for Company X to the budget of Company Y.
2. It was unethical for Engineer B to direct Engineer A to charge Engineer A's time for Company X to the budget of Company Y.

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