

Report on a Case by the Board of Ethical Review

Case No. 85-3

P.E. Requirement for County Surveyor Position

Facts:

A local county ordinance requires that the position of county surveyor be filled by a P.E. The first appointee to the position was not a P.E. and was therefore deemed unqualified to continue in the position. The county commissioners met and decided to appoint Engineer A, a P.E. with experience and educational background solely in the field of chemical engineering. Engineer A accepted the position.

The duties and responsibilities of the position of county surveyor include oversight of surveying reports and highway improvement projects but do not include actual preparation of engineering or surveying documents.

Question:

Was it ethical for Engineer A to accept the position of county surveyor?

References:

Code of Ethics - Section II.2. - "Engineers shall perform services only in the areas of their competence."

Section II.2.a. - "Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved."

Section II.2.b. - "Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control."

Section II.2.c. - "Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers who prepared the segment."

Discussion:

The Board notes that its evaluation of the facts of this case is limited to an interpretation of the NSPE Code of Ethics and in no way constitutes an interpretation of any state engineering or surveying registration law in recognition of the great disparity in state registration laws and rules of professional conduct.

The Code provisions under consideration in the case have been interpreted in the past by this Board in the context of consulting engineering services and not in the context of an employment relationship. In BER Case 71-2, a case involving the brokerage of engineering services by two firms competing for government work, this Board, in examining predecessor Section 6, recognized "the propriety and value of the prime professional or client retaining the services of experts and specialists in the interests of the project," and noted that a prime professional will be expected to retain or recommend the retention of experts and specialists in situations in which the prime professional is performing substantial services on the project.

A second BER case, Case 78-5, involved an effort by a consulting firm under consideration to perform services to a public utility in which the firm sought to alter its qualifications following its interview with the public utility in order to improve its position to secure the contract. This Board affirmed its decision rendered in BER Case 71-2 that in the field of consulting practice, engineers have an ethical obligation to seek work only in areas where they possess educational background and experience or to retain individuals who possess the necessary educational background and experience to perform the work. While the facts of the two aforementioned cases are quite dissimilar with the instant case, those two cases do relate to the same Code provisions, and do have some bearing upon our understanding of those provisions.

Obviously, there are important distinctions in applying the Code language to a consulting practice and applying the language in the context of an employment relationship. In the former situation, the firm has a good deal more discretion and flexibility and may be able to structure its work force to fit the needs and requirements of a particular job for which the firm is being retained. For example, if an engineering firm is retained to perform engineering and land surveying services and the firm does not have expertise in the area of land surveying, under the provisions of the Code, the firm should retain individuals with that expertise. Because of the relatively dynamic nature of private consulting practice, engineering firms frequently establish joint ventures and subcontracts, hire additional qualified personnel, or make other arrangements in order to serve the needs of a client more effectively and efficiently. However, in the instant situation, from a practicality standpoint, it would be extremely difficult, if not impossible, for a county surveyor with no background or expertise in surveying to perform effective oversight of surveying reports and highway improvement projects for the county. We do not see any way in which Engineer A could be in accordance with Section II.2.b. under these facts because whatever course of action he took would result in unethical conduct and compromise his role as county surveyor. It may seem plausible that Section II.2.c. would provide some ethical avenue through which Engineer A could perform the job as county surveyor.

While it is true that Engineer A meets the legal requirements for the position because he is a licensed professional engineer, professional ethics requires an engineer to go beyond what is specifically permitted by the law. For example, it may be legal for an engineer to exercise his First Amendment rights by making strong and critical statements with regard to another individual or with respect to a particular public policy issue; however, it is an entirely different question as to whether such conduct would be ethical under those circumstances. We are of the view that the same reasoning would apply to this particular case.

Because of the absence of a case relating to the instant facts, we must look to the Code of Ethics and apply its language to the facts at hand. In Section II.2., the introductory section makes the clear statement that the engineer is obligated to perform services only in his area of competence. We do not think it would be consistent with the Code provision for Engineer A to act as a county surveyor when his expertise is limited to the field of chemical engineering. Section II.2.a. states that the engineer should undertake assignments only when qualified by education or experience in the specific technical fields involved. Again, the position that Engineer A is accepting is in an area in which he possesses no apparent expertise. Under the facts of this case, the job responsibilities of the county surveyor do not include actual preparation or approval of engineering or surveying documents; however, the job responsibilities do include oversight of surveying reports and highway improvements. Such oversight is important in protecting the interests of the public and must be performed by one with expertise and background in the areas of surveying and highway improvements.

It could be stated that Engineer A's responsibilities did not include actual preparation or approval of engineering or surveying documents, that instead such documents would be prepared or approved by qualified individuals, and that Engineer A's role would be to oversee those documents and reports. We are convinced that neither is this the intent of the Code provisions nor is this what is commonly understood to be the proper oversight role of a county surveyor.

First, Section II.2.c. must be read in the context of the other provisions that precede it and that relate to the ethical requirement that one should not perform services in areas where one lacks competence. Second, at a bare minimum, we think that one who is serving in the role as a county surveyor must have at least some substantive degree of background and experience in order to accept such a position. We fail to see how an individual, without such background or experience, could properly perform and exercise the judgment and discretion required by the job.

Conclusion:*

It was unethical for Engineer A to accept the position as county surveyor.

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Board of Ethical Review: F. Wendell Beard, P.E., Robert J. Haefeli, P.E., Ernest C. James, P.E., Robert W. Jarvis, P.E., James L. Polk, P.E., Everett S. Thompson, P.E., J. Kent Roberts, P.E., chairman