

APPROVED --12/17/96

- II.1.a. - Code of Ethics: *If engineers' judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.*
- II.4. - Code of Ethics: *Engineers shall act for each employer or client as faithful agents or trustees.*

### **USE OF GUIDE SPECIFICATION AS A DESIGN SPECIFICATION**

#### **FACTS:**

Engineer A is requested to prepare a set of general guide specifications for a state Department of Transportation (DOT) to use in connection with road maintenance. As required under state law, Engineer A signed and sealed the guide specifications as a professional service provided by Engineer A. Later, Engineer A learns that the DOT has taken the general guide specifications and is using it as a design specification for a series of projects involving differing design requirements which were not contemplated when Engineer A prepared the original design.

#### **QUESTION:**

Under the Code of Ethics, does Engineer A have a professional obligation to advise the client of the original intent of the guide specifications and the potential for misuse?

#### **DISCUSSION:**

Under the NSPE Code of Ethics for Engineers Section I.4., engineers have an obligation to act on behalf of clients as faithful agents and trustees in the performance of professional services (see NSPE Code Section II.4.). Under this obligation, the engineer not only has the obligation to perform professional services in a manner that seeks to protect the interests of the client, but also to affirmatively advise the client of facts and circumstances that should be known to the client so that the client's project will proceed in a smooth and reasonable manner consistent with the protection of the public health and safety (see BER Cases 76-4, 92-4).

When an engineer is retained to provide professional services, as is the situation in this case, both the engineer and the client should have a complete understanding of the nature of those services and the purposes for which those services are being provided. This understanding is generally spelled out in a written understanding, agreement, or contract negotiated between the client and the engineer. Frequently, such a document will spell out the party's understanding concerning the general uses of the work and services provided by the engineer and, in some cases even certain limitations or conditions under which the work may be used. Sometimes the issue of ownership and

reuse of certain work, including drawings, specifications, etc., will be addressed in such agreements. Great care should be taken by the engineer to be certain that the client has a full and complete understanding of any limitations or conditions that might exist in connection with such work.

Under the specific facts of this case, it appears that the engineer has been retained to perform the usual and customary services to be provided by a state DOT in preparing a set of guide specifications in connection with the road maintenance work by the state DOT. As indicated under the facts, these services are mandated under state law, and it can be presumed that additional requirements and expectations are spelled out in state regulations, codes, manuals, and standards. Assuming the work performed by Engineer A was done under Engineer A's responsible charge -- direct control and personal supervision -- Engineer A appears to have properly signed and sealed the work and delivered over the work to his client, the state DOT. Based upon the facts, it will be assumed that the signed and sealed guide specifications provided by Engineer A was intended by the parties is to be used solely as a set of guide specifications by the parties.

The client's subsequent use of the guide specifications as design specifications is inconsistent with the intent of the documents and, as stated under the facts, could jeopardize the public health and safety (see NSPE Code Section II.1.a.). This is because certain design parameters and conclusions might be drawn from the guide specifications -- conclusions that were never contemplated by Engineer A when he prepared the original guide specifications, and were never intended to apply to the differing and unique highway site conditions or requirements for which the client is now using them.

In closing, we are deeply disturbed that engineers within the department of transportation could permit or participate in this kind of unethical activity.

### **CONCLUSION**

Under these conditions, Engineer A has a responsibility to inform the client of his original intent, and presumably the original understanding between the parties concerning the preparation of the guide specifications. Engineer A should make clear that if the guide specifications are being used as a set of design specifications, the specifications will need to be supplemented with sufficient design detail and other appropriate engineering documentation so that the highway maintenance work will be performed properly. Although it is not clear from the facts, in the future, the engineer and the client should take all appropriate steps to clarify the client's intended use of the work performed by the engineer in the written agreements executed between the parties.

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- \* Note -- In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer and it is incumbent on a member of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.