

Report on a Case by the Board of Ethical Review

Case No. 80-6

Conflict of Interest—Use of Former Public Employee

Facts:

Joe Doe, a landscape architect, while employed by a city, prepared a general plan for the development of a city park, including a design concept. Implementation of the plan would involve a mixture of engineering, architecture, and landscape architecture. Shortly thereafter, Doe left the city employment and was employed by Firm X, a local A/E firm.

Firm X submitted its qualifications for the project assignment with the city selection board along with a number of other firms. Firm X was placed on the "short list" of the top three firms and granted an interview, at which time the principals of Firm X noted, among its other qualifications, that Doe was in its employ and his expertise in landscape architecture, and particularly his familiarity with the project. In due course Firm X was selected for the assignment. The members of the selection board noted that one of the major factors in the selection of Firm X was its employment of Doe, who would be assigned to the implementation of the project. Firm A, one of the other firms on the "short list," which had also been interviewed, has objected to the selection of Firm X because of the undue influence created by the involvement of Doe.

Question:

Were the engineer principals of Firm X in violation of the Code of Ethics by reason of their utilization of Doe to obtain the project assignment?

References:

Code of Ethics - Section 7(a) - "While in the employ of others, he will not enter 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 without the consent of all interested parties."

Section 8(a) - "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."

Discussion:

Our previous cases along related lines have dealt largely with situations in which the engineer was a member or advisor of a public agency. In our most recent case along these lines (79-4) we concluded that the engineer who was chairman of a local storm drainage board could ethically be considered for a project to be awarded by the city when the city engineering staff requested his submission of qualifications and he secured the prior approval of the members of the city council, city attorney, and city manager, and provided he did not participate in the consideration of the selection board.

In contrast, in Case 76-3 we concluded that it was unethical for an engineer while serving under a retainer to a county to testify as an expert witness on behalf of a development company rezoning petition and in opposition to the views of the county department of public works.

And in Case 75-7 we dealt with an engineer serving on a commission which controls the issuance of water and sewer connection permits to private developers, holding that he could ethically be retained by a private owner for topographic survey work and design of the water system for a new private facility which has received a permit from the commission on which he served. But we emphasized in that case that the engineer had abstained from the discussion and vote on the permit application.

Each of these cases illustrates the fine lines which must be drawn in relating the ethical duty of engineers when serving in any form of public service.

The case before us raises related, but quite different, considerations from those discussed in the cited cases. Here there is, in effect, a charge of favoritism. If the landscape architect was an engineer, and thus subject to the code, we would have little difficulty in applying 8(a), which applies to employees of public agencies as well as members or advisors of public bodies. Likewise, 7(a) would apply whether or not he was shown to have engaged in promotional efforts to benefit from the project on which he was a key figure during his public employment, or whether he had engaged in negotiations for the project while in public employment. It is sufficient under the wording of 7(a) to note that he was involved in "practice in connection with a specific project for which he had gained particular and specialized knowledge....." It is not indicated in the facts whether the city-employer had or had not given consent to his involvement, but we may assume that consent had been given by implication inasmuch as the employment of the former city employee by Firm X was cited as a favorable factor by the selection board.

This brings us back, then, to the definition of "interested" parties. If Firm A was an "interested" party it obviously had not given its consent. In the previous case (80-5), we said we did not interpret "interested party" under those particular circumstances to extend to those merely seeking an assignment as distinguished from those directly involved in a project. In view of our conclusion in this case, however, we do not need to strain to distinguish between involvement in an on-going project and the selection between competing firms for an upcoming project. However that definitional point might be resolved in later cases, we can rely upon the intent of the language of both 7(a) and 8(a) to bar the services of an engineer on a project for a private firm based in large measure on his services on the same project while a public employee.

Our discussion has centered on the ethical concerns as if the former public employee had been an engineer, which is not the case. However, we think that the intent of 7(a) and 8(a) would extend to engineer principals of Firm X, who were fully aware of and parties to the arrangement with Doe and who may be assumed to have entered into the arrangement to gain an advantage.

Conclusion:

*The engineer principals of Firm X were in violation of the Code of Ethics by reason of their utilization of Doe to obtain the project assignment.

*Note: This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

Board of Ethical Review Louis A. Bacon, P.E. F. Wendell Beard, P.E. James G. Johnstone, P.E. Robert H. Perrine, P.E. Marvin M. Specter, P.E.-L.S. L.W. Sprandel, P.E. Robert R. Evans, P.E., chairman