

A CHALLENGE TO OUR PROFESSION

Presidential address of Max D. Sorota

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This afternoon I would like to talk to you briefly about a matter that has been troubling me and I am sure is of particular concern to the engineering profession.

In the State of New Jersey, the Center for the Analysis of Public Issues, in its report entitled "Blueprint for Scandal", charged that recent ethics scandals "... are not the signs of a profession that needs to get rid of a few rotten apples. These are the symptoms of an overprivileged business which must go through fundamental change before it is entitled to the status of a profession."

In the State of Maryland, despite a vigorous lobbying and public relations effort on the part of the state's professional engineering societies to defeat the bill, the House by a vote of 124-0 recently passed a mandatory competitive bidding bill covering the state procurement of architectural and engineering services.

On the national scene, bills have been filed in Congress to require competitive bidding by A-E's on all federally-supported projects. If enacted, this legislation will repeal the Brooks Law which was passed just last year making it a requirement of law that A-E's on all federal projects be selected on the basis of competency and negotiation, rather than price competition.

As a result of the disclosure of the extent of the involvement of professional engineers and architects in the events that both precipitated the resignation of Vice President Spiro T. Agnew and contributed to the recent payoff convictions in several states, the professional image and integrity of all engineers has been severely tainted. It is understandable that as a result of these tragic events, there is growing disenchantment among the public and legislators with the role of the design professionals and the traditional methods of selecting A-E consultants for government projects. Unless we professional engineers provide the leadership that will bring about the changes needed to eliminate the types of abuses which have been uncovered, others will do the job for us.

In the past, many of us were under the mistaken impression that the professional engineering societies could control the unprofessional or unethical conduct of their members by utilizing the disciplinary or expulsion proce-

dures available to the societies; however, the recent events have made it painfully evident that the professional societies do not have sufficient clout to adequately discipline and, thereby, discourage such activities on the part of their members.

I think it is particularly significant that each of the national engineering societies which recently issued public statements on this matter has called for increased involvement of the state P.E. registration boards in the policing of the engineering profession.

In an article which appeared in the March 1974 issue of *Consulting Engineer*, William N. Holway, president, American Consulting Engineers Council, pointed out that during 1972, nationally, a total of 122 attorneys were disbarred and 48 attorneys resigned with charges pending. Although I'm unaware of any national data available on disciplinary action taken against professional engineers, I doubt that in 1972 a total of more than five professional engineers had their engineers' licenses revoked. On the basis of this comparison, it is possible that some might conclude that, on the whole, professional engineers are far more ethical than attorneys. Although I am of the opinion that the premise is, in fact, a valid one, I do not believe that we can use the disciplinary action comparison to back it up. Rather, the comparison and the recent events clearly show that we engineers have not done a very good job in policing our profession.

One of the difficulties with the problems we face, at this point in time, is that the law infractions which have come to light — namely, payoffs, bribes, and kickbacks — are all violations of law and, as such, are law enforcement problems. There is very little that we, as engineers, can do to influence the few misguided members of our profession who are willing to become involved with corrupt politicians and risk a felony conviction and a jail sentence for monetary gains.

However, there is a course of action which we and the members of the other professional engineering societies can take to help restore confidence in our profession and counteract the atmosphere which has fostered this type of activity. We can introduce and actively support legislation which has been drafted to eliminate or control many of the conditions which have in the past encouraged or contributed to the development of a corrupt political environment. I would like to present for your consideration a basic five-point legislative program which I believe can make a significant contribution towards bringing about such an end.

I propose that legislation be enacted on the state level to accomplish the following:

1. Increase the authority and activities of the state P.E. registration board.
2. Restrict activities of those who have been involved in illegal acts.
3. Establish designer selection boards.

4. Limit political contributions by those doing business with the government.
5. Require full public disclosure of all political contributions.

In the remainder of time available to me, I would like to briefly discuss and amplify on each of these legislative recommendations.

1. *Increase the authority and activities of the state P.E. registration board.* The state registration laws should be amended to require the board to adopt rules of professional conduct, the violation of which will be grounds for suspension or revocation of a professional engineer's license. The rules of professional conduct selected should be similar to those which have already been recommended by the Interprofessional Commission on Environmental Design or the National Council of Engineering Examiners.

The board should be required to initiate proceedings against any registered professional engineer who has been convicted of a felony or misdemeanor involving fraud, bribery, collusion, or kickback schemes or had his license revoked or suspended by another jurisdiction for any other cause which constitutes a violation of the local rules.

In order to be able to function efficiently, the board should be granted a quasi-judicial status and have the right to issue subpoenas. Likewise, the members of the board and all witnesses testifying before the board should, except in the case of perjury, be immune from liable or slander suits.

