

MILTON F. LUNCH ETHICS CONTEST SUBMITTAL

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2011 NSPE Milton F. Lunch Ethics Contest
NSPE Legal Department
1420 King Street
Alexandria, VA 22314-2794

Dear NSPE Legal Department,

I am pleased to submit this entry for the 2011 Milton F. Lunch Ethics Competition. I am a student member of NSPE, in the Tennessee State Society (TSPE), Memphis Chapter. Thank you for the opportunity to participate as a student member of NSPE.

Respectfully,



Ethan W. Skaggs

Enclosures

Facts:

Engineer A works for ES Consulting, a consulting engineering firm. In performing engineering services for ES Consulting, Engineer A performs construction observation services on a project for Client X. During the performance of the construction observation services on a project for Client X, Engineer A observes potential safety issues relating to the performance of work by a subcontractor on a project being constructed on an adjacent piece of property for Owner Y, a party with whom neither Engineer A, ES Consulting, or Client X has any direct relationship.

Question:

What are Engineer A's ethical obligations under the circumstances.

NSPE Code References:

- Section I.1.* - *NSPE Code of Ethics: Engineers shall hold paramount the safety, health, and welfare of the public.*
- Section I.6.* - *NSPE Code of Ethics: Engineers shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
- Section II.1.f* - *NSPE 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 the public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.*
- Section III.2.* - *NSPE Code of Ethics: Engineers shall at all times strive to serve the public interest.*
- Section III.2.a.* - *NSPE Code of Ethics: Engineers are encouraged 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.7* - *NSPE Code of Ethics: Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practices shall present such information to the proper authority for action.*

Discussion:

The situation presented here brings into question an engineer's ethical responsibilities above and beyond their duties in the workforce. The safety issues, although observed while conducting work, are not germane to the duties of Engineer A acting under ES Consulting for Client X. Engineer A has no contractual relationship with the particular project, contractor, or Owner Y. Engineer A does however have an undeniable personal and ethical responsibility, as an engineer, to uphold the ethical canons of the Code despite the arena, context, or circumstances of the situation.

To demonstrate one aspect of this dilemma, an excerpt from NSPE Board of Ethical Review (BER) Case No. 07-10 Discussion, "*Engineers are sometimes presented with situations involving impact on the public*

health and safety and must decide, after pointing out the situation, how far their obligation reaches in seeking corrective action.” In that particular case, Engineer A built a barn on his property and subsequently sold the property to Jones, who later removed portions of the columns and footings supporting the roof of the barn during renovations. Engineer A, upon learning of this, becomes concerned that the changes, although approved and certified by the town, may make the barn susceptible to collapse under severe snow load conditions. Engineer A contacts the town supervisor, who agrees to look into the matter, but no action was taken. The BER explains that in the context of this case, notifying the authority of potential safety deficiencies is fulfillment of Engineer A’s ethical responsibility. The BER goes further to state that it would have been appropriate to first notify the owner in writing of the potential deficiencies as well. In the BER’s view of this case, Engineer A should make a written record of his communication with the owner and town supervisor, restating the concerns and continue to monitor the situation. If no action is taken within a reasonable amount of time Engineer A should contact the town supervisor again, indicating that bringing the matter to the attention of county or state building officials will be necessary to adequately address the situation.

The facts and circumstance of the present case do differ from that of BER Case No. 07-10 in that Engineer A did not design the project on the adjacent property, but Engineer A’s ethical obligation to hold “*paramount the safety, health and welfare of the public,*” remains unchanged. This obligation is unmistakable; the BER stated in Case No. 98-9 that this obligation must take precedence. The BER has also stated on numerous occasions that no section of the Code must be read in a vacuum or independent of the other provisions of the Code. Engineer A should begin a course of action that makes full use of, and is in adherence with, all applicable language of the Code. Consistent with BER’s judgment on Case No. 07-10, and upholding ethical obligations under Code Sections I.6, III.2., III.2.a, and III.7; Engineer A should notify Owner Y in writing of the observance, and recommend methods to address the safety issue. Engineer A should continue to observe the conditions at the adjacent job site and allow Owner Y reasonable time to remediate the safety issue. If corrective action is not taken and safety continues to be compromised, just as in Case No. 07-10, Engineer A should then notify the proper jurisdictional authorities, upholding his/her ethical obligations under Code Sections II.1.f and III.7.

Engineer A is obligated to work for the advancement of the honor, reputation, and usefulness of the profession and for the safety, health, and well-being of the community. By informing and educating Owner Y, and allowing for the remediation of the safety issues, Engineer A allows the parties responsible to uphold their ethical obligations as well. If the responsible parties do not uphold their ethical obligations, Engineer A is duty-bound to take further action and notify the proper authorities, in order to preserve the safety, health and well being of the public.

Conclusion:

Although not contractually involved with the specific safety issue, Engineer A has an ethical obligation to notify Owner Y and, if necessary, the proper authorities of the potential safety issues. Maintaining records of the communication will ensure that Engineer A is not bringing claim maliciously against Owner Y, but simply striving to serve the interest of the public. Engineer A’s paramount ethical obligation is the safety, health, and well being of the public.