

Report on a Case by the Board of Ethical Review

Case Number: 58-1

Subject:

Section 27, Canons of Ethics: "He will not use the advantages of a salaried position to compete unfairly with another engineer." Procurement of engineering contract for consultant while employed by public agency on related subject matter.

Facts:

An agency of a foreign government invited proposals from consulting engineering firms to complete the design and supervise the construction of a hydroelectric project which is being financed in part by a World Bank loan. The basic plans for the project were prepared by an agency of the Federal Government of the United States, and the project report was made by an agency of the foreign government, with the assistance of a team from the U. S. Agency. Several engineers in the employ of the U. S. Agency responsible for the basic plans negotiated with at least two engineering firms with the intent of taking part in the design and supervision of the work. Negotiations were finally concluded between this group and a firm of consulting engineers for a cooperative project to execute the work, and the group of employees formed a corporation to be a part of a joint venture to design the hydroelectric project. At or about the time the negotiations with the foreign government were concluded, this group of engineers resigned their positions with the U. S. Agency and shortly thereafter entered into contract with the foreign government.

Question:

The Board of Ethical Review was asked to study this case and give their opinion regarding the ethical implications and specifically to answer the question- "Was it a violation of the Canons of Ethics or the Rules of Professional Conduct for employees of the U. S. Government, while still employed, to organize a new private company and negotiate a contract to take part in the design of a project for which they had prepared preliminary plans as employees of the Government?" Section 27 of the Canons is as follows: "He will not use the advantages of a salaried position to compete unfairly with another engineer." Rule 51. "While in a salaried position, he will accept part-time engineering work only at a salary or fee not less than that recognized as standard in the area." Rule 52. "An engineer will not use equipment, supplies, laboratory, or office facilities of his employer to carry on outside private practice without consent."

Discussion:

The evidence in this case is of such a nature and the implications so far reaching, that a pinpoint decision is difficult if not impossible to achieve. It was not possible for the Board to meet and discuss the case and it could not bring in the witnesses for explanation or cross-examination. There can be no question of the basic right of an American citizen to resign from one position and accept another or initiate a business of his own. NSPE has

formally recognized that right in Professional Policy No. 52 which says: "It is the stated policy of the Society that an individual professional engineer has the right to seek and accept other employment in his field, provided the seeking and acceptance of such other employment is consistent with the Canons of Ethics as it pertains to relations with clients and employers. NSPE looks with disfavor on any provisions in contracts, or conditions of employment, which unreasonably limit this right." It seems axiomatic that the personal and intimate knowledge of the project which the employees gained from their work on the preliminary design of the project and the acquaintance they made with the representatives of the owner of the project gave them many distinct advantages over any other firms who may have considered the offering of their services to the owner. The crucial question is, therefore, "Were these advantages used unfairly?" This could have been accomplished by withholding certain information from the competitors, by misrepresentation to the owner of the importance of their inside information, or by quoting a price which was lower than could be considered proper for the securing of data for and the design of the project. It has not been established that any of these things occurred. However, they might have been used and in any case the possibility of the existence of one or more of these facets raises a cloud of doubt as to the purity of the enterprise. It becomes a matter which might be considered under Section 19 of the Canons, which states: "The engineer will endeavor to protect the engineering profession collectively and individually from misrepresentation and misunderstanding."

Conclusion:

The Board believes that the men in question have violated the spirit of the Canons and Rules, although the evidence does not prove them to be in violation of specific paragraph, as now worded. The Board believes that it makes little difference in the basic ethics of the problem whether a man leaves the employ of the Government to open his own consulting office or whether he goes to work on a salary for a consulting engineer; it tends to bring dishonor to the profession of engineering if the man devotes his energies, while still employed, to promote his future practice or employment on the basis of having inside information which would lead" to greater profits, if he can secure a position or enter into contract to work on further details of the identical project. In the hope of deterring and ultimately eliminating such practices, the Board proposes the following rule to supplement Section 27 of the Canons: "He will not enter into promotional efforts or negotiations for work or make arrangements for other employment as a principal or to practice in connection with a specific project for which he has gained particular and specialized knowledge while in such employment."

Respectfully submitted, BOARD OF ETHICAL REVIEW Pierce G. Ellis, P.E. Wylie W. Gillespie, P.E. Orland C. Meyer, P.E. Murray A. Wilson, P.E., Chairman Members Not Voting: Marvin C. Nichols, P.E. William F. Ryan, P.E.

Member Dissenting: Ezra K. Nicholson, P.E.

Dissenting Opinion: The wording of certain Canons is somewhat like the oracle. The spirit, or intent, of the Canons varies with people and the situations in which they find themselves. The next to last paragraph of the introduction to "Ethics for Engineers" states, "An expression heard frequently is, 'The intent of this section of the Canons is ...'" The guiding principle behind the phrasing of the "Rules" is that the words mean exactly what they say-that there is no concealed, hidden, or obscure "intent." In my opinion the "Conclusion" of the report should be, "The Board believes that the men in question have not violated the Canons or Rules as they currently exist." This could be followed by a "Recommendation" that the Ethical Practices Committee be instructed to consider the desirability of adding another Rule under Section 27 of the Canons to make unethical a situation similar to the one considered, as well as for a situation where the employees were other than Government. I foresee difficulties with the additional Rule proposed in the report for employees other than Government, and I would prefer that the development of a Rule for this complicated situation be assigned to the Ethical Practices Committee which has the responsibility for developing rules for ethical conduct. Ezra K. Nicholson, P.E. Action on Case by NSPE Board of Directors: Moved and seconded that the report on case 58-1 of the Board of Ethical Review be received and that the matter of preparing and submitting a rule to more adequately cover the situation be referred to the Ethical Practices Committee.

Ezra K. Nicholson, P.E.