Report on a Case by the Board of Ethical Review

Case No. 62-21

Conflict of Interest—Member of City Council

Facts:
An employee of Engineering firm A, who is a professional engineer, is a member of the city council of a city that is interviewing several consulting firms prior to retaining a consultant for the preparation of an engineering study for the city. The city council makes the final decision on the selection of the consultant, and firm A is retained. There are ten members of the city council, and the employee engineer has disqualified himself from the voting on the selection of the engineering firm. Engineering firm B, that was one of the firms interviewed, maintains that the principals of firm A acted unethically in offering the firm's services to the city council even though the employee did not vote in the selection.

Question:
Did the principals of firm A act unethically in placing it under consideration for the project knowing that one of the firm's employees sat on the city council which would make the final decision even though said employee had disqualified himself from any participation in the selection?

References:
Canons of Ethics-Canon 8- "The engineer will act in professional matters for each client or employer as a faithful agent or trustee." Canon 19-"The engineer will endeavor to protect the engineering profession collectively and individually from misrepresentation and misunderstanding."

Rules of Professional Conduct-Rule 3-"He should seek opportunities to be of constructive service in civic affairs and work for the advancement of the safety, health and well-being of his community."

Discussion:
We have previously stated that "although neither the Canons nor the Rules refer specifically to a 'conflict of interest' it is axiomatic that a professional person may not take action or make decisions which would divide his loyalties or interests from those of his employer or client." (Case No 60-5).

Also, we have pointed out that "the professional engineer has a right, and even a duty in the general sense, to be active in the political affairs of his community, state and nation." And we noted the general sentiment of the profession which encourages engineers to seek political office at all levels of government in order to provide the public with the kind of desirable public service which may be expected from one with specialized training and experience in many aspects of governmental activity related to engineering implications. (Case 61-1) .

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If we consider the city council the "employer or client" of the engineer, at least in a philosophical sense, there seems to be an apparent conflict of interest in the situation. This conflict must be resolved, however, because both principles cited above are vital and sound.

It is altogether unreasonable and unnecessary to expect an engineer to serve on public bodies as encouraged by Rule 3 at the total expense of severing his professional relations with a firm which normally does business with the city. Nor is it reasonable or necessary to expect that the firm with which the engineer is associated must be willing to forego normal relations with the city because one of its employees performs a civic duty.

In this case the engineer took some steps to resolve the conflict by not participating in the selection of the engineering firm by the city council. We think that this was an essential requirement and that he was correct in so doing. However, somewhat more should be required. The engineer should not only refrain from participation in the selection, he should affirmatively remove himself from any discussion of the selection of the firm in the deliberations of the city council, officially or unofficially, and he should avoid any discussion of the selection of the firm with other members of the city council or other public officials. These acts of disassociation should be recorded in the minutes or records of the city council. The engineer should not be physically present at city council meetings at which the contract award is discussed.

While these procedures may seem stringent, they are essential from the standpoint of removing all possible question that the award of a contract was influenced in any degree by a member of the city council who had a vested interest in the award. The public is entitled to this fullest measure of protection, and the engineer and his firm will serve their own best interests and the reputation of the profession by this method of extreme care.

Conclusion:
The principals of firm A did not act unethically in seeking a con tract with a city knowing that one of its employees was a member of the city council, provided the engineer did not participate in the selection of the firm and disassociated himself completely from the discussions in the city council pertaining to the particular contract.

Board of Ethical Review: P. T. ELLIOTT, P.E. A. C. KIRKWOOD, P.E. W. S. NELSON, P.E. M. C. NICHOLS, P.E. E. K. NICHOLSON, P.E. N. O. SAULTER, P.E. L. R. DURK.EE, P.E., Chairman

NOTE: Member Nichols did not participate in the consideration or decision of this case.

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