

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

### Case No. 63-5

#### **Subject: Conflict of Interest-Part-Time Service as City Engineer**

Canon 15-Canons of Ethics; Canon 27 -Canons of Ethics; Rule 13- Rules of Professional Conduct; Rule 17-Rules of Professional Conduct.

#### **Facts:**

A small community retains a professional engineer on a part-time basis to serve as city engineer. The professional engineer holding this position is engaged in full-time private practice and treats his part-time service to the community as service to a client. The duties for the city usually include advising the city council on engineering problems, offering recommendations on engineering project considerations and approving plans for engineering processes and works.

In addition to general advisory services to the city, the professional engineer may be retained by the city council for the preparation of plans and specifications for a city project. In such cases, he is compensated on a normal professional fee basis over and above his monthly retainer.

#### **Question:**

Is a professional engineer retained by a city for general advisory services in violation of the Canons of Ethics by also preparing plans and specifications on projects for the city in which he participated and advised the city council?

#### **References:**

Canons of Ethics-Canon 15- "He will not accept compensation, financial or otherwise, from more than one interested party for the same service, or for services pertaining to the same work, without the consent of all interested parties."

Canon 27-"He will not use the advantages of a salaried position to compete unfairly with another engineer."

Rules of Professional Conduct Rule 13-"He will advise his client when he believes a project will not be successful."

Rule 17-"An engineer in private practice may be employed by more than one party when the interests and time schedules of the several parties do not conflict."

#### **Discussion:**

We have previously noted that "although neither the Canons nor the Rules refer specifically to a 'conflict of interest,' it is axiomatic that a professional person may not take action or make decisions which would divide his loyalties or interests from those of his employer or client." (Case No. 60-5)

A somewhat similar situation was analyzed in Case No. 62-7. Here it was held that there would be a conflict of interest in a situation in which a consulting engineer was retained by a county commission to perform all engineering and advisory services for it, including review and approval of plans submitted by other engineers; and the same consultant was retained by a private company to perform engineering design for housing units as part of a project which involved negotiations with the same county commission. In reaching our conclusion that there was a conflict of interest, we said: "The consultant is in the position of passing engineering judgment on behalf of the Commission on work or contract arrangements which the engineer performed, or in which he participated. This would obviously involve the self-interest of the engineer and divide his loyalties. Even if the engineer acts with the best of intentions, he is put into the position of assessing his recommendations to two clients with possibly opposing interests."

The distinguishing fact in the instant case is that the engineer has only one client, and he is, therefore, not subject to the same pressures to temper his service to one client in order to satisfy the other. There is still left for decision, however, the practical question of the engineer passing on the adequacy of his own plans in his capacity as city engineer. There is no requirement in either the Canons or Rules that an engineer's plans for a client must be reviewed by an engineer employed or retained by the client. The client has such a right of review by its own engineer, but it may waive its right, as it has obviously done in this case. Under these circumstances, the engineer is acting in a dual capacity, but not a divided one.

Canon 15 is not a bar to this type of arrangement because there is only one interested party (client) and that party has given its consent. Canon 27 is not an impediment because it refers to a "salaried" position, whereas in this situation the engineer is retained on a part-time basis by the city as a consultant rather than as a salaried employee. Rule 17 deals only with situations in which the engineer is employed by more than one party.

Rule 13 is binding in this case and the engineer has a duty because of his dual capacity to avoid prejudicing his advice to the city on the project under consideration because its approval by the city council may lead to his securing a commission for that project. There is no ground to believe that such improper conduct is present, but we would caution that an engineer in these circumstances should be doubly careful in studying and recommending approval of a project for which the city council must look to him for guidance.

**Conclusion:**

It is not unethical for an engineer retained by a community on a part-time basis as a city engineer to prepare plans and specifications for a project for the same community, but in so acting the engineer must be scrupulously careful that his advice is not influenced by his secondary interest as the engineer likely to be retained for the design of the project.

Board of Ethical Review:

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