Report on a Case by the Board of Ethical Review

Case No. 75-10

Conflict of Interest—Specifying Equipment of Employer

Facts:
Engineer Doe is employed on a full-time basis by a radio broad cast equipment manufacturer as a sales representative. In addition, Doe performs consulting engineering services to organizations in the radio broadcast field, including analysis of their technical problems and, when required, recommendation of certain radio broad cast equipment as may be needed. Doe's engineering reports to his clients are prepared in form for filing with the appropriate governmental body having jurisdiction over radio broadcast facilities. In some cases Doe's engineering reports recommend the use of broadcast equipment manufactured by his employer.

Question:
May Doe ethically provide consulting services as described?

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 12(c) – "An Engineer in sales or industrial employ is entitled to make engineering comparisons of his products with products by other suppliers."

Discussion:
As we previously noted in Case 72-9, and reaffirmed in Case 74-4, a primary duty under §8 is "to prevent the conflict of interest from arising." We also recognized in those cases, as we do now, that it is not always possible to avoid a conflict of interest and the decision on whether it is avoidable is "a subjective judgment. . . ." In Case 74-4 the controlling factor was the time the conflict became apparent.

The word "avoid" in §8 is not an absolute bar in all cases in which there may be an active or apparent conflict of interest if all parties in interest are aware of all pertinent facts and relationships. As we said in Case 72-9, "To become involved in a conflict of interest is not unethical, per se, as the code clearly indicates. However, it may be unethical depending on the circumstances."

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The controlling element in this case is the extent to which Doe's recommendations for equipment manufactured by his employer are justified by the best interests of his client. It would be too easy to merely conclude that Doe may not recommend the equipment manufactured by his employer in all circumstances. If he truly believed and documented that such equipment was in the best interest of his client he would be ethically and duty bound to so advise.

However, the facts do not tell us whether Doe advises his client in each case of his connection with the manufacturer of the equipment in order that the client may then determine if Doe's recommendation is influenced by his relationship with the manufacturer. It is clear that §8 requires disclosure of that relationship to both his employer and his client. Section 8(a) reinforces this duty in its reference to disclosure of any business connections, interests or circumstances which may influence the judgment of the engineer. Such disclosure must be made at the earliest time that a conflict of interest becomes apparent and it is desirable that the disclosure be in writing.

We assume the governmental body is interested primarily in the technical adequacy of the proposed equipment without regard to the source of supply; consequently, we perceive no requirement in the code to impose an obligation on Doe to inform the governmental body of his relationship with the manufacturer of the equipment.

It should be further noted that §12(c) of the code provides the further basis for Doe's conduct by its authorization for him to make engineering comparisons of the products he sells with the products of other suppliers. It is not indicated if Doe's reports do provide such equipment comparisons, but we believe that in appropriate circumstances where the equipment in question may be available from more than one source, his reports should indicate the alternative sources and a technical evaluation of the several products as factually as possible. The client will then be in as fair a position as possible to evaluate the merits of the competing products.

It would be preferable, of course, if the client could rely upon the technical judgment and recommendations of an engineer without any financial interests in the equipment of any manufacturer, but we realize that under some circumstances the client may wish to retain the services of an engineer with an apparent conflict of interest. In the latter instance the client must have full knowledge of all the circumstances; otherwise the client has been defrauded.

Conclusion:*
Doe may ethically provide consulting services as described only if there is full disclosure of all the facts and circumstances to his client.

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