Conflict of Interest –
Assistant Director of Public Works – Part-Time Consulting

Case No. 14–1

Facts:

Engineer A is an assistant director of public works in Somecity. As part of his job, Engineer A is involved in selecting and hiring engineering consultants for projects in Somecity. These projects may involve local, state, and federal funds. Engineer A also works part-time as an independent consulting engineer and has teamed with Engineer B on federal and state-funded projects in another city in the same state.

Question:

Is it ethical for Engineer A to work with Engineer B as a consultant on federal and state funded projects under these circumstances?

NSPE Code of Ethics References:

Section II.4. *Engineers shall act for each employer or client as faithful agents or trustees.*

Section II.4.a. *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. *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. *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.1.c. *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.4.a. *Engineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the engineer has gained particular and specialized knowledge.*

Section III.6.b. *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:

The issue of engineer “moonlighting” has been an issue considered by the NSPE Board of Ethical Review in the past. As the Board noted in BER Case 02-8, 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.

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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 government 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 a government employee and a private employee, both the state government 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.

The facts in the present case involve an assistant director of public works with direct involvement in selecting and hiring engineering consultants for projects. In this connection, the Board can easily foresee, at the very least, the potential appearance of a conflict of interest in his roles as assistant director of public works and as an engineer who has teamed with Engineer B on projects in the same state. While the outside consulting work in question may involve projects in another city in the same state, Engineer A may be exposing himself and the engineering profession to public criticism, particularly if the work in question is the same or similar to the work Engineer A is performing in his role as an assistant director of public works. Moreover, Engineer A's impartiality and judgment could be called into question, particularly in the event that conflicts or disputes arise in connection with his private work.

Clearly, before Engineer A undertakes any work as an independent consultant, Engineer A must advise and secure the permission of the appropriate authorities in Somecity. Additionally, because the work in question involves local, state, and federal resources, Engineer A must also make absolutely certain that his actions are consistent and in conformance with applicable local, state, and federal procurement laws and conflict-of-interest provisions as well as with state engineering licensure laws and regulations. This point was noted in BER Case 97-1, with regard to an engineer's dual role as a government employee and a private employee. In that case, the Board assumed both the state government agency and the engineering firm were aware of Engineer A's activities as a dual employee and did not object to these activities. The Board believes, based on 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 there. Similarly, in that case, the Board also cautioned the engineer to be mindful of the issues raised earlier: the need to carefully follow all applicable government procedures and policies, address liability concerns, and avoid using public resources in the performance of private work.

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Conclusion:

Based on the limited facts presented, it was unethical for Engineer A to work with Engineer B as a consultant on federal and state projects. Engineer A's working with Engineer B as a consultant on federal and state-funded projects could create the appearance of a conflict of interest. Before Engineer A undertakes any work as an independent consultant, Engineer A must advise and secure the permission of the appropriate authorities in Somecity; and because the work in question involves local, state, and federal resources, Engineer A must also make absolutely certain that his actions are consistent and in conformance with applicable local, state, and federal procurement laws and conflict-of-interest provisions as well as with state engineering licensure laws and regulations.

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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, and university engineering departments), 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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