Report on a Case by the Board of Ethical Review

Case No. 62-4

Subject:
Employment of Sales Representative
Canon 19-Canons of Ethics-Rule 4-Rules of Professional Conduct-Rule 54-Rules of Professional Conduct

Facts:
A firm of consulting engineers employed a representative, who was not a professional engineer, for the specific purpose of soliciting engineering service contracts for the firm. His compensation was on a salary, plus commission, basis.

Questions:
Q1. Is it unethical for an engineering firm to employ a non-engineer representative to solicit engineering service contracts?

Q2. Is it unethical for an engineering firm to employ a non-engineer representative to discuss engineering aspects of a project (including contract negotiations) with a prospective client?

Q3. Is it unethical to compensate a representative on a commission basis?

References:
Canons of Ethics-Canon 19- "The engineer will endeavor to protect the engineering profession collectively and individually from misrepresentation or misunderstanding."

Rules of Professional Conduct-Rule 4-"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."

Rule 54-"He will conform with registration laws in his practice of engineering."

Discussion:
It is an accepted practice for principals or qualified engineering employees of engineering firms to solicit project assignments through personal contacts, conferences and other discussions. This practice has not been questioned and is proper, provided, of course, that these contracts and discussions are on a professional plane and do not offend any of the Canons or Rules.

A completely different question arises, however, when a non-engineer functions as a representative of an engineering firm since he is not bound personally by the ethics of the engineering profession. If the representative confines his discussions to information on the firm he represents, its background, experience, and other general information of

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this type, there is no apparent violation of the Canons and Rules. However, if the representative discusses the engineering aspects of the proposed project, (including negotiations for the engineering service contract) , he is engaging in the practice of engineering, a function for which he is not qualified. Such action would be imputed to the principals of the engineering firm and they would be in violation of Canon 19 in exposing the profession to misrepresentation or misunderstanding. There also would be an apparent violation of state registration law by the representative, and, if so, the principals then would have violated Rule 54.

We do not construe Rule 4 as applying to payments to bona fide employees of the firm. To interpret otherwise would forbid payments in any form to such employees for solicitation of clients for engineering services. Although neither the Canons nor Rules cover specifically the method of compensation of employees, we believe a commission basis might lead to misunderstanding of the engineering profession.

Conclusions:
Q1. It is not unethical for professional engineers to employ a non-engineer as a representative to solicit engineering service contracts.

Q 2. It is unethical for an engineering firm to employ a non-engineer representative to discuss engineering aspects of a project (including contract negotiations) with a prospective client.

Q 3. Under the Canons and Rules, it is not unethical to compensate a representative on a commission basis. However, this method of compensation is undesirable since it could lead to loss of confidence by the public in the professional nature of engineering services.

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