

FORMAL OPINION NO. 62

The question presented is as follows:

May individual attorneys or law firms participate in competitive bidding for legal services to a governmental agency? Specific reference was made to bidding procedures pertaining to the public defender contract with the county.

Though the Code of Professional Responsibility does not contain a specific prohibition, bidding to obtain a professional assignment is, we believe, precluded by the language and intent of Canon 2 and particularly DR 2-103(B).

Bidding for employment in the legal profession is but another form of solicitation. There are many prior opinions condemning solicitation of professional employment both directly or by various indirect approaches and lawyers have been suspended and even disbarred for doing it. Though the invitation to bid may seem reasonable from the standpoint of the government agency, there is no justification for yielding in the matter to accommodate the agency's methods aimed at economy.

Formal Opinion No. 292 of the American Bar Association, Committee on Ethics respond to the request of a school board made to several attorneys and firms of attorneys to give "a firm figure" for handling certain enumerated and detailed assignments of legal work. The school board advised that all proposals received would be considered in the selection of a lawyer to represent the school board for a stated period of time. Referring to ABA Canons 12, 27 and 29, the opinion condemns such procedure.

"Canon 12 reminds us that the legal profession is essentially a branch of the administration of justice, not a mere money making business. Canon 27 declares it to be unprofessional to solicit employment by personal communication or interviews not warranted by personal relation."

"If attorneys responded as requested by this particular school board, or any other governmental agency or persons seeking legal services, it inevitably would result in competitive bidding which would tend to reduce the profession of law to a mere money making business." Citing Drinker, Legal Ethics, pp. 174, 191, 220, 249 and 250.

For the reasons mentioned above we believe that bidding for the privilege of furnishing legal services to a governmental agency would be in violation of the Code of Professional Responsibility.

DATED this 16th day of March, 1973.

*See also, I.S.B. Opinion No. 99 (August 1, 1977).