CONFLICT OF INTEREST – PUBLIC EMPLOYEE SERVING AS PART-TIME CONSULTANT

Case No. 02-8

Facts:

Engineer A serves as a traffic engineer for the State DOT. Engineer A reviews private engineering firm contracts and traffic signal plans, specifications, and estimates submitted from outside entities (developers, municipalities) for traffic signal work performed on the state highway system. Prior to Engineer A's employment with the State DOT's traffic engineering division, Engineer A performed airport design through a consulting firm which currently does no traffic signal work in the state highway system.

The State DOT contracts directly with municipalities by means of a grant agreement to fund improvements to municipal airports. The State DOT does not contract directly with consultants hired by the municipalities for their airport improvements, nor is the state involved in the selection of airport consultants other than to provide FAA guidelines with respect to consultant qualifications-based selection procedures.

Engineer A is approached by his former consulting engineering firm to serve on a part-time basis in seeking contracts with municipalities for design work associated with the airport improvements (master plans, runway extensions, etc.) while continuing to work as an employee with the State DOT.

Question:

Would it be ethical for Engineer A to serve on a part-time basis in seeking contracts with municipalities for design work associated with the airport improvements (master plans, runway extensions, etc.) while continuing to work as an employee with the State DOT?

References:

Section II.4.	-	*Code of Ethics:*	*Engineers shall act for each employer or client as faithful agents or trustees.*
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.*
Section III.1.c.	-	*Code of Ethics:*	*Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment they will notify their employers.*
Section III.6.b.	-	*Code of Ethics*	*Engineers in salaried positions shall accept part-time engineering work only to the extent consistent with policies of the employer and in accordance with ethical considerations.*

Discussion:

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The issue of engineer "moonlighting" has been an issue considered by the NSPE Board of Ethical Review (BER) in the past. While at one time, there was serious ethical concern over such practice on the part of employed engineers, in recent years, the issue has been somewhat muted as an ethical matter. Among the more significant considerations in this area are the extent to which such practice may constitute a conflict of interest, whether the individual is using the materials, equipment, and resources of the individual's full-time employer in pursuing and performing part-time work, and whether such practices are consistent with the policies and procedures of the employer. Other questions arise relating to whether such practices may have an adverse effect on the professional liability of the employer and other professional practice areas. As with all such cases, a review of all of the facts and circumstances is critical to a determination of the ethical issues.

The Board noted in BER Case 97-1 that these cases frequently raise the question of whether an engineer can ethically devote sufficient attention to the responsibilities involved. In BER Case 97-1, Engineer A held a full-time engineering position with a governmental agency and was also employed on a part-time basis by an engineering firm. Finding no ethical violation, the Board noted that with regard to Engineer A's dual role as an governmental employee and a private employee, both the state governmental agency and the engineering firm were aware of Engineer A's activities as a dual employee and did not object to these activities. However, the Board also indicated that should a conflict-of-interest arise (e.g., where Engineer A or the firm's activities conflict with the governmental employer's activities or interests) Engineer A would need to carefully address those activities consistent with NSPE Code Sections III.6.b., II.4.d., II.4.e. and other applicable provisions of the NSPE Code.

Turning to the facts in the present case, the Board can easily foresee the potential for a conflict of interest for Engineer A in his relations with municipality's work as a state highway employee and in his relations with the same municipalities as a representative for the consulting firm working on municipal airports. While the scope of his responsibilities (state highways vs. airports) are clearly different, there may be situations and circumstances where his role in one or another area could be compromised. Highways link to airports and decisions in one sphere could have an impact on decisions in another sphere. For example, there are airport and highway hubs that are inextricably linked and the traffic and airport issues are often closely related. Moreover, there are clear ethical appearance issues that would presumably need to be addressed. While as we noted in BER Case 97-1, with regard to Engineer A's dual role as an governmental employee and a private employee, assuming both the state governmental agency and the engineering firm are aware of Engineer A's activities as a dual employee and do not object to these activities, the Board believes based upon the engineer's obligation to serve as faithful agent and trustee that there is a violation of the NSPE Code of Ethics under the facts and circumstances presented here. The Board must also caution Engineer A to be mindful of the issues raised earlier relating to the need to carefully follow all applicable government procedures and policies, liability concerns, and the avoiding the use of public resources in the performance of private work.

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Conclusion:

It would be unethical for Engineer A to serve on a part-time basis in seeking contracts with municipalities for design work associated with the airport improvements (master plans, runway extensions, etc.) while continuing to work as an employee with the State DOT.

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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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