Report on a Case by the Board of Ethical Review

Case No. 75-9

Facts:
An engineering firm issues a monthly newsletter to clients and potential clients in the local area of the firm's operations. The circulation is approximately 300 copies each month. The recipients, in addition to current clients, include municipal officials and private organizations. The content of the newsletter, entitled "Public Works Newsletter" generally consists of reports on pending legislation related to water-sewer programs, solid waste programs, state certification requirements and factual reports on current activities of the firm. The masthead and label portion carries the name, address and telephone number of the firm.

Question:
Is a newsletter of the type described and as circulated to clients and potential clients acceptable under the Code of Ethics?

References:
Code of Ethics – Section 3(a) – "The Engineer shall not advertise his professional services but may utilize the following means of identification:

Section 3(a)(3) "Brochures, business cards, letterheads and other factual representations of experience, facilities, personnel and capacity to render service, providing the same are not misleading relative to the extent of participation in the projects cited, and provided the same are not indiscriminately distributed."

Discussion:
We have heretofore considered the basic question here involved only under the previous Canons of Ethics and Rules of Professional Conduct, now superseded by the Code of Ethics. At that time the prevailing Canons and Rules permitted the advertising of engineering services, provided it was not self-laudatory and was circumspect, limited to fact and did not contain any statement or offer intended to discredit or displace another engineer, either specifically or by implication. Under those criteria we held that it was ethical for a firm to issue and distribute a newsletter to clients and potential clients (Case No. 63-9).

In the intervening period, however, the current code was adopted and now bars the advertising of engineering services with the exception of such items as professional cards and listings, project and equipment signs, brochures, business cards, letterheads and "other factual representations of experience, facilities, personnel and capacity to render services. . .," all of which are categorized as "means of identification," with the further admonition that such materials are not indiscriminately distributed.

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The only related case decided since the current provisions were adopted was Case No. 72-8, in which it was held that a firm could ethically distribute reprints of a newspaper article about its organization and projects to past, present and potential clients.

We assume for the purpose of this case that the rationale for the firm to expend its time and money to prepare, print and distribute the newsletter is to attract attention to the firm in the hope that the recipients may thereby be induced to contact the firm for potential assignments in its field of expertise. The content of the newsletter, being confined to reports on public works developments and factual accounts of the firm's activities, might be considered as a device to secure work for the firm, even if in an indirect manner. Our discussion and conclusion would be the same if the newsletter also included some statement or invitation for the recipients to contact the firm regarding its possible services.

Taken in that light, there is little doubt that the newsletter is a form of promotion in the same way that firms may and do use professional cards in magazines and brochures. As noted in Case 75-2, however, we believe that the thrust of §3(a):

". . . restrains only those forms of promotion of services which are of a degree and type which amount to a 'commercial' approach to the offer of services, e.g., a display advertisement, a neon sign, a billboard, etc. . . ."

On the premise we do not believe that a factual newsletter issued to clients and potential clients is barred by the code, provided it is truly "factual" and is not indiscriminately distributed. While there is not any precise definition of "indiscriminate" distribution in the code or previous cases we believe that a reasonable interpretation means that the distribution should be limited, as in this case, to those in the general geographic area of the firm's practice and to those who might logically be expected to have an interest in the type of projects covered in the content of the newsletter as potential clients of the firm.

In reaching this conclusion we recognize that other engineers or firms that regularly serve some of the clients who receive the newsletter may consider the newsletter as a means to wean away their clients, but it has long been recognized that the code does not bar other engineers from offering their services to clients of other engineers for new projects and assignments. In one of the first cases on this point we held that an engineer serves his clients at their sole discretion and that the client has an absolute right to select the engineer of his choice for any particular project (Case No. 59-2).

Conclusion:*****
A newsletter of the type described and circulated to clients and potential clients is permitted by the Code of Ethics.

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