

REFERENCES:

- II.1.c. - Code of Ethics: Engineers shall not reveal facts, data or information without the prior consent of the client or employer except as authorized or required by law or this Code.*
- II.1.e. - Code of Ethics: Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.*
- II.4. - Code of Ethics: Engineers shall act for each employer or client as faithful agents or trustees.*
- III.9. - Code of Ethics: Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.*

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FACTS:

Engineer A is employed by SPQ Engineering, an engineering firm in private practice involved in the design of bridges and other structures. As part of its services, SPQ Engineering uses a CAD software design product under a licensing agreement with a vendor. Although under the terms of the licensing agreement, SPQ Engineering is not permitted to use the software at more than one workstation without paying a higher licensing fee, SPQ Engineering ignores this restriction and uses the software at a number of employee workstations. Engineer A becomes aware of this practice and calls a “hotline” publicized in a technical publication and reports his employer’s activities.

QUESTION:

Was it ethical for Engineer A to report his employer’s apparent violation of the licensing agreement on the “hotline” without first discussing his concerns with his employer?

DISCUSSION:

The facts and circumstances involved in this case are probably most analogous to earlier Board of Ethical Review cases dealing with the issue of whistleblowing.

Over the years, the Board has considered two cases relating to the issue of whistleblowing. The first, BER Case No. 82-5, involved the issue of whether an engineer had an ethical obligation or an ethical right to continue his efforts to secure change in the policy of his employer or to report his concerns to the proper authority. The case related to an engineer, employed by a large industrial employer, who, after observing that certain subcontractor plan submissions were inadequate, notified his employer of the problem. Following several notifications to the employer, which were ignored, the engineer became insistent regarding the problem, with the result that the employer placed a critical memo in the engineer’s file and ultimately placed the engineer on probation and at risk for possible termination. After reviewing earlier BER cases and appropriate NSPE Code provisions, the Board noted that the facts before it did not relate to a danger to the public health and safety, but were premised upon a claim of unsatisfactory plans and the unjustified expenditure of public funds. The Board

concluded that, in the type of situation presented in Case No. 82-5, the ethical duty or right of the engineer becomes a matter of personal conscience. The Board was not willing to make a blanket statement that there is an ethical duty in these kinds of situations for the engineer to continue his campaign within the company and make the issue one for public discussion. Said the Board, "the NSPE Code only requires that the engineer withdraw from a project and report to proper authorities when the circumstances involve endangerment of the public, health, safety, and welfare."

More recently, in Case No. 88-6, which involved a city engineer who learned of wastewater ponds overflowing into a river, the Board, in reviewing the reasoning in Case No. 82-5, concluded that the facts involved a danger "to the public health and safety – the contamination of a community water supply." On that basis, the Board, tracing its rationale in Case No. 82-5, noted that where an engineer determines that a case may involve a danger to the public safety, the engineer has not merely an "ethical right" but has an "ethical obligation" to report the matter to the proper authorities and withdraw from further service on the project. Importantly, the Board acknowledged that it is difficult to say exactly at what point the engineer should have reported her concerns to the appropriate authorities. However, it was suggested that such reporting could have occurred when the engineer was reasonably certain that no action would be taken concerning her recommendations and that, in her professional judgment, a probable danger to the public health and safety existed.

We believe these two cases are instructive and relevant to the matter presently before the Board, for at least two significant reasons. First, the two cases draw a clear distinction between those matters that involve possible apparent improprieties and those that involve a probable or imminent danger to the public health and safety. Although not stated directly in either earlier case, adding further support to this basic principle is the fact that the language in NSPE Code Section II.1.e. is within the Rule of Practice section specifically relating to the engineer's paramount obligation to protect the public health and safety.

Second, the circumstances involved in both BER Case Nos. 82-5 and 88-6 appear to involve situations where the engineers have at least made an effort to exhaust all internal mechanisms before contemplating taking action by reporting the dangers to the proper authorities.

Under the facts in the present case, the Board concludes that the facts and circumstance are not of a character that involve any danger -- direct or indirect -- to the public health and safety. Instead, the facts and circumstances relate to matters of a legal nature and do not relate to engineering judgment or expertise. NSPE Code Section II.4. places a basic obligation on engineers to be faithful agents and trustees in professional matters with their employers. It is the Board's opinion that Engineer A's actions in reporting his employer's apparent violation was directly in conflict with the NSPE Code of Ethics. We are troubled that Engineer A did not consider other less adversarial and surreptitious alternatives. For example, Engineer A could have first discussed this matter with his employer, pointing out the possible damages that the violation posed to SPQ Engineering, and suggesting that SPQ Engineering confer with its legal counsel before continuing its current actions. Instead, Engineer A took a course of action that could cause significant damage to SPQ Engineering and ultimately to Engineer A himself. One is inclined to wonder about the motivation for Engineer A's actions without his first exploring other less adversarial and surreptitious alternatives, in view of the lack of any direct danger to the public health and safety. While, in the context of the facts of this case, we cannot conclude that this provision compels Engineer A to ignore an apparent violation of the law and the NSPE Code (See NSPE Code Section III.9.), by the same token, Engineer A could have easily exercised far greater judgment and professional discretion before taking action.

CONCLUSION:

It was not ethical for Engineer A to report his employer's apparent violation of the licensing agreement on the "hotline" without first discussing his concerns with his employer.

BOARD OF ETHICAL REVIEW

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