

Report on a Case by the Board of Ethical Review

Case No. 82-2

Confidentiality of Engineering Report

Facts:

Engineer A offers a homeowner inspection service, whereby he undertakes to perform an engineering inspection of residences by prospective purchasers. Following the inspection, Engineer A renders a written report to the prospective purchaser.

Engineer A performed this service for a client (husband and wife) for a fee and prepared a one-page written report, concluding that the residence under consideration was in generally good condition requiring no major repairs, but noting several minor items needing attention.

Engineer A submitted his report to the client showing that a carbon copy was sent to the real estate firm handling the sale of the residence. The client objected that such action prejudiced their interests by lessening their bargaining position with the owners of the residence. They also complained that Engineer A acted unethically in submitting a copy of the report to any others who had not been a party to the agreement for the inspection services.

Question:

Did Engineer A act unethically in submitting a copy of the home inspection report to the real estate firm representing the owners?

References:

Code of Ethics - Section II.1.c. - "Engineers shall not reveal facts, data, or information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law or this Code."

Section II.4. - "Engineers shall act in professional matters for each employer or client as faithful agents or trustees."

Discussion:

A first blush this appears to be a case involving a relatively small economic issue compared with the larger commercial and industrial projects with which engineers are often concerned. But as it involves an ethical principle we have not had occasion to address before, we will consider it on the broader philosophical aspects. Also, we note that this is not a case of an engineer allegedly violating the mandate of Section III.4. not to disclose confidential information concerning the business affairs of a client. That provision of the Code necessarily relates to confidential information given the engineer by the client in the course of providing services to the client. Here, however, there was no transmission of confidential information by the client to the engineer.

Whether or not the client in this case actually suffered an economic disadvantage by the reduction of its bargaining power in negotiating the price of the residence through the owner having knowledge gained from the inspection report, the same principle should apply in any case where the engineer voluntarily provides a copy of a report commissioned by a client to a party with an actual or potential adverse interest.

It is a common concept among engineers that their role is to be open and aboveboard and to deal in a straightforward way with the facts of a situation. This basic philosophy is found to a substantial degree throughout the Code (e.g., Sections II.3. and II.3.a). At the same time, Section II.1.c. recognizes the proprietary rights of clients to have exclusive benefit of facts, data, and information obtained by the engineer on behalf of the client.

We read into this case an assumption that Engineer A acted without thought or consideration of any ulterior motive; that he, as a matter of course, considered it right and proper to make his findings known to all interested parties in order that the parties handle their negotiations for the property with both sides having the same factual data flowing from his services.

Thus, although we tend to exonerate Engineer A of substantial or deliberate wrongdoing, he was nevertheless incorrect in not recognizing the confidentiality of his relationship to the client. Even if the damage to the client, if any in fact, was slight, the principle of the right of confidentiality on behalf of the client predominates.

Conclusion:

Engineer A acted unethically in submitting a copy of the home inspection to the real estate firm representing the owners.

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: Ernest C. James, P.E. Lawrence E. Jones, P.E., Robert H. Perrine, P.E., James L. Polk, P.E., J. Kent Roberts, P.E., Alfred H. Samborn, P.E., F. Wendell Beard, P.E., chairman