Report on a Case by the Board of Ethical Review

Case No. 67-1

Conflict of Interest Public Employment

Facts:
John Doe, a professional engineer, is a county engineer and a member of the county planning board. He also engages in part-time consulting practice. Doe prepared the plans for a subdivision development in his capacity as a consulting engineer, then as county engineer recommended approval of his plans to the county planning board. As a member of the Bounty planning board he later voted to approve these plans.

Question:
Are Doe's activities as described above in conflict with the Code of Ethics?

References:
Code of Ethics-Section 8-"The Engineer will endeavor to avoid a conflict of interest with his employer or client, but when unavoidable, the Engineer shall fully disclose the circumstances to his employer or client.

Section 8(a)-"The Engineer will inform his client or employer of any business connections, interests, or circumstances which may be deemed as influencing his judgment or the quality of his services to his client or employer.

Section 8(b)-"When in public service as a member, advisor, or employee of a governmental body or department, an Engineer shall not participate in considerations or actions with respect to services provided by him or his organization in private engineering practice."

Discussion:
Our previous decisions in cases of this type (60-5, 62-7, 62-21, 63-5) were decided under the then-prevailing Canons of Ethics and Rules of Professional Conduct As noted in those cases, although neither the Canons nor Rules referred specifically to a "conflict of interest," we observed that, "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).

Since those cases were decided the Code of Ethics has been promulgated as the controlling document, and it is now more explicit on the point raised by this case.

It is abundantly clear that Engineer Doe's operations were in direct conflict with Section 8(b) of the Code. In his capacity as an engineer in private practice he prepared plans for approval by a governmental body on which he served as a member. He would be in violation of Section 8(b) even if he had not been a member of the county planning board

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by virtue of his employment as the county engineer and the responsibility of the county engineer to submit the plans to the county planning board with recommendation.

The broader language of Section 8 and Section 8(a), which requires that the Engineer will inform his client or employer of any possible conflict of interest, does not condone the violation in this case. Section 8(b) is specific in prohibiting the type of conflict of interest here involved. Neither does it excuse compliance on the condition that the Engineer inform his client or employer of all the pertinent circumstances. Section 8 and Section 8(a) recognize that a conflict of interest may be unavoidable in some circumstances, but no such exception is made for an Engineer engaged in public service. The prohibition is absolute and mandatory.

Conclusion:
Engineer Doe's activities, as described, are in conflict with the Code of Ethics, and are therefore unethical.

BOARD OF ETHICAL REVIEW CASE REPORTS: The Board of Ethical Review was established to provide service to the membership of the NSPE by rendering impartial opinions pertaining to the interpretation of the NSPE code of ethics.

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