

Board of Ethical Review

Case No. 64-3

Subject: Selection of Firm
Canon 25-Canons of Ethics

Facts:

Roe & Doe, a local firm of consulting engineers, had been interviewed by representatives of the city engineering staff authorized to conduct interviews and make recommendations to the city council for employment of a consulting engineer for a water-sewer job. In due course, Roe & Doe were notified by the engineering staff representative that they had been recommended for the work. Before the city council acted upon the recommendation which it had received, Smith & Jones, also a local consulting engineering firm who knew the factual background, appeared before the city council and presented their qualifications for the work. They were interviewed by the city council and a contract for the work was negotiated with them. Roe & Doe allege that Smith & Jones are guilty of unethical conduct in contacting the city council for the same work, knowing that Roe & Doe had already been recommended. Smith & Jones, however, contend that they were invited by the city council to present their qualifications.

Questions:

Was it unethical for Smith & Jones to present their qualifications to the city council:

1. On their own initiative?
2. If requested to do so by the city council?

References:

Canons of Ethics- Canon-25-"He will not try to supplant another engineer in a particular employment after becoming aware that definite steps have been taken* to ward the other's employment."

Discussion:

In Case 62-10 and Case 62-18 we considered the meaning of the language in Canon 25 regarding "definite steps" having been taken for the employment of an engineer. In these cases it was held that an engineer may not ethically seek to displace another engineer who has been or is about to be retained for particular work.

The present case raises the further question of whether a recommendation to retain a particular firm constitutes "definite steps" under Canon 25. We defined "definite steps" in Case 62-10 to mean ". . . that the engineer has been informed by the client that he has been selected to negotiate an agreement for a specific project." We believe that this definition should be extended to cover a situation of the type in this case-where the

engineer has been notified by an authorized agent of the client that he has been recommended to be retained for a specific project. On this basis, it would be unethical for another engineer or firm to take the initiative in trying to supplant the engineer or firm who was under consideration on the basis of an authorized recommendation to the client. This is distinguished from the situation in which a number of engineers or firms seek to present their qualifications before a selection has been made or before an official recommendation has been submitted.

If Smith & Jones, however, did not take the initiative and were, in fact, invited by the city council to present their qualifications for consideration, we think that the city council has, in fact, exercised its authority to disavow the "definite steps" which had been taken by, the city's engineering staff representatives. The city council has a clear legal right to defer action on the recommendation for Roe & Doe if it desires to consider other firms before making a final selection. Under these circumstances, Smith & Jones would not be trying to "supplant" another engineer or firm. We construe "supplant" in the light of the dictionary definition of "to supersede another, especially by force, trickery, or treachery," to which for our purposes we would add, "or unethical means."

Although not technically required by the Canons or Rulers, we think it would be desirable professional conduct for Smith & Jones to advise Roe & Doe of the circumstances and seek to ascertain whether there were valid reasons for Smith & Jones to decline the invitation of the city council.

Conclusions:

1. It would be unethical for Smith & Jones to contact the city council on their own initiative.
2. It would not be unethical for Smith & Jones to respond to an invitation from the city, council for consideration of their qualifications for the work.

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