Report on a Case by the Board of Ethical Review

Case No. 70-6

Conflict Of Interest - Member Of Legislature

Facts:
As a member of a state legislature, Engineer A is on a committee which initially passes upon appropriations to local communities for certain public works projects. He is also a partner in an engineering firm in the state.

Following an appropriation to local communities in the state for projects designed to combat air pollution as recommended by the legislative committee of which Engineer A is a member, the firm of which Engineer A is a member submits its qualifications for a project to be financed by the appropriation of the legislature. At the meeting of the town council in the town in which the firm of Engineer A is located, objection is voiced to the selection of the firm in which Engineer A is a partner because of his influential position in securing the appropriation.

Question:
May the firm in which Engineer A is a partner ethically perform engineering services to be financed by an appropriation secured in part by the position of Engineer A in the legislature?

References:
Code of Ethics-Section 3(f) -"He will not use his professional affiliations or public office to secure personal advantage and will avoid any act tending to promote his own interest at the expense of the dignity and standing of the profession."

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."

Section 8(c)-"An engineer shall not solicit or accept an engineering contract from a governmental body on which a principal or officer of his organization serves as a member."

Discussion:
In Case 67-12 we held that it was not unethical for an engineer to provide engineering services to a county while he was also serving part-time as the county engineer. In distinguishing this holding from that in Case 67-1 we noted that the pertinent sections of the code, as cited, are intended to avoid situations in which the engineer has a conflicting role- that is to say, that he is serving, or appearing to serve, opposing interests.

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A second basic factor in the conflict of interest portions of the code (Section 8) is the question of self-interest. Section 8(c) particularly addresses itself to this point. It is basic to the purpose of Section 8(c) that an engineer who has a voice in the selection of a firm for a particular project as a member of the public body making such a selection may not be considered by it because of his evident self-interest in the decision. This position is reinforced by Section 3(f).

The facts before us raise the question of the extent to which this principle extends. Here Engineer A was a significant factor in securing the appropriation for the projects to be awarded. The actual awards to the selected engineering firms, however, were to be made by the governing bodies of the local communities. In one sense it might be contended that the local authorities, knowing certainly of Engineer A's partnership in the firm, might be influenced to favor that firm for the contract in question. If so, we believe that such indirect influence is too remote to disqualify the firm. Otherwise, engineers in such situations could never be in a position to serve on public bodies. We would be constrained to an opposite conclusion, of course, if there were any evidence that Engineer A had to any degree sought to influence the town council to favor his firm because of his position in the legislature.

Section 8(c) refers only to soliciting or accepting an engineering contract from a governmental body on which a principal or officer of the firm serves as a member. Engineer A was not a member of the town council. If so, the firm of which he is a partner would clearly be disqualified. It is conceivable that under some circumstances Section 8(c) would apply to the situation before us if it were shown that an engineer member of the legislature had exerted his influence to favor higher appropriations or allocations to the town in which his firm is located, or had otherwise used his political office as a means to enhance the opportunities for his firm to benefit from the legislative action. On the facts before us this is not the case.

Conclusion*:
The firm in which Engineer A is a partner may ethically perform engineering services financed by an appropriation secured in part by the position of Engineer A in the legislature.

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