Report on a Case by the Board of Ethical Review

Case No. 62-18

Supplanting—Another Engineer

Facts:
Engineer A had a contract with a municipality for a feasibility study in connection with possible extension of the municipality's sewer system. He filed a report on the feasibility and probable costs of the extension system, for which he was paid. The city council did not act on the report. Several years later a new city council revived the project and called in Engineer B who reviewed the earlier report and entered into a contract with the municipality for a new engineering report and the design of the sewer extension system. Engineer B did not contact Engineer A to advise him of his retention for the work or to ascertain whether Engineer A still had any contractual relations with the municipality in relation to the .project.

Question:
Was it unethical for Engineer B to negotiate a contract with the municipality knowing of Engineer A's previous involvement in the same project without notifying Engineer A of the facts and determining if Engineer A had any remaining contractual relations for the project?

References:
Canons of Ethics-Canon 23- "He will not directly or indirectly injure the professional reputation, prospects or practice of another engineer." Canon 25-"He will not try to supplant another engineer in a particular employment after becoming aware that definite steps have been taken toward the other's employment."

Rules of Professional Conduct-Rule 46-"He will not review the work of another engineer for the same client, except with the knowledge or consent of such engineer, or unless the connection of such engineer with the work has been terminated." Rule 47-"He will not attempt to inject his services into a project at the expense of another engineer who has been active in developing it."

Discussion:
Canons 23 and 25 relate only to situations in which one engineer attempts to replace another engineer on a project, directly or indirectly. The portion of Canon 23 dealing with professional reputation is not involved in this case.

Likewise, Rule 47 makes it an offense against the Canons for an engineer to "inject" his services with regard to a project which another engineer has been instrumental in developing. "Inject" means "to throw in by way of suggestion" (Webster's New Collegiate Dictionary, 2nd .Edition) . Hence, we look to the acts of Engineer B to determine whether he made the suggestion to the city council that he be employed for the work, and, if so,

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whether such injection of his interest was "at the expense of another engineer" who had been active in developing the project. "Develop" has many meanings, including disclosure or revelation, unfold more completely, evolve the possibilities of a situation, to make active something which is latent, to advance or further, and to promote the growth of a situation or project. Nothing in the Canons or Rules indicates the meaning which should be attributed to "developing" a project as referred to in Rule 47. In its context, however, we believe that the reference is to a set of facts whereby an engineering project has advanced to a certain point due to the work of a particular engineer by means of studies, designs, or research as to feasibility or economic considerations.

We have previously held that "definite steps" as recited in Canon 25 "means that the engineer has been informed by the client that he has been selected to negotiate an agreement for a specific project." (BER Case 62-10). Such "definite steps" had not been taken with regard to Engineer A. His earlier work had been completed and, having been paid for his work, he had no pending claim, nor was there any evidence or indication that he could expect the municipality to necessarily retain him for further work on the same project if it was later determined to proceed.

The facts state that Engineer B was "called in" by the city council and hence it cannot be said that he "injected" his services. From a practical standpoint, it is difficult to determine whether an engineer is first "called in" or first makes known his interest in a project. The two may be simultaneous, or at least informal through casual discussion with those familiar with the status of the contemplated project. Even if the facts established definitely that the engineer made the first contact and offered his services, we would not feel that this was an "injection" of his services in the sense of the language 75 of Rule 47. This language means that the engineer's "injection" is related to an attempt to displace another engineer. Such is not the situation here. Engineer A could not be displaced on the project under these circumstances because he neither held a contract for the project, nor could he reasonably assume that he would be retained by the city council because he had performed the earlier study several years previously.

This leaves for decision the question of whether Engineer B was derelict ethically in reviewing the earlier report of Engineer A without advising him of that fact. Rule 46 imposes such a duty, except in a case in which "the connection of such engineer with the work has been terminated." The connection and the earlier work had been terminated in this case.

Conclusion:
It was not unethical for Engineer B to negotiate a contract in the absence of any showing that definite steps had been taken to retain Engineer A for the later work.

Board of Ethical Review: P. T. ELLIOTT, P.E. P. G. ELLIS, P.E. A. C. KIRKWOOD, P.E. W. S. NELSON, P.E. M. C. NICHOLS, P.E. E. K. NICHOLSON, P.E. L. R. DURKEE, P.E., CHAIRMAN

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