

## **Conflict of Interest – Retiring Director of Public Works, Member of City Council**

### **Case No. 04-3**

#### **Facts:**

- A. Engineer A serves as the director of public works and city engineer for City X. Engineer A retires from his position as city public works director and city engineer, receiving a full pension and the day after retiring, the city awards Engineer A's new firm \$600,000 in contracts, including a \$300,000 construction inspection contract.
- B. Engineer A serves as a member of the city council and also owns a construction contracting firm. Engineer B's company contracts for the remodeling of a residence. Engineer A contacts the city's planning department and is told that the remodeling would be in violation of a longstanding city zoning law since the parcel of land had been rezoned into a nonresidential category. Engineer B meets with the associate city planner and following a contentious meeting, Engineer B contacts the city manager and urges the city manager to initiate a rezoning of the parcel.

#### **Questions:**

1. Was Engineer A's conduct ethical under the circumstances?
2. Was Engineer B's conduct ethical under the circumstances?

#### **References:**

- Section II.4.a. - NSPE Code of Ethics: *Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.*
- Section II.4.d. - NSPE Code of Ethics: *Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.*
- Section II.4.e. - NSPE Code of Ethics: *Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.*

#### **Discussion:**

Engineers work in a variety of practice areas including industry, education, construction, private practice, and government. During a full career, an engineer may practice in two or more of these practice areas. In addition, engineers often participate as public officials at the local, state, and federal levels while continuing to practice. These circumstances sometimes raise ethical questions and issues which may require examination.

For example, in BER Case 95-6, Engineer A served as a member of the Board of Trustees of a college in a medium-sized city. The U.S. Department of Housing and Urban Development had awarded the city money and the city had agreed to use the money to construct a new library at the college. Engineer A indicated that he would like to be considered to provide engineering services on the project. In deciding that it would be unethical for Engineer A to be considered in providing engineering services on this project, the Board noted that the facts indicated the city would be awarding the library contract using HUD funds. The Board noted that under the facts, it appeared that the college trustees and the city had a very close relationship. Although Engineer A would not be directly involved in the decision, Engineer A was far too close to the city and could influence its decision.

In BER Case 92-5, an engineer was serving on a community service corporation board that was responsible for obtaining money to construct a courthouse and office. In this case the engineer was instrumental in getting the Federal government to spend the money on the project. His service corporation had no influence in determining who would design or build the project. The engineer wanted to be a subconsultant to a larger design firm submitting proposals to the Federal government agency responsible. Under these facts, the BER opinion found no violation of the ethical code.

A third example is in BER Case No. 85-2, where an engineer served on a board of directors of a private health care provider that contracted with the county hospital board to operate a health care facility. When engineering work was needed at the facility, the engineer offered to provide the services and received a contract from the private provider to perform the work. The decision to select the engineer was made by the private board of which Engineer A was a member. Since the engineer did participate in the decision, the BER concluded Engineer A acted unethically in agreeing to a contract under these circumstances.

Turning to the facts of the present case (situation A), it is clear that Engineer A was in a position to influence the award of a contract. Having just retired from his public position as director of public works and city engineer, it would appear that Engineer A likely had a role significant role in laying the groundwork for his new firm to obtain the work with the city. In addition, the timing of the selection which occurred immediately following Engineer A's retirement would suggest that standard engineering selection procedures were not followed (e.g., qualifications-based selection procedures, requiring notice, submission, interviews, rankings, selection). On this basis, the Board concludes that Engineer A's actions were unethical. The Board's conclusions may have been different had the facts indicated that the compensation to Engineer A was part of a severance/retirement package, that Engineer A had unique qualifications and capabilities and that the city would be benefited by these services.

Scenario B presents a somewhat similar situation. Here, by way of explanation, the Board assumes that Engineer B's, in his role as city council member, has direct authority over the city manager, who has direct authority over the planner. Thus, Engineer B appears to be using his official position to influence a governmental decision in which Engineer B has a direct financial interest. Engineer B appears to be wearing two hats simultaneously—that of a contractor with a financial interest in a residential project, and that of a city council member with an obligation to act in a manner that is consistent with the interests of the city, its laws and regulations. The Board cannot see how Engineer B would ethically be able to perform these roles simultaneously and act consistently with the NSPE Code of Ethics or his obligations as a member of the city council. Therefore, the Board must conclude that Engineer B's actions were not consistent with the NSPE Code.

**Conclusions:**

1. Engineer A's conduct was not ethical under the circumstances. However, the result might be different if the compensation was part of Engineer A's severance/retirement package, that Engineer A had unique qualifications/capabilities and that the city would be benefited by these services.
2. Engineer B's conduct was not ethical under the circumstances.

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