

## Report on a Case by the Board of Ethical Review

**Case No. 78-8**

### Advertising of Company - Advertising – Calendars/Pencils

**Example 1:** John Smith, P.E., a principal of a consulting engineering firm, proposes to purchase and distribute wall calendars to clients and prospective clients in the fall of the year. On each page of the calendar will be printed:

Smith & Associates Consulting Engineers  
124 Main Street  
Capitol City, Michigan  
Phone: 123-345-5678

**Example 2:** Roger Roe, P.E., a principal of a research and development company, proposes to purchase and distribute pencils to present and potential clients. Each pencil will be inscribed:

Acme Research & Development Company  
Columbia, Mississippi

#### **Question:**

Is the type of advertising stated above permissible under the Code of Ethics?

#### **References:**

Code of Ethics - Section 3(a) - "The Engineer shall not make exaggerated, misleading, deceptive, or false statements or claims about his professional qualifications, experience, or performance in his brochures, correspondence, listings, advertisements, or other public communications."

Section 3(b) - "The above prohibitions include, but are not limited to, the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep the statement from being misleading; statements intended or likely to create an unjustified expectation; statements containing prediction of future success; statements containing an opinion as to the quality of the Engineer's services; or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format."

#### **Discussion:**

The series of earlier cases dealing Advertising Calendars Pencils Case No. 78-8 with the ethics of the advertising of engineering services is no longer applicable to provide precedent or guidance. In July 1978, the Board of Directors amended the code to conform to the constitutional limitations on restrictive ethical standards of the advertising of professional services as established by the Supreme Court of the United States in

Bates v. State Bar of Arizona. In that case, the Supreme Court ruled that under the First Amendment it is not permissible for either private organizations or public agencies to totally prohibit the advertising of professional services, but that certain limitations could be placed on such advertising, such as statements which are deceptive or misleading, and that reasonable restraints may be placed on claims of quality of services. And the Court indicated that it would be permissible to require that professional advertising be "restrained."

The revised NSPE code provision on advertising, based upon a study of revised wording on the advertising issue by other professional societies and changes adopted in federal agency regulations governing advertising by attorneys practicing before those agencies, is intended to comply with the criteria enunciated by the Supreme Court. In effect, it widens the door for engineering advertising over the previous code provisions, but still retains some restrictions as permitted by the Bates decision.

With that brief background, we are now required to consider cases on specific fact situations, such as the ones before us, to establish new concepts and guidelines on permissible forms of engineering advertising. In these two examples we are primarily concerned with the restrictions related to "showmanship", and "format."

While there is no definition of either term in the code itself, we take it that "showmanship" relates basically to the idea that professionals should not promote their services by exhibitions or similar forms of broad-scale presentations to the general public or to those with whom there is no present or anticipated future relationship. Such is not the case in the two fact situations under consideration. The format of material appearing on the calendars and pencils in question is presumed to be in good taste. Both the calendars and pencils are to be distributed only to persons or organizations with whom the engineering firms have either direct contacts or a reasonable prospect of future relationships.

The restriction of "format" must be read in conjunction with "sensational." While it is contrary to the previous code to allow the promotion of professional services by such devices as calendars and pencils, and the like, we cannot say these means are considered to be of a "sensational" format.

Under the mandate of the Supreme Court the "traditional" restraints self-imposed by the professions have crumbled to a substantial degree, and the professions, engineering included, must now live within the more "liberal" standards and concepts. Future cases will likely elucidate the meaning and application of the advertising restraints remaining in the code. Meanwhile, the advertising devices in the two examples before us must be recognized as permissible.

**Conclusion:\***

The type of advertising stated above is permissible under the Code of Ethics.

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