

Duty of Engineer Not to Interfere With Building Approval Process in Fee Dispute

Case No. 17-6

Facts:

Engineer A, a structural engineer, is retained by Contractor B on a project to design a building for Client C. Engineer A prepares drawings, plans, and specifications and delivers them to Contractor B. The plans are filed with the building department and approved. Engineer A is never paid by Contractor B. Contractor B is removed from the project by Client C. Engineer A seeks to rescind the building department's approval of the drawings, plans, and specifications because he was not paid.

Question:

Was it ethical for Engineer A to seek to rescind the building department's approval of the drawings, plans, and specifications because he was not paid?

NSPE Code of Ethics References:

- Section I.1. - *Engineers, in the fulfillment of their professional duties, shall hold paramount the safety, health, and welfare of the public.*
- Section I.6. - *Engineers, in the fulfillment of their professional duties, shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
- Section II.1. - *Engineers shall hold paramount the safety, health, and welfare of the public.*
- Section II.1.b. - *Engineers shall approve only those engineering documents that are in conformity with applicable standards.*
- Section II.4. - *Engineers shall act for each employer or client as faithful agents or trustees.*
- Section III.1.e. - *Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.*
- Section III.7. - *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 practice shall present such information to the proper authority for action.*

NSPE BER Case References: 67-3, 88-4

Discussion:

Professional practice issues relating to compensation for engineering services sometimes result in engineering ethics issues. Obligations between and among various parties involved in the rendering of services often result in conflicts and even ethical concerns. The NSPE Board of Ethical Review (BER) first examined one of these issues nearly 50 years ago. In Case 67-3, the Board noted that, as a general rule, in the absence of a contractual provision to the contrary, the drawings, plans, and specifications prepared by an engineer for a client are the property of the client.

Later, in BER Case 88-4, Engineer A was retained by an architect to provide mechanical engineering services in connection with the design of a small office building. Engineer A performed her services and thereafter a dispute arose between Engineer A and the architect as to Engineer A's final compensation. The issue was never fully resolved. Several months later, the owner, who had retained the architect on the project, requested that Engineer A provide him with a copy of the final record drawings in order to perform certain work on the building that did not involve issues of safety or health. The owner offered to pay Engineer A the cost of reproduction and any administrative staff costs and to attempt to mediate the dispute between Engineer A and the architect. Engineer A refused to provide the owner with a copy of the drawings and declined the owner's offer to mediate the dispute.

In deciding that it was unethical for Engineer A to refuse to provide the owner with the drawings and to decline the owner's offer to attempt to mediate the dispute between Engineer A and the architect, the BER noted that the NSPE Code of Ethics should be read flexibly, particularly when the service being rendered by the engineer is being incorporated into a larger design plan for the benefit of a client. In this larger context, the term "client" should be interpreted more broadly to encompass the owner—the ultimate "beneficiary" of the services which Engineer A has been retained to provide—and the one who, however indirectly, had provided compensation for her services. The BER also noted that Engineer A, by withholding her engineering drawings until her dispute with the architect had been resolved, could potentially jeopardize the economic value of the owner's property, in direct contravention of NSPE Code Sections I.1. and II.4.

In the case presently before the BER, several important considerations must be weighed, including (1) impact to the local community; (2) whether any justifiable legal reason exists for Engineer A to remove his seal from the engineering drawings; (3) ethical obligations to other "clients" in light of the reasoning in BER Case 88-4; (4) whether Engineer A is promoting his self-interests at the expense of the dignity and integrity of the profession; (5) whether Engineer A was engaged in improper or questionable methods; and, (6) whether Engineer A could have explored other potential options to resolve the compensation conflict.

Taking each point individually:

- (1) Engineer A should consider the impacts to the local community.
- (2) The BER is unaware of any legal basis or authority for a professional engineer to seek to rescind the building department's approval for engineering documents that the engineer had signed and sealed, based on a fee dispute.
- (3) The Board accepts the reasoning of BER Case 88-4 and agrees that under the facts, Engineer A owed a special obligation to the client/owner of the building.
- (4) The BER believes that by his actions, Engineer A would be promoting his self-interests at the expense of the dignity and integrity of the profession.

- (5) The BER believes that Engineer A was engaged in improper or questionable methods in seeking to rescind the building department approval due to non-payment. These actions appear retributive and not conforming with honorable conduct.
- (6) The BER believes that Engineer A could have, and should have, explored other potential options to resolve the compensation conflict.

Conclusion:

It was not ethical for Engineer A to seek to rescind the building department’s approval of the drawings, plans, and specifications because he was not paid.

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