**Report on a Case by the Board of Ethical Review**

**Case No. 75-7**

**Conflict of Interest—Membership on Public Agency**

**Facts:**
John Doe, a civil engineer in private practice, is engaged principally in topographical survey work and the design of water and sewer facilities. He is an appointed member of a commission which controls and determines the issuance of water and sewer connection permits to private owners and developers. The commission's authority is of such a nature that its decisions have a decisive impact on land development projects and the construction of facilities of all kinds by private owners. While serving on the commission Doe undertook to perform extensive topographic survey work and the design of the water and sewer systems for a new private facility which had earlier received approval for necessary water and sewer connections from the commission while he was a member of the commission. In response to public criticism of an alleged conflict of interest on his part, Doe noted that he had abstained from the discussion and vote on the permit application.

**Question:**
Was Doe ethical in performing these services for a private client under the circumstances stated?

**References:**
Code of Ethics Section 3 "The Engineer will avoid all conduct or practice likely to discredit or unfavorably reflect upon the dignity or honor 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:**
We believe that the situation in this case is related to the question considered in Case 70-6 in which the engineer in private practice was a member of the state legislature which approved an appropriation for a project, following which the engineer had submitted his qualifications for the engineering work on the project to a local community which was the recipient of part of the appropriation. We said in reaching the conclusion in that case that the engineer could ethically perform the engineering services for the project that the controlling factor was that the award was made independently by the local community

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authorities, but recognizing that the local authorities could have been influenced in favor of the engineer because of his position in the legislature. But in that event, we added, ". . . 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."

The fact that Doe had abstained from the discussion and vote may indicate that he had not influenced or played any special role in the granting of the water and sewer permit for the facility on which he later provided some services. This was consistent with the mandate of §8(b), which we interpret to apply to actions of the governmental body both before and after the services are provided.

In Case 69-13 we dealt with the related question of whether an engineer with a personal interest in certain land could properly provide services to a client for a water and sewer facility study which might lead to an increase in value in his land. We there held that in addition to full disclosure of his personal interest to the client, the engineer must go further to avoid the conflict of interest by either disposing of his land interest before undertaking the assignment, or if this is not feasible to decline to perform the services We said in that case that we had reached a harsh result, but that it was necessary to go that far to avoid even an implication of an unethical conflict of interest.

Even though Doe had abstained from voting on the permit which opened the way for him to later provide services for his personal gain, there may still have been a conflict of interest if his relation ship as a member of the commission could reasonably be construed as a factor in the granting of the permit or his later choice to per form the services on the project. Clearly, if he had not abstained from voting for the permit he could not ethically have engaged in work flowing from its issuance. And we would reach the same result even with his abstention if there was any showing to any degree that he had influenced the decision on the permit.

Section 8(c) does not apply directly to these facts because the contract obtained by Doe was from a private client, and not a governmental body. But in context it is pertinent to the principle here involved that an engineer may not personally profit from his service on a public body. Some very thin and difficult lines must be drawn in applying that principle lest we inadvertently hold that an engineer involved in work generally subject to public agency action may never serve on public bodies which even remotely relate to his general field of practice. A controlling factor on a case-by-case analysis may also entail the time frame between the action of a public body and the time the engineer later enters into private relationships made possible by the agency action.

In effect, then, the governing rule is that all of the circumstances must be such that reasonable per- sons will not conclude, or entertain the suspicion, that the action of an engineer on a public body was related to or intended to bring him personal profit. In the facts before us Doe was aware of a potential conflict of interest and abstained from the discussion and vote. Further, it is not established that there was any showing to any degree that he had influenced the decision on the permit.

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Conversely, if Doe had influenced the decision, even if for purely altruistic motives, he would then be obliged to refrain from providing any engineering services related to or flowing from the issuance of the permit. The code enjoins engineers to perform public service, but the price in addition to the time and effort for the public service may also include the sacrifice of personal opportunities connected with such public service. If so, such sacrifice is but another cost of the recognition accorded by society to those who choose the path of professionalism.

**Conclusion:***
It was ethical for Doe to perform the engineering and topographic survey work for a private client while serving on the commission when the water and sewer permits were issued.

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**Board of Ethical Review**-William J. Deevy, P.E.; William R. Gibbs, P.E.; Joseph N. Littlefield, P.E.; Donald C. Peters, P.E.; James F. Shivler, Jr.; Louis W. Sprandel, P.E.; Robert E. Stiemke, P.E., chairman

**Additional Views**-I agree with the other members of the Board that conflict of interest is not shown in the facts of this case and I certainly agree that engineers generally should be encouraged to membership on such boards and commissions, rather than discouraged from such membership; however it appears to me that this engineer should not serve on this commission. The facts indicate that a great deal of his work is contingent upon favorable decisions by the commission. Under these circumstances, allegations of conflict of interest are almost certain to arise, as they have in this instance, even if the engineer is completely blameless. Further, if he truly abstains from all discussions and decisions which may relate to his future work then his effectiveness on the commission will be impaired. His involvement is simply too close. I believe that he should resign from the commission in order to conform with the mandate of §3 of the code. *J. N. Littlefield, P.E.*

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