Report on a Case by the Board of Ethical Review

Case No. 73-4

Contingent Fee - Fee Based on Savings to Client

Facts:
Engineer A, a specialist in utility systems, offers to industrial clients a service consisting of a technical evaluation of the client's use of utility services (electric power, gas, telephone, and the like) including, where appropriate, recommendations for changes in the utility facilities and systems, methods of payment for such utilities, study of pertinent rating schedules, discussions with utility suppliers on rate charges, and renegotiation (where found applicable) of rate schedules forming the basis of charges to the client. Engineer A is compensated by his clients for these services solely on the basis of a percentage of money saved by the client for utility costs.

Question:
Is it ethical for Engineer A to be compensated solely on the basis of a percentage of savings to his clients?

Reference:
Code of Ethics-Section 11(d)-An Engineer shall not request, propose, or accept a professional commission on a contingent basis under circumstances in which his professional judgment may be compromised, or when a contingency provision is used as a device for promoting or securing a professional commission.

Discussion:
We noted in Case 69-2 that Section 11(d) of the code does not rule out all contingent contracts. Rather, Section 11(d) recognizes that contingent contracts are improper only under circumstances in which the arrangement may compromise the professional judgment of the engineer or when used as a device for promoting or securing a professional commission. The latter restriction is admittedly not as clear in its meaning as the first restriction. But we observed in Case 69-2 that we construed its purpose to be to safeguard the public and clients from projects which are unsound from a technical or economic standpoint.

An example of the kind of restriction contemplated by the second condition is found in Case 65-4, in which we concluded that it would be unethical for an engineer to enter into a contingent contract under which his payment depends upon a favorable feasibility study for a public works project. We commented in that case: "The import of the restriction ... is that the engineer must render completely impartial and independent judgment on engineering matters without regard to the con- sequences of his future retention or interest in the project." Following that premise in this case, there appears to be no possible or potential conflict between the interests of Engineer A and his clients through his search for lower utility rates on their behalf.

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It is conceivable that Engineer A could compromise his professional judgment under these facts by over-zealousness in seeking means of savings to his clients. But this kind of motivation can hardly produce a compromise of professional judgment, providing all other interests of the client, such as safety and reliability, are protected.

Whether this type of compensation arrangement is the most productive or wisest for Engineer A or his clients is not for us to say; it is enough to say that it is an arrangement not prohibited by the code.

Conclusion*:
It is ethical for Engineer A to be compensated solely on the basis of a percentage of savings to his clients.

***Note**-This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

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