Report on a Case by the Board of Ethical Review

Case No. 69-8

Conflict of Interest - Ownership of Product Firm

Facts:
Firm A, an incorporated consulting engineering firm with five owners, offers the usual type of consulting engineering services to the public. The owners of Firm A, acting as individuals, organize a new and separate corporation (Company B) for the purpose of marketing several products which are used in the construction of engineering projects. The products are manufactured by a national company which contracts with Company B for the dealership rights to market its products in a specified geographical area. Company B is operated separately from Firm A by individuals other than the owners of Firm A, but under their general direction.

Firm A specifies by name the products of Company B in its specifications for a project which it designed, but with a provision that products of equal acceptability may be used. The relationship between the ownership of Firm A and Company B is made known to the owner of the project.

In a different but related situation, the principals of Firm A suggest to one of their clients that Company B has some products that the client may wish to use in a development, also disclosing to the client the relationship between Firm A and Company B.

Questions:
Q.1. Is the relationship between the engineer principals of Firm A and Company B a violation of the Code of Ethics?

Q.2. Is the method of operation between the two organizations a violation of 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."

Discussion:
The primary mandate of Section 8 is the injunction that the engineer shall endeavor to avoid a conflict of interest. The language of the code recognizes that conflict of interest

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may, under some circumstances, be unavoidable, in which case full disclosure of the facts is required.

On the basis of the facts before us, we must conclude that the conflict of interest between Firm A and its clients, which is inherent in the relationship between the engineer-principals of Firm A and Company B, is avoidable.

Even though the engineer-principals of Firm A might be expected to specify only those products or equipment which are best suited to the needs of the client without regard to their proprietary interests in the products of Company B, there would be an unavoidable implication that their professional judgment might have been compromised, even if only by a subconscious process.

The engineer-principals of Firm A indicated their intention to avoid any question of conflict by use of the "or equal" clause, but this is slight protection for the client who may be expected to accept the judgment of the engineer with regard to a particular product in the usual case. The same objection applies to the use of "suggestions" to the client in favor of the products of Company B.

What we have said does not resolve all aspects of this type of conflict of interest problem. There are many situations in which the engineer may be the owner of an interest in a company which produces equipment or material which the engineer might specify in the normal course of his practice. In these situations a minimal or nominal degree of ownership may not represent a conflict of interest sufficient to influence or raise the inference of influence on the part of the engineer in specifying the equipment or material which he considers best for the interests of the clients. That type of involvement is discussed more fully in Case 69-13. Suffice it to say that when an actual or potential conflict of interest arises of which the engineer was unaware when he entered into his relationship with the client his immediate duty is to disclose all the facts and circumstances to the client.

Conclusion*:

Q.1. The relationship between the engineer-principals of Firm A and Company B is a violation of the Code of Ethics.

Q.2. The method of operation between the two organizations is a violation of the Code of Ethics.

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