Report on a Case by the Board of Ethical Review

Case No. 67-12

Conflict of Interest Consultant Serving As County Engineer

Facts:
Engineer X, who is in full-time private practice, is retained by the county in which he maintains his office, as the part-time county engineer, for a stipulated monthly fee. His duties are generally to advise the county on engineering problems, offer suggestions on public improvements, and confer with the county council on request on such engineering problems as may arise. Engineer X is usually retained for the actual engineering work which may develop and in such instances is compensated on a normal professional fee basis over and above his monthly retainer. Engineer X does not participate in the county council's subsequent official action pertaining to his work.

Question:
Are the activities of Engineer X in accordance with the Code of Ethics?

References:
Code of Ethics-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:
We accepted this case for review to resolve questions which had been raised as a result of our previous decision in Case 67-1. In that case it was held that an engineer was unethical in preparing plans for a subdivision development in his capacity as a consulting engineer, then as the county engineer recommending approval of his plans to the county planning board, and later approving his plans as a member of the county planning board. Some of the discussion in that case has raised the question whether an engineer under the facts stated above would also be unethical.

The two cases are quite distinct and the result in Case 67-1 is not applicable to this case. In Case 67-1 the ethical evil involved was the conflicting role of the engineer in recommending his own plans to the county planning board in his capacity as a part-time county engineer and acting in a public capacity as a member of the county planning board on his own plans. We said in that case:

> "He would be in violation of Section 8 (b) even if he had not been a member of the county planning board 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."

Copyright © 1967 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

That language was not intended to say that an engineer who divides his practice between consulting and being a part-time county engineer could not ethically provide consulting services to the same client. In the facts before us Engineer X does that and no more. He does not recommend his plans to the county in his capacity as the county engineer.

When an engineer in this situation submits plans to the same client he serves as part-time adviser he need not and should not offer any recommendation for their approval. To do so is actually a useless act because it is basic to the Code of Ethics that an engineer will not submit plans or other work which he does not believe represent the best interests of the client. If the county wishes to obtain a recommendation on the merit of his work it should retain another engineer for review and comment in accordance with Section 12 (a) of the Code.

When the present Section 8 (b) was written into the Code, the NSPE Ethical Practices Committee commented: ". . . Section 8 (b) should be modified to permit an engineer to perform this dual function, if he has an understanding with the municipality that when serving as municipal engineer he will not be required to participate in considerations or acts with respect to engineering services provided by him or his firm in private practice either directly for the municipality or for private clients where review and approvals are required."

In this case it is clear that the county had such an understanding with Engineer X by virtue of the fact that the county usually retained him in his private practice capacity for its engineering requirements.

Conclusion:*
The activities of Engineer X as described are in accordance with the Code of Ethics.

*__Note__-This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

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.

BOARD OF ETHICAL REVIEW Frank H. Bridgers, P.E., T. C. Cooke, P.E., James Hallett, P.E., C. C. Hallvik, P.E., Kurt F. Wendt, P.E., Sherman Smith, P.E., N. 0. Saulter, P.E., Chairman.

Copyright © 1967 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).