Report on a Case by the Board of Ethical Review

Case No. 69-1

Political Influence To Secure Contract

Facts:
Firm "A" has a contract with a public agency for design and inspection services for a public works program, which has been in effect for several years and is approximately 50 percent completed.

Firm "B" contacts the public agency and subsequently enters into negotiations to replace Firm "A" for the balance of the work. The contact with the public agency on behalf of Firm "B" is by representatives of the firm who are not registered engineers. It is alleged that the displacement of Firm "A" by Firm "B" was brought about by the use of political influence on the part of the nonengineer representatives of Firm "B," and that their action was approved by the principals of Firm "B," who are registered engineers.

The public agency terminates its contract with Firm "A" and pays it for the work completed to the date of termination, in accordance with the terms of the contract between the public agency and Firm "A."

Questions:
Q.1: Was it ethical for the engineer principals of Firm "B" to authorize efforts to supplant Firm "A"?

Q.2: Was it ethical for the engineer principals of Firm "B" to permit the use of political influence in securing the contract?

References:
Code of Ethics-Section 11- "The Engineer will not compete unfairly with another engineer by attempting to obtain employment or advancement or professional engagements by competitive bidding, by taking advantage of a salaried position, by criticizing other engineers, or by other improper or questionable methods."

Section 11(a)- "The Engineer will not attempt to supplant another engineer in a particular employment after becoming aware that definite steps have been taken toward the other's employment."

Section 11 (b) - "He will not offer to pay, either directly or indirectly, any commission, political contribution, or gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies."

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Section 13(b)-"He will not use association with a nonengineer, a corporation, or partnership, as a "cloak" for unethical acts, but must accept personal responsibility for his professional acts."

Discussion:

In Case 64-9 we dealt at some length with the question of one engineer supplanting another and held that it was unethical for one firm to undertake to displace another firm which had a reasonable basis to believe that it would be retained for a particular project. The case before us is even stronger in that Firm "A" actually had the contract and was engaged in its performance. Clearly, Firm "B" was unethical in undertaking to displace Firm "A" and could not ethically contact the public agency and offer its services for the same work unless and until the contract with Firm "A" had been terminated.

The facts submitted do not indicate the nature or type of "political influence" involved. Because the Code is so clear and specific on the point, we do not dwell upon the possible assumption that such "political influence" may or may not have involved a political contribution, commission, or gift by the representatives of Firm "B" to the members of the public body. If such was the case there would be both a violation of criminal law and the Code of Ethics.

A more pertinent consideration is the ethical aspect of "political influence" short of commissions, political contributions, or gifts to members of the public agency. In the absence of detailed information on the nature of the political influence in this case, we believe it may be of value to the profession to indicate some general principles on the point.

In Case 66-6 we considered a situation in which a member of Congress intervenes on behalf of a particular engineering firm for a specific Federal-aid project and commented in the conclusion of that case:

"Situations involving political considerations are to be avoided because they are fraught with many dangers and frequently result in suspicion of unethical behavior. However, the Code does not prohibit an engineer from accepting a contract, even though his selection was in part influenced by political considerations, provided that the engineer has not paid, or offered to pay, directly or indirectly, any commission, political contribution, gift, or other consideration for the influence on his behalf."

Applying that statement to this case, we assume, for the purpose of discussion, that the political influence was based on the political relationship between the nonengineer representatives of Firm "B" and members of the public agency, or their superiors holding public office. This relationship, for example, may have been that the nonengineer representatives had participated in a political campaign on behalf of the public office holders, an activity to which no objection may be taken. We recognize, and even encourage, the participation of engineers in public affairs and political activities

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on behalf of candidates for public office. When such a political relationship develops we would be closing our eyes to reality to suggest that it may not be a factor in selecting a firm for projects under the direction of a public body on which the elected official serves.

With the facts before us, however, we consider the political factor in the context of the total conduct of Firm "B." The fact that Firm "B" unethically sought to and did supplant Firm "A" cannot but help suggest that the political influence went beyond the type of political relationship which is permissible.

We also take note of the fact that the political influence was that of nonengineer representatives of Firm "B" rather than the engineer principals themselves. This fact, in itself, is of no consequence. As we have held previously in Case 62-4, it is not unethical per se for an engineering firm to employ a nonengineer representative to solicit engineering service contracts, provided that such a representative does not discuss engineering aspects of the project or negotiate the engineering contract. However, this must be taken in the context of all the circumstances, and where, as in this case, there is an element of political influence and an unethical supplanting of another firm, we are constrained to relate the two aspects toward the conclusion that in the total context the action was unethical.

All that we have said is predicated upon the mandate of Section 13(b) of the Code that an engineer may not hide behind the activities of nonengineers associated with him to condone unethical activity. The acts of an agent within the scope of his authority are legally binding on the principal. Even if an agent acts beyond his authority his acts are attributable to his principal if the principal ratifies such acts or takes the benefits of them. The same principle is applicable with respect to the demands of the Code of Ethics. The engineer principals of Firm "B" took the benefit of the acts of its agents; it must therefore take the onus of the unethical aspects of those acts.

Conclusions:

Q.1: It was unethical for the engineer principals of Firm "B" to authorize efforts to supplant Firm "A."

Q.2: It was unethical for the engineer principals of Firm "B" to permit the use of political influence in securing the contract.

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