

Report on a Case by the Board of Ethical Review

Case No. 66-1

Subject: Engineers' Criticism of Fees

Section 2(b)-Code of Ethics; Section 4(a)-Code of Ethics; Section 5Code of Ethics;
Section 5(a)-Code of Ethics; Section 12-Code of Ethics.

Facts:

A local public body signed a contract with an engineering firm for complete engineering services for a new airport, including the establishment of fees for preliminary planning, general consulting services, preparation of construction plans and specifications, field engineering during construction and other technical services, including coordination of a unique mechanical passenger conveyor system with the basic design.

Certain public officials charged publicly that the fee structure was excessive and the question was referred to a grand jury. The controversy received considerable publicity in the local press and on radio and television stations. During the period of public discussion of the fee structure, a group of local consulting engineers, none of whom had had airport design experience issued a report, concluding that the fee was substantially in excess of the fee schedule published by the state professional engineering society. The report of the local group was made public and received general press and radio and television coverage.

Question:

Is it ethical for a group of consulting engineers to issue a public report criticizing the fee arrangements contained in a contract with an engineering firm?

References:

Code of Ethics-Section 2(b)"He shall seek opportunities to be of constructive service in civic affairs and work for the advancement of the safety, health and wellbeing of his community."

Section 4 (a) -"He shall not issue statements, criticism, or arguments on matters connected with public policy, which are inspired or paid for by private interests, unless he indicates on whose behalf he is making the statement."

Section 5-"The Engineer will express an opinion of an engineering subject only when founded on adequate knowledge and honest conviction."

Section 5 (a) -"The Engineer will insist on the use of facts in reference to an engineering project in a group discussion, public forum or publication of articles."

*Section 12-"The Engineer will not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects or practice of another engineer, nor will

he indiscriminately criticize another engineer's work in public. If he has knowledge that another engineer is guilty of unethical or illegal practice, he shall present such information to the proper authority for action."

Discussion:

It is a difficult, but necessary, task to balance the ethical rights and obligations of engineers to issue public criticism related to other engineers and the restrictions of the Code as to the extent and type of such criticism.

In Case 65-9 it was held that it was ethical for an engineer to publicly criticize a proposed highway route prepared by other engineers and to propose an alternative route. The discussion in that Case pointed out that the critical engineer did not have any personal interest in the project and that by virtue of related experience had adequate professional knowledge of the facts.

In an earlier decision, Case 63-6, it was held that it was not unethical for engineers to offer conflicting opinions on the application of engineering principles, or to criticize the work of another engineer at a hearing on an engineering project, "provided such criticism is offered on a high level of professional deportment."

In the case before us, however, there are two factors which distinguish it from the previous opinions. First, the criticism in the other cases was directed to the engineering features of the project and reflected differences of opinion on the technical content. Second, the engineers involved were shown to have knowledge, background and competence in the area of their critical comments. In those circumstances it is proper to issue critical statements in accord with the duty imposed by Section 2 (b) to be of constructive service in civic affairs by urging alternative engineering criteria for a public project which are believed by the critic to be superior to those originally proposed.

Section 5 restricts the expression of critical opinions on engineering subjects to engineers who have "adequate knowledge" of the subject matter. It is evident in this case that the criticism of the fee for an airport design was not based on "adequate knowledge" in that the critics had never done airport work and hence could not be in a position to properly evaluate the fee structure for that type of work.

It was likewise improper for the committee of engineers to publicly conclude that the fee was in excess of that established by the state professional engineering society. Such an interpretation of the society fee schedule should obviously be determined by an appropriate body of the society which is in a position to know the background, intent and application of various portions of the fee schedule. State society fee schedules are necessarily general in nature and are intended to be guides. They serve a valuable purpose in providing a basis for the negotiation of the fee between the engineer and the owner, but the fee must reflect the unusual or special requirements of the project.

Even though the local engineers who voiced the criticism may have been motivated by "honest conviction" and even though there is no evidence that they were serving an undisclosed private interest, they were in violation of the Code for their action in expressing public criticism on a subject in which they demonstratively did not have "adequate knowledge." Under the mandate of Section 12 the local engineers should have presented their views to the state professional engineering society for an evaluation of their position that the fee was excessive.

Conclusion:

It is not ethical for a group of consulting engineers to issue a public report criticizing the fee arrangements contained in a contract with an engineering firm under the circumstances described.

BOARD OF ETHICAL REVIEW FOR THESE CASES: T. C. Cooke, P.E., James Hallett, P.E., C. C. Hallvik, P.E., W. S. Nelson, P.E., N. O. Saulter, P.E., K. F. Wendt, P.E., A. C. Kirkwood, P.E., Chairman.