

Report on a Case by the Board of Ethical Review

Case No. 76-4

Public Welfare—Knowledge of Information Damaging to Client's Interest

Facts:

The XYZ Corporation has been advised by a State Pollution Control Authority that it has 60 days to apply for a permit to discharge manufacturing wastes into a receiving body of water. XYZ is also advised of the minimum standard that must be met.

In an effort to convince the authority that the receiving body of water after receiving the manufacturing wastes will still meet established environmental standards, the corporation employs Engineer Doe to perform consulting engineering services and submit a detailed report.

After completion of his studies but before completion of any written report, Doe concludes that the discharge from the plant will lower the quality of the receiving body of water below established standards. He further concludes that corrective action will be very costly. Doe verbally advises the XYZ Corporation of his findings. Subsequently, the corporation terminates the contract with Doe with full payment for services performed, and instructs Doe not to render a written report to the corporation.

Thereafter, Doe learns that the authority has called a public hearing and that the XYZ Corporation has presented data to support its view that the present discharge meets minimum standards.

Question:

Does Doe have an ethical obligation to report his findings to the authority upon learning of the hearing?

References:

Code of Ethics-Section 1-"The Engineer will be guided in all his professional relations by the highest standards of integrity, and will act in professional matters for each client or employer as a faithful agent or trustee."

Section 1(c)-"He will advise his client or employer when he believes a project will not be successful."

Section 2-"The Engineer will have proper regard for the safety, health, and welfare of the public in the performance of his professional duties. If his engineering judgment is overruled by nontechnical authority, he will clearly point out the consequences. He will notify the proper authority of any observed conditions which endanger public safety and health."

Section 2(a)- "He will regard his duty to the public welfare as paramount."

Section 2(c)-"He will not complete, sign or seal plans and/or specifications that are not of a design safe to the public health and welfare and in conformity with accepted engineering standards. If the client or employer insists on such unprofessional conduct, he shall notify the proper authorities and withdraw from further service on the project."

Section 7-"The Engineer will not disclose confidential information concerning the business affairs or technical processes of any present or former client or employer without his consent."

Discussion:

Section 1 of the code is clear in providing that the engineer "will act in professional matters for each client or employer as a faithful agent or trustee." In this spirit Engineer Doe has advised the XYZ Corporation that the results of his studies indicate that the established standards will in his opinion be violated. His verbal advice to the corporation would seem to meet the letter and spirit of §§1 and 1(c).

The termination of Doe's contract with full payment for services rendered is a business decision which we will presume is permitted by the terms of the engineering services contract between Doe and his client. Doe, however, has reason to question why the corporation specifically stipulates that he not render a written report. Upon learning of the hearing, he is squarely confronted with his obligations to the public concerning its safety, health, and welfare. Section 2(a) requires that his duty to the public be paramount. In this case, it is presumed that a failure to meet the minimum standards established by law is detrimental to the public health and safety.

We note that we have not heretofore during the entire existence of the board had occasion to interpret §2(c) of the code. That portion of §2(c) which requires the engineer to report any request for "unprofessional" conduct to "proper authorities" is particularly pertinent in the situation before us. The client's action instructing Doe to not render a written report when coupled with XYZ's testimony at the hearing raises the question of Doe's obligation under §2(c). We interpret the language in the context of the facts to mean that it would now be "unprofessional conduct" for Doe to not take further action to protect the public interest.

It is not material, in our view, that the subject matter does not involve plans and specifications as stipulated in §2(c). We interpret "plans and specifications" in this section to include all engineering instruments of service. That particular reference must be read in light of the overall thrust of §§2 and 2(a), both of which indicate clearly that the paramount duty of the engineer is to protect the public safety, health and welfare in a broad context. As we noted in Case No. 67-10, even though involving unrelated facts and circumstances, "It is basic to the entire concept of a profession that its members will devote their interests to the public welfare, as is made abundantly clear in §2 and §2(a) of the code."

Section 7 of the code does not give us pause because the action of the engineer in advising proper authority of the apparent danger to the public interest will not in this case be disclosing the technical processes or business affairs of the client.

Conclusion:*

Doe has an ethical obligation to report his findings to the authority upon learning of the hearing.

***Note:** This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

Board of Ethical Review

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