## Report on a Case by the Board of Ethical Review

## Case No. 82-1

## Promotional Letters

**Facts**:
Example 1: A professional engineer on behalf of a nationally operated consulting engineering firm sent a form letter to a number of mayors of municipalities in a state that had recently enacted legislation requiring municipalities to prepare and update master plans for storm-water management. After noting this development and a brief description of the purposes of the legislation, the engineering firm called attention to its background in the subject matter and the availability of its area office, and offered its services. The letter stated that the firm "has the capability of providing you with timely cost-effective professional assistance... that would respond to the new legislation, . . . or nearly any engineering task." The writer of the letter concluded with the statement that he would call the mayor's office to arrange a meeting.

One of the local engineers who became aware of the letter noted that it was sent to a mayor in a municipality served by that engineer for a number of years, and also reported to the state professional engineering society that other engineers with current relationships with municipalities had voiced objections to such solicitation.

Example 2: In a related case, an engineering firm sent a form letter to local public officials calling attention to a new EPA program of performance audit inspections. The firm stated that it has knowledge of the pertinent regulations and the technical expertise to aid the local community in complying with the EPA requirements. The letter then offered a range of its services, coupled with an offer to meet with appropriate local officials to discuss the firm's services. The form letter concluded with a notation that it was planning a seminar series on the regulations to be presented at various locations throughout the state, and enclosed a return postal card to indicate interest in attending the seminar or to indicate topics which should be covered in the seminar.

As in Example 1 above, several local engineers who presently serve municipal clients objected to the solicitation.

**Question**:
Is the form of solicitation shown in either or both examples consistent with the Code of Ethics?

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**Reference**:
Code of Ethics - Section III.3.a. - "Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep statements from being misleading; statements intended or likely to create an unjustified expectation; statements containing prediction of future success; statements containing an opinion as to the quality of the engineers' services; or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format."

**Discussion**:
Our most recent case dealing in general with solicitation involved a display advertisement which was found to be ethically objectionable (Case 81-5). In the course of the discussion of that case we noted that in recent years the Code provision in point had been extensively revised to reflect a more liberal or tolerant acceptance of advertising and other forms of solicitation. At the same time, it was then noted, and is emphasized again, that the present Code language is not without its limitations; that statements (which include advertising and letters of solicitation) may not be misleading, create unjustified expectations, contain predictions of future success, opinions as to the quality of services offered, the use of showmanship, puffery, or self-laudation, or sensational language or format.

Those criteria, taken in isolation, basically require subjective judgments. Recognizing this difficulty, and in order to provide guidance to the profession, we believe that a better purpose will be served if judgments are made on the basis of the total perception created by these solicitation letters.

In Example 1 we believe that the letter claims too much in terms of the firm's capabilities; that it creates the impression that the firm is making a blanket claim of expertise without knowing the facts of a particular assignment or the particular expertise required to deal with the needs of the municipality. The claim, for instance, that the soliciting firm can handle "nearly any engineering task" or perform "timely cost-effective professional assistance" is not consistent with the limitation of the Code regarding the creating of unjustified expectations, and is close to a statement predicting future success.

It is not our function to suggest editorial revisions of solicitation letters, but we endorse the concept that such letters should be confined to factual statements of the background, experience, and qualifications of personnel.

Turning to Example 2, the language is more acceptable in total context. It is not too much for a firm to claim knowledge of certain regulations in a particular field of specialization, and to also claim expertise in the technical subject matter. Nor is it objectionable for a firm to invite interested officials to a seminar and to request subject matters to be considered at such seminars.

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In both cases the intent is clearly to solicit clients, and the Code does not bar such undertaking. We need not concern ourselves at this point in history with the older issue of one engineer attempting to supplant another. That restriction of old is no longer in the Code. We deal now with difficult lines of style and technique under the present liberalized Code as it relates to solicitation of clients.

The change in Code philosophy and content noted above is not as far-reaching as might appear on the surface. Even when the Code barred supplanting of one engineer by another, we held in Case 72-3 that it was ethically proper for an engineer to send unsolicited letters to city officials to call attention to the availability of his services. In that earlier case, as in Example 2 in this case, the solicitation letter was judiciously composed and avoided the kinds of statements or claims that we find ethically objectionable in Example 1.

**Conclusions:**
Example 1: The solicitation letter is not consistent with the Code of Ethics.

Example 2: The solicitation letter is consistent with the Code of Ethics.

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