

Report on a Case by the Board of Ethical Review

Case No. 60-5

Subject:

Conflict of Interest - Section 4, Canons of Ethics; Section 9, Canons of Ethics; Rule 9, Rules of Professional Conduct.

Facts:

A state sanitary engineer works with communities in promoting adequate sewage and sanitary installations. Some small local communities become interested in the program and desire to construct appropriate facilities. These communities ask the state sanitary engineer for a list of qualified consulting engineers to handle such work. The plans prepared by the consultants will require approval by the state sanitary engineer or his office.

Questions:

1. Should the state sanitary engineer submit a list of qualified consulting engineers?
2. If the answer to question 1 is "yes," should he restrict the list to those firms known personally to him and which he believes to be qualified?
3. What would be the responsibility of the state sanitary engineer in passing on plans submitted by a firm which he had listed as qualified?

References:

Canons of Ethics-Section 4-"He will have due regard for the safety of life and health of public and employees who may be affected by the work for which he is responsible."

Section 9-"He will act with fairness and justice between his client or employer and the contractor when dealing with contracts."

Rules of Professional Conduct-Rule 9-"He will regard his duty to the public welfare as paramount."

Discussion:

Although neither the Canons nor the Rules refer specifically to a "conflict of interest," it is axiomatic that a professional person may not take action or make decisions which would divide his loyalties or interests from those of his employer or client.

It is arguable that this would not be the result of a state sanitary engineer endorsing as "qualified" a firm whose plans he would later be called upon to review and approve. However, it is equally arguable that the position of the state sanitary engineer would be compromised to some extent by such action, even though he would have the legal right to reject the plans submitted to him. In balancing these possible contentions we believe

it would be more prudent for the state sanitary engineer to avoid placing himself in a situation which might even raise the question of a "conflict of interest," or any inference that the extent of his criticism of the plans was in any way limited by the fact of his prior endorsement of the firm as qualified. He should be in completely independent position in reviewing the plans submitted.

A state or local professional engineering society could appropriately provide information regarding qualified firms as it would have no direct or indirect interest in the matter, nor would it be placed in a compromising position in doing so by virtue of later having to pass on plans submitted for a firm on the list, or one selected which was not on the list. Moreover, professional engineering societies invariably have as one of their stated objectives assistance to the public and state and local governments in securing qualified professional engineers for engineering assignments affecting the public health, safety and welfare.

Conclusion:

Question 1 is answered negatively, which also disposes of questions 2 and 3. Further as to question 3, the state sanitary engineer must eliminate as completely as human nature permits any consideration of personal feeling as to the firm whose plans he is required to review, and he must base his review solely on the technical soundness of the material presented to him.

Board of Ethical Review L. R. DURKEE, P. E. WYLIE W. GILLESPIE, P. E. A. C. KIRKWOOD, P. E. EZRA K. NICHOLSON, P. E. PIERCE G. ELLIS, P. E., Chairman

Dissenting Opinion:

In connection with question 1, we believe a state sanitary engineer, upon request by community officials could submit a list of qualified consulting engineers. It should be made clear, either in the conversation or in the letter of transmittal, that the state sanitary engineer is, of course, assuming no responsibility for either the selection or the work of the consulting firm. It would also be highly desirable to indicate both in the conversation and in the letter of transmittal that he would recommend that the community officials consult several of these firms and make their own selection on the basis of the concern that they judge would give them the best service. The sanitary engineer should also indicate that there are other qualified engineering firms not indicated on his list.

We have a strong feeling that the community has a right to expect this kind of service of an engineer employed by the state and it is most likely that a state sanitary engineer with the broad coverage he would necessarily have would be in a better position to recommend a number of competent consulting concerns in the sanitary field than any of the engineering societies. The manner in which these recommendations are presented, in our opinion, become all-important and determine whether there can be any conflict of interest at a later date.

In connection with question 2 we would think that a list should cover primary firms which he knows personally are qualified, but we see no objection to including firms which he does not know personally but from reliable sources has a good reputation in the fields required for this consulting work. Undoubtedly, the state office and other sanitary engineers associated with that office will have information on qualified concerns with which he may not be personally acquainted.

With reference to the 3rd question, the responsibility of the state sanitary engineer in passing on plans submitted by firms which he has listed as qualified would obviously be exactly the same as his responsibility in connection with firms which were not on his list. This statement of responsibility should be made clear in any conversation or letter to the community at the outset.

We have no objections to the sanitary engineer suggesting to the community officials that they obtain recommendations from a qualified engineering society and in some cases this might be more prudent. The fact remains, however, that this situation is more cumbersome and the society will undoubtedly be influenced by the sanitary engineers of that society if for no other reason than the fact that they have the greatest knowledge in this field.

Frankly, if we were officials of a community and required the services of a qualified sanitary engineering firm, we would expect that we could get dependable information from representatives of the state who are continuously concerned with this sort of work. We would expect this as a service from the state and we would recognize that obtaining this information would in no way affect or change their responsibility to us or the public in connection with detailed review of any plans they might be submitting.

Board of Ethical Review PHIL T. ELLIOTT, P. E. MARVIN C. NICHOLS, P. E.