Public Office – Ownership of Engineering Firm

Case No. 07-9

Facts:

Engineer A is a licensed engineer for an agricultural consulting company. As one of the employed company engineers, Engineer A assists clients with obtaining permits from the State Department of Environmental Protection. Engineer A and other engineers in the firm also prepare designs and plans and submit them to the State Department of Environmental Protection's regional office for approval. Engineer A and other company employees also assist farms with grant applications to the State Department of Agriculture under existing funding programs.

Engineer B, the owner of the company, was recently elected to the state legislature as a senator. For several years, Engineer B has been discussing with Engineer A and other employees the transition of company ownership to the employees, but it has not yet occurred. The owner has always been hands-off and not directly involved in the day-to-day operations of the company. Engineer A is not concerned with any improper actions in connection with the work of the company. However, Engineer A is concerned about the perception of a state senator being an owner of a firm that is assisting clients in (a) obtaining approvals for state regulated permits and (b) assisting clients in obtaining grants from state offices.

Question:

Would it be ethical for Engineer B to continue to serve as a state senator and to be an owner of a firm that is assisting clients in (a) obtaining approvals for state regulated permits and (b) assisting clients in obtaining grants from state offices.

References:

Section II.4.a.	-	*NSPE 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 II.4.d.	-	*NSPE Code of Ethics:*	*Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.*
Section II.4.e.	-	*NSPE Code of Ethics:*	*Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.*
Section III.2.a.	-	*NSPE Code of Ethics:*	*Engineers are encouraged to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health, and well-being of their community.*

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Discussion:
As the Board of Ethical Review has stated on numerous occasions, engineers are strongly encouraged to participate in civic affairs and should use every opportunity available to influence public policy. Of course, this includes seeking public office at the local, state, and federal levels. The NSPE Code of Ethics encourages this responsibility in Section III.2.a.

An engineer serving in a public role as a member of a village, town, city, or county board can at times raise questions of conflict of interest, particularly where the government board has operational as well as legislative responsibilities. For example, where a local board is involved in the selection of an engineering firm to provide services to the local community and the engineer owns or is employed by an engineering company that provides or can provide engineering services to the local community, the potential for a conflict of interest clearly exists.

Over the years, this Board has considered numerous cases involving conflicts of interest of this or of a similar type. A case involving a engineer-legislator was discussed in BER Case No. 70-6. In that case, a member of a state legislature, Engineer A, was on a committee that initially passed up on appropriations to local communities for certain public works projects. Engineer A was also a partner in an engineering firm in the state. Following an appropriation to local communities in the state for projects designed to combat air pollution as recommended by the legislative committee of which Engineer A was a member, the firm of which Engineer A was a member submitted its qualifications for a project to be financed by the appropriation of the legislature. At the meeting of the town council in the town in which Engineer A's firm was located, objection was voiced to the selection of the firm in which Engineer A was a partner because of his influential position in securing the appropriation.

In ruling that the firm in which Engineer A is a partner may ethically perform engineering services financed by an appropriation secured in part by the position of Engineer A in the legislature, the Board noted that while Engineer A was a significant factor in securing the appropriation for the projects to be awarded, the actual awards to the selected engineering firms were to be made by the governing bodies of the local communities. The Board indicated that such indirect influence is too remote to disqualify the firm. Otherwise, engineers in such situations could never be in a position to serve on public bodies. The Board also indicated that if there was any evidence that Engineer A had to any degree sought to influence the town council to favor his firm because of his position in the legislature, the result would be different.

Turning to the facts in the current case, which is somewhat similar to BER Case No. 70-6, it is clear that on its face, the NSPE Code of Ethics Sections II.4.d. and II.4.e., which would appear to indicate that (1) an owner/legislator could not participate in decisions

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with respect to services solicited or provided by him or his firm if he is also a member of the body/department of the public client involved and (2) an owner or other engineers in the firm could not solicit or accept a contract from a governmental body/department on which a principal or officer of their organization (e.g., owner/legislator) serves as a member. Neither of these conditions appear to be present in this case, since as a legislator, Engineer B's relationship to the activities of the local governing bodies that will be administering the services funded and approved by the legislature are far removed from Engineer B's direct influence. The only issue remaining appears to relate to Engineer A's concern regarding appearances. However, as noted earlier in BER Case No. 70-6, if appearances were the measure in cases of this type, virtually all engineers in private practice would be excluded from public service.

Having said that, it is also the Board's view that the NSPE Code language requires full disclosure (see NSPE Code of Ethics Section II.4.a.) regarding the potential conflict of interest or the appearance of a conflict of interest. Clients or customers should be made aware that Engineer B is a member of the state legislature and also that his role as a legislator can have no bearing on the work being performed by the firm. However, in the absence of some legal prohibition, there would not appear to be any other ethical limitation on Engineer B or his firm.

In passing, the Board would also note that in addressing the issues in this case, the Board is assuming that Engineer A's reason for raising this issue is not motivated by any self-interest or desire to force a transition of the ownership of the engineering firm.

Conclusion:
In the absence of some legal prohibition, and provided there is full disclosure, it would be ethical for Engineer B to continue to serve as a state senator and to be an owner of a firm that is assisting clients in (a) obtaining approvals for state regulated permits and (b) assisting clients in obtaining grants from state offices.

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