

Beware of Price Fixing!

by

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Recently, the Department of Justice Antitrust Division entered an agreement with the Northwest Chapter of the Arkansas Society of Professional Surveyors where the Chapter agreed to pay a fine of \$60,000 for violation of the United States Code. The indictment charged five surveyors and the Chapter with a conspiracy “to raise, fix and maintain the price of lot and block surveys in northwest Arkansas.” The indictment went on to charge that the defendants met, discussed, reached a price agreement, raised the price to a minimum of \$300 per survey, received compensation in that amount, and generally affected interstate commerce. They were charged under 15 U.S.C.A. § 1, known as the *Sherman Antitrust Act*, which states in part:

15 U.S.C.A. § 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce ... is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine ... or by imprisonment ... in the discretion of the court.

On 26 February 1993 a plea agreement was filed which provided in part that the Northwest Chapter of the Arkansas Society of Professional Surveyors agrees to enter a plea of guilty and pay a fine of \$60,000. In return, the United States agrees to drop all charges against the individual surveyors.

Admittedly there was no trial and at least one of the defendants believes that had there been a trial they would have been found innocent of the charges. Conjecture aside, the monetary fine, attorney fees, court costs, loss of reputation, anxiety, and loss of business exacted a heavy toll from the defendants. Furthermore, the problems are not behind the individual defendants since the Arkansas Board of Licensure has started an investigation to determine if there are grounds for professional discipline. The bitterness and discord among the Northwest Chapter members may cause the Northwest Chapter irreparable damage.

For survey practitioners, there are several points to be learned from the indictment and subsequent plea agreement. Perhaps the most tangible is

that guilty or innocent, any charge of price fixing will cost the surveyor legal fees, court costs, anxiety, lost work days, loss of reputation, and lost business. As a result, surveyors should be aware of the danger and avoid actions, conduct, or words that violate the *Sherman Antitrust Act*. Surveyors should not fix fees in concert with other practitioners or take part in any activities that establish by written, verbal, or implied consent a minimum fee for professional services.

As a general rule, the lessons learned from the Arkansas Chapter's experience does not mean that surveyors cannot get together to discuss fees, salaries, or prices — so long as such discussion is not meant or does not cause prices or fees to become artificially fixed in concert or conspiracy with other practitioners. Fees should be established independently of other practitioners in a competitive, free-marketplace environment. For example, surveyors can establish reasonable and justifiable standards and procedures that may eventually cause fees to rise. Surveyors can participate in information surveys that tabulate high, average, and low fees for specific services. For educational purposes, surveyors can discuss how to best estimate or apply costs, overhead, and profit margins in order to determine what fees to charge for what services. Furthermore, surveyors can discuss various methods to estimate their fees (e.g. area, number of corners, linear feet of boundary, etc.). In fact, all of these examples may actually help prevent scrutiny by the justice department if the information is sought and used by survey practitioners to underbid their competitors.

Obviously, there is no fine black line. There are warning signs. One obvious warning sign is when fees are the same among all local practitioners for a particular service. Another warning sign is where there is some form of communication among practitioners that results in fees being raised in apparent concert among a group of practitioners.

There are also some safety guidelines that surveyors can adhere to in order to prevent price fixing. First, understand how to determine a fair and reasonable fee for services. Professional practice is not for the sake of making a killing at the expense of the public, rather the purpose is to provide a quality service for a reasonable price. Determine and be prepared to justify your fee based on an accurate and reasonable analysis of costs, overhead, profit, and demand within a free marketplace environment. Do not base a fee solely on a competitor's fee. Bargain and reach an agreement with the client to determine the fee and not with the competitor. Fair competition is healthy among knowledgeable and ethical professionals. In this regard, attend or encourage your employees to

attend the many excellent seminars on business and ethics sponsored by ACSM and State professional societies.