The fees charged by the board should be set at a level that will be adequate to provide the board with sufficient funds to permit it to employ counsel, investigators, or any other assistance needed to properly enforce the revised registration law.

There should be increased emphasis on the initiation of professional misconduct cases by the board, when warranted, instead of waiting for complaints.

2. *Restrict activities of those who have been involved in illegal acts.* To further discourage the giving of kickbacks and other similar illegal acts, the state, cities, and towns and all other tax-supported governmental bodies should be prohibited from doing business with any individual or firm that has been convicted of, or has admitted to, having been involved in the payment of payoffs, kickbacks, bribes, or illegal contributions in connection with the procurement of work involving public funds.

A mandatory limit, in the order of three to five years, should be set on the length of time the prohibition applies for each type or classification of offense; and it should be applicable regardless of whether or not the offense was committed in the state or political jurisdiction affected.

If the offense was committed by an individual, the prohibition should apply to both the individual and the firm in whose behalf the offense was committed.

3. *Establish designer selection boards.* To minimize the possibility of political influence in the awarding of A-E contracts on governmental proj-

ects, the selection procedure should involve designer selection boards. The actual selection procedure to be used should be tailored to satisfy the requirements and capabilities of the particular awarding authority. Where it is possible to do so, the board should be required to select the three firms best qualified to perform the work, and the awarding authority should rank the firms in numerical order. The authority should then negotiate with the first firm on the list and if for some reason this proves fruitless, the second firm should be contacted. It is possible that in other situations, it might be desirable to have the board handle the complete selection procedure. However, regardless of the procedure followed, in all cases the initial selection should be made on the basis of the firm's overall ability — subject to the negotiation of a mutually-satisfactory fee.

4. *Limit political contributions by those doing business with the government.* To minimize the possibility of political contributions being a factor in the awarding of government contracts, limits should be set on the size of a political contribution that can be made to a candidate for office or to a political party. The limits should apply to an individual, to a partnership, or the employees of a corporation that is involved, or expects to be involved, in direct business dealings with the government. Likewise, in those states which still permit corporate political contributions, the size of the contribution made by a corporation doing business with the government should be similarly limited.

In all cases, separate limits should be set that will apply to individuals, partnerships or corporations, and the employees of a firm or corporation collectively. The contribution limitation amount established for each candidate should cover the term of the particular office being contested. The limitations should apply to all elected offices at every level of state and local government and to contributions made to the candidate or his political committee. Likewise, limitations should also be established to cover contributions to political parties.

Each of the limits should apply to the total of all forms of contributions and should include the value of donations of services and equipment made in lieu of cash payments.

It is my belief that the limits should be set at nominal values and that limitations in the order of \$100 for individuals and \$500 for the employees of a firm collectively are reasonable.

5. *Require full public disclosure of all political contributions.* To establish procedures that will permit the monitoring of political contributions to uncover improperly solicited or contributed funds, all candidates for state and local office and all political parties should be required to publicly list all contributions and expenditures. This listing should identify every donor and the recipient of each expenditure. The candidates should be required to file the data periodically on an interim and cumulative basis. A copy of all such records should be on file at a designated state agency and, in the case

of local candidates, an additional copy should be on file at the office of the town or city clerk.

The basic legislative program which I have proposed lists the types of legislation which I feel are necessary in order to control the problem. For the most part, the proposals are not new.

On January 1 of this year, a law limiting political contributions and requiring full public disclosure on all such contributions went into effect in the Commonwealth of Massachusetts. The law also provides for the establishment of a commission to appoint a Director of Campaign and Public Finance to administer and oversee the requirements of the law. The political disclosure provisions of the law appear to be adequate, but the limit set on political contributions is not sufficiently restrictive. The law sets a limit on an individual's contribution in any calendar year to \$1,000 for each candidate or political party and does not contain any other restriction on contributions. In the case of those involved in doing business directly with the state or local government, the law will not bring about the desired reform unless the limit is set at a much lower level.

For the past eight years, in the Commonwealth of Massachusetts, the Bureau of Public Construction has successfully utilized an A-E selection board in the awarding of all architectural and engineering contracts which come under its jurisdiction.

Several states have recently passed laws which provide for the establishment of rules of professional conduct and increase the authority of their P.E. registration boards. Similar bills have been introduced for legislative action in other states.

As a result of the abuses which have been uncovered, we engineers have been confronted with a situation which will adversely affect the future of our profession; however, the actual extent of this adverse effect will to a large measure depend upon how we react to the challenge and the action which we take to cope with the overall problem.