

NSPE Milton F. Lunch Ethics Contest - 2015

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Facts:

A county Industrial Development Agency (IDA) and the county plan to jointly fund a site-development study for a proposed business/commerce park on two parcels behind the Mid-County Plaza. The county will take the lead on the project and contract with an engineering firm to perform the study. The land is currently owned by XYZ Properties, Inc. The IDA-County agreement stipulates that IDA and the county will each contribute \$50,000 for the project.

As project lead, the county is considering a proposal from ABC Engineering to perform services for the project. Engineer A, an IDA board member and part owner of ABC Engineering, believes he has a conflict of interest due to IDA's involvement on the property and the fact that Engineer A's firm, ABC Engineering, has previously done development work on the property for XYZ Properties. Engineer A indicates that since the county is the lead agency, he plans to recuse himself from discussions and decisions related to the study. Engineer A also indicates that if IDA had been the lead agency, he would have resigned from the IDA. The county attorney indicates that since this is a contract between the county and the engineering firm, there is no need for Engineer A to resign.

Question:

Was Engineer A's decision to recuse himself from discussions and decisions relating to the jointly funded site-development study ethically sufficient under the circumstances?

NSPE Code References:

Section II.4.a. 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.b. Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties. *ABC Engineering has previously done development work on the property for XYZ Properties.*

Section II.4.d. 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 by or provided by them or their organization in private or public engineering practice. *Engineer A indicates that since the county is the lead agency, he plans to recuse himself from discussions and decisions related to the study.*

Discussion:

In a precedent case BER 95-6, an engineer served as a member of the Board of Trustees of a college in a city, where the US Department of Housing and Urban Development (HUD) awarded money to the city money to construct a new library at the college. The engineer wanted to provide engineering services for the project. It was noted that the college trustees and city fathers must have a very close relationship. Although the engineer would not be involved in

the decision, the NSPE Board of Ethical Review determined that he was too close to the city and could influence the city's decision; therefore, it would be unethical for the engineer to provide engineering services for this project.

In another precedent case (BER 79-4), an engineer, who is a principal in a consulting engineering firm, served as chairman of a local storm drainage advisory board. The engineer's consulting firm wanted to provide services to the city council. The engineer was willing to disqualify himself from the considerations and recommendation of the advisory board regarding the selection of the engineering firm. The NSPE Board of Ethical Review determined that the engineer's consulting firm, of which the engineer is a principal, would not be unethical in responding to the request for services, if the engineer disqualified himself from the considerations and recommendation of the advisory board regarding the selection of the firm.

The guidance from these two precedent cases seems at first to contradict each other. In BER 95-6, the NSPE Board of Ethical Review determined that **it would be unethical** for the engineer both to continue serving on the college Board of Trustees and to provide the requested engineering services. In BER 79-4, the NSPE Board of Ethical Review determined that **it would not be unethical** for the engineer to continue serving as chairman of a local storm drainage board and for his firm to provide the requested engineering services, provided he disqualified himself from the considerations and recommendation of the advisory board for the selection of the engineering firm. The difference in these two cases is in the degree of influence that the engineer exercised in each case in the selection of the engineering service provider. In the case BER 95-6, the engineer was in a position of significant influence with both the college and the city. However, in the case BER 79-4, the engineer had very little influence with city council in the awarding of engineering services.

Turning to the present case, Engineer A has taken steps to recuse himself from discussions and decisions related to the jointly funded site development study. However, the circumstances of this case are most similar to those of BER 95-6, where Engineer A has significant influence as a board member on the county Industrial Development Agency (IDA) and also with the county.

Further, if Engineer A resigns from his position with the IDA and continues through ABC Engineering to offer development services to the county, his prior site development on this property should be disclosed to all parties (IDA and the county) to avoid any appearance of a conflict of interest and to fully disclose all previous site development on the property that ABC Engineering has already completed, as stated in NSPE Code of Ethics Section II.4.b.

In a precedent case BER 65-2, an engineer was retained by a government agency to study their computer programming methods and techniques. Subsequently, the engineer was contacted by a commercial mining company with a problem similar in scope and content to the work he had done under his contract with the government. He was requested by the mining company to act as its consultant and to recommend methods to improve its operations in this area. The engineer was ethically required to advise the mining company of the existence and availability

of the report he had previously prepared for the government. In a similar manner, Engineer A should advise the IDA and the county of the development work he had already performed on this property for XYZ Properties.

Conclusion:

Engineer A's decision to recuse himself from discussions and decisions related to the jointly funded site development study was ethically a good start in complying with the NSPE Code of Ethics, Section II.4.a. However, he should resign his position as a board member with the IDA based on the close association he has with both the IDA and the county, according to the NSPE Code of Ethics, Section II.4.d. Since ABC Engineering has submitted a proposal for providing engineering services, Engineer A should disclose the previous development work that his firm, ABC Engineering, did on this property for XYZ Properties, as stated in the NSPE Code of Ethics, Sections II.4.a. and II.4.b.