CONFLICT OF INTEREST – ALLEGATIONS OF BIAS

Case No. 02-3

Facts:
Engineer A is responsible for the design of a major city library. Following completion, the library structure experiences significant structural problems. As a result, the city retains Engineer B, an independent consulting professional engineer, to investigate the structural problems and issue a report. Ten years earlier, Engineer B worked in Engineer A's firm for two years as a "trial principal." That employment relationship did not work out and the firm and Engineer B soon parted company. Immediately after departing from Engineer A's firm, Engineer B went to work for General Contractor X for two years, the company that was responsible for constructing the library several years later. In his earlier employment for Engineer A and for General Contractor X, Engineer B was not involved in any work for the city. Following an investigation of the library's structural failure, Engineer B prepares a report and assesses responsibility for the structural failure jointly to both Engineer A's firm and General Contractor X. Following the issuance of the report, Engineer A states that Engineer B's unsuccessful employment history with Engineer A's firm and also Engineer B's past association with General Contractor X raised a conflict of interest. Engineer A believes the total responsibility belonged to General Contractor X Engineer A believes that Engineer B's action demonstrates extreme bias against Engineer A's firm and favorable treatment to the General Contractor X.

Question:
Did Engineer B's actions constitute a conflict of interest in violation of the NSPE Code of Ethics?

Reference:
Section II.4.a. - Code of Ethics: Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.

Discussion:
Conflicts of interest are among the most common and fundamental ethical issues faced by engineers in their professional practice. Since engineering practice generally involves immediate relationships, financial dealings, and technical information of a sensitive nature, engineers are constantly facing situations under which the potential for a conflict of interest is a very real fact of professional life.

The NSPE Board of Ethical Review (Board) considered the issue of conflict of interest on numerous occasions. For example, in BER Case 89-4, the Board considered a case involving Engineer A who was retained under contract with a village to perform consulting services consisting of design and construction observation of a water supply system. The water supply

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system included a pump station. The general construction was performed by Contractor B. Two years after substantial completion and continuous operation of the system, Contractor B made a claim for additional costs which was rejected by the village. Contractor B instituted a suit, which was dismissed by the court at a very early stage. In the lawsuit brought by Contractor B against the village, Engineer A was not named, although he was represented by an attorney appointed by his liability insurance company. Thereafter, Contractor B brought a lawsuit against the law firm that represented it in its suit against the village, claiming that the law firm did not properly represent Contractor B. Engineer A was contacted by the attorney representing the law firm being sued. He was requested to review and verify the facts relative to the professional services rendered to the village. In finding that it was ethical for Engineer A to agree to testify to the facts of his consulting services for the village, the Board noted that increasingly the engineering profession finds itself interacting in a consulting capacity with the legal profession. More and more, attorneys involved in both the defense and the prosecution of claims, require the technical expertise of professional engineers skilled in areas of engineering in order to educate the trier of fact about issues being litigated. Because of their highly specialized knowledge of technical issues not understood by the lay public and the legal system, engineers have an important and unique role to play in this area. Engineers also have a responsibility as citizens to testify as to facts within their knowledge.

In addition, many earlier Board opinions (see Case Nos. 85-2, 87-3, 94-1) addressed fundamental issues in many contexts relating to the various questions surrounding conflicts of interest. In considering the current case in the context of BER Case 89-4, as well as earlier Board opinions, it is this Board's conclusion that the current situation does not involve a violation of the NSPE Code of Ethics. Under the facts presented, there is nothing to suggest that Engineer B, a former employee who worked at a much earlier point in his career for both Engineer A and also for General Contractor X was acting unethically by making a decision finding joint responsibility on the part of Engineer A and General Contractor X. Under the facts, there is no suggestion that Engineer B was trying to mislead anyone, nor is there any evidence of any overt bias on the part of Engineer B. Engineer B's employment with both Engineer A's firm and General Contractor X is sufficiently removed from his current relationship with the city and there is nothing to suggest any prejudgment on the part of Engineer B. Engineer A's suggestion that Engineer B is biased is based on nothing more than supposition and is not supported by the facts. Moreover, the Board is troubled that if Engineer A had concerns over the issue of bias, Engineer A should have raised the issue of bias at an earlier point in time and not wait until after Engineer B rendered his decision. Instead, it appears that Engineer A sat on the issue and then raised it only when Engineer A believed his interests were adversely effected.

In addition, the Board is of the belief that it would have been necessary for Engineer B to have alerted the city of Engineer B's previous employment relationship with Engineer A and with General Contractor X, assuming that the city was not aware of this fact.

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Conclusion: Engineer B's actions did not constitute a conflict of interest in violation of the NSPE Code of Ethics, assuming Engineer B alerted the city of Engineer B's previous employment relationship with Engineer A and with the General Contractor X.

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Each opinion is intended as guidance to individual practicing engineers, students and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole-proprietorships, government agencies, university engineering departments, etc.), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services—which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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