

Report on a Case by the Board of Ethical Review

Case No. 66-10

Subject: Representation by Sales Organization

Section 4-Code of Ethics; Section 11(b)-Code of Ethics.

Facts:

An engineer in private practice receives literature from an organization which offers to represent engineering firms for the purpose of contacting prospective clients, presenting the qualifications of the engineering firms which are interested in providing services to the prospective clients, making the necessary arrangements for the contractual relations between the engineering firm and the client, including negotiations, billing the client on behalf of the engineering firm and taking care of all administrative problems associated with the consulting assignment. The organization making the offer states that it is compensated by the engineering firm directly on the basis of a fee of fifteen (15) percent of the amount paid to the engineering firm by the client. This fee is intended to be included as part of the engineering firm's fee to the client.

Question:

Is it ethical for an engineering firm to contract with a sales organization of the type and under the conditions described?

References:

Code of Ethics-Section 4-"The Engineer will endeavor to extend public knowledge and appreciation of engineering and its achievements and to protect the engineering profession from misrepresentation and misunderstanding."

Section 11 (b)-"He will not offer to pay, either directly or indirectly, any commission, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies."

Section 13-"The Engineer will not associate with or allow the use of his name by an enterprise of questionable character nor will he become professionally associated with engineers who do not conform to ethical practices, or with persons not legally qualified to render the professional services for which the association is intended."

Discussion:

We have previously held that it is not unethical for professional engineers to employ non-engineers as representatives to solicit engineering service contracts, nor is it unethical to compensate a representative on a salary plus commission basis, noting, however, that the commission basis of compensation is undesirable "since it could lead to loss of confidence by the public in the professional nature of engineering services." It is of critical importance to further note that in the previous case we were dealing with a sales representative who was an employee of the firm. In the same case we held that it

was unethical for an engineering firm to employ a non-engineering representative to discuss engineering aspects of a project, including contract negotiations, with a prospective client. (See Case No. 62-4).

The facts before us do not indicate whether the organization offering to represent engineering firms with prospective clients is staffed by or headed by professional engineers, but we think this is not a material factor in this case. Unlike the situation in Case 62-4, the sales representative here would not be an employee under the direction and control of the engineering firm, but rather an independent contractor. Thus the commission to be paid cannot be considered as a form of salary.

It is particularly clear in this case that the sales organization representing the engineering firm would enter into contract negotiations. This is an essential element of professional engineering services and requires the application of engineering knowledge and experience. In fact, the offer to negotiate engineering contracts may require that the sales organization be qualified through its officers or employees under the state engineering registration law, but this legal consideration is outside of our purview.

As indicated in Case No. 62-4, we believe that the commission form of payment is undesirable as it "might lead to misunderstanding of the engineering profession." While we only "frowned" upon the commission arrangement in that case because the Code does not specifically cover the method of compensation of employees, we go further in this case and hold that the commission arrangement with an outside independent organization of sales promoters, whether legally qualified under the state engineering registration law or not, is to be condemned as a violation of Section 4 and Section 13 of the Code. Certainly the engineering profession will be exposed to public misunderstanding if it is regarded by the public as a profession which operates through externally controlled commission agents. There is a patent violation under these circumstances of Section 11 (b) of the Code which prohibits the payment of commissions to secure work.

Conclusion:

It is unethical for an engineering firm to contract with a sales organization of the type and under the conditions described.

BOARD OF ETHICAL REVIEW CASE REPORTS: The Board of Ethical Review was established to provide service to the membership of the NSPE by rendering impartial opinions pertaining to the interpretation of the NSPE code of ethics.

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