Report on a Case by the Board of Ethical Review

Case No. 62-7

Conflict of Interest—Consultant to Governmental Body

Facts:
An engineering consultant has been retained by a County Metropolitan Commission to perform all necessary engineering and advisory services. The Commission does not have an engineering staff, so the consultant acts as the staff for the Commission in the preparation of sewerage and water studies, the establishment and financing of sanitary districts, and reviews and approves plans submitted by other engineers.

The same consultant has also been retained by a private company to perform the engineering design for a development of several thousand housing units. Involved are extensive contract negotiations between the Commission and the developer for the construction and financing of sanitary and water facilities for the development. As consultant to the Commission, the engineer will under the circumstances have a key role in the negotiations.

Question:
Does the dual role of the engineer constitute a conflict of interest?

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 15-"He will not accept compensation, financial or otherwise, from more than one interested party for the same service, or for services pertaining to the same work, without the consent of all interested parties."

Canon 18-"He will promptly disclose to his client or employer any interest in a business which may compete with or affect the business of his client or employer. He will not allow an interest in any business to affect his decision regarding engineering work for which he is employed, or which he may be called upon to perform."

Canon 19-"The engineer will endeavor to protect the engineering profession collectively and individually from misrepresentation and misunderstanding."

Rules of Professional Conduct-Rule 17-"An engineer in private practice may be employed by more than one party when the interests and time schedules of the several parties do not conflict."

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Discussion:
We may assume that the engineer involved in this situation would make a full disclosure of the facts to both the County Metropolitan Commission and the project developer. If so, this would eliminate any violation of Canon 15, if both parties agree to the arrangement. However, this is not dispositive of the question.

Canon 8 imposes a more stringent standard on the engineer in stipulating that the engineer must act as a faithful agent or trustee of the client. And the second sentence of Canon 18 is specific in barring a business interest of the engineer from affecting his engineering decisions. Likewise, Rule 17, while it permits employment by more than one party, prohibits such an arrangement if the interests of the several parties are in conflict.

These Canons and Rules, then, hold in essence that a conflict of interest must be avoided by the engineer. There is a conflict of interest in the facts stated. The consultant is in the position of passing engineering judgment on behalf of the Commission on work or contract arrangements which the engineer performed, or in which he participated. This would obviously involve the self-interest of the engineer and divide his loyalties. Even if the engineer acts with the best of intentions he is put into the position of assessing his recommendations to two clients with possibly opposing interests. As discussed in Case No. 60-5, the mere fact that there may be a conflict of interest between the parties is sufficient to offend the principle of an engineer's duty of complete loyalty to the client. Canon 19 then comes into play and takes precedence over well-intentioned claims that the engineer could work with both parties to reconcile any differences for the best interests of both. Even if this should prove to be correct, the engineering profession would have been exposed to misunderstanding by the public.

Conclusion:
The dual role of the engineer constitutes a conflict of interest. An engineer may not ethically represent a governmental body and a private developer under circumstances in which the operations of the private developer are subject to review and approval of the governmental body.

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

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