Report on a Case by the Board of Ethical Review

Case No. 77-9

Favoritism in Award of Engineering Contract

Facts:
John Smith, P.E., is an engineer engaged in a consulting engineering partnership with Richard Jones, P.E. Smith sells his interest in the partnership to Jones on May 10th and is appointed county director of public works on May 11th. Within the next several days Jones sells the entire interest of the consulting firm to Amalgamated Engineers, Inc., and becomes an officer of Amalgamated. On May 15th Smith announces the award of a consulting engineering contract to Amalgamated.

Questions:
Q.1. Was Smith ethical in awarding the contract to Amalgamated?

Q.2. Was Jones ethical for his involvement?

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:
Normally, governing ethical principles in specific fact situations deal with fundamental concepts of a broad nature and do not relate to particular time sequences. In this case, however, the pertinent dates are the key issue in determining whether either Smith or Jones acted contrary to sound ethical standards.

In the ordinary course of events little question would be raised if an engineer leaves private practice and enters public service and then subsequently awards a contract to the firm with which he was formerly associated. No portion of the code can reasonably be read to forever bar a firm from performing engineering services for a public body because the public official responsible for the award had at one time been a partner in that firm, or a predecessor firm. At the same time, there is a common understanding that a public official must be scrupulously careful to avoid favoritism in performing his public duties.

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It may well be that Smith sincerely believed that Amalgamated, as the successor firm to the former Smith-Jones partnership, was the best qualified firm for the particular assignment. However, the confluence of dates strongly suggests that the timing was all related to a scheme or plan among the participants to bring about the award to Amalgamated.

What would have been a reasonable period of time for Smith to refrain from awarding contracts to his former firm or its successor to avoid the suspicion of favoritism? No hard and fast time can be stated, but it may be noted that in somewhat reverse circumstances the minimal rule is that a public official entering private enterprise will not represent the private interest with the public agency he formerly served for at least one year. And a further general rule is that the former public official will not ever represent the private interest with that agency in a matter in which he had been directly involved.

While there is no direct proof in this case that Smith was improperly motivated by favoritism, he had an ethical duty to avoid even the inference of such favoritism. As long ago as in Case 66-5 we noted the fundamental principle that the engineer recognize the impression he might create to the public by dubious conduct. And as recently as in Case 75-7, in a reverse set of facts, we noted that "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 agency action."

It is not clear from the submitted facts why Jones sold his interest to Amalgamated. Assuming legitimate business reasons for the sale, however, it becomes immaterial that the contract awarded by Smith went to Amalgamated rather than Jones. If the intent was to avoid the inescapable charge of favoritism of awarding the contract to his former partner by converting the firm to Amalgamated, that will avail the parties nothing from an ethical standpoint. It is too clear from the close time sequences that Jones was a party in interest, and if there was favoritism, or the appearance of favoritism, it extended to Jones as a principal of Amalgamated as much as if the award had been directly to Jones. Technically, neither Smith nor Jones was in violation of §§8(b) or (c), but they are related in principle to the offensive conduct. It is sufficient for our needs to cite §3, in conjunction with §§8(b) and (c), to conclude that both Smith and Jones played fast and loose with established ethical concepts.

Conclusions:*

Q.1. Smith was unethical in awarding the contract to Amalgamated.

Q.2. Jones was unethical for his involvement.

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Board of Ethical Review

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