

Report on a Case by the Board of Ethical Review

Case No. 65-2

Subject: Disclosure of Previous Work

Section 10-Code of Ethics.

Facts:

An engineer is retained by a government agency to make a study of computer programming methods and techniques as related to the economical extraction of certain metals from ore. He undertakes extensive investigation, conducts experiments and submits a comprehensive report containing detailed recommendations to solve the problem posed in his assignment. He is paid an appropriate fee for his services and the project is terminated. The government then publishes the report and makes it available to the public.

Subsequently the engineer is contacted by a commercial mining company which has a problem similar in scope and content to that which he studied under his contract with the government. He is requested by the mining company to act as its consultant and recommend methods to improve its operations in this area.

Question:

During the negotiations is the engineer ethically required to advise the mining company of the existence and availability of the report he prepared for the government?

References: Code of Ethics-Section 10-"The Engineer 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, unless there is full disclosure to and consent of all interested parties."

Discussion:

On its face, Section 10 of the Code permits compensation for services from more than one interested party for the same service, or for services pertaining to the same work, provided there is a full disclosure of the facts and consent is obtained from the interested parties.

It seems clear that the requirements of the Section must be met in full if the engineer is doing the same or similar work for two clients at the same time. In the situation described, the engineer is applying knowledge gained from previous work which was performed for the government and the results of which are now in the public domain.

The situation here except for government involvement is essentially no different from that which every engineer encounters in the course of his career by building upon his knowledge gained from experience in serving his clients or employers. Engineers undertaking new assignments may rely upon and use the knowledge resulting from

previous services. This is an important value and a normal and proper benefit to the engineer, and to the client as well.

In this situation the mining company, together with all other citizens, is a joint owner of the report which was prepared at public expense. Assuming that the mining company officials did not know of the existence of the report, they are nevertheless entitled to share in its benefits. Therefore, the engineer is ethically obligated to inform the mining company of the report and its availability during the negotiations as a failure to do so would be in conflict with the principle of Section 10 that the engineer will not accept compensation for services pertaining to the same work unless there is a full disclosure of the facts. Whether or not the report furnishes the mining company a complete solution of its problem is for its sole determination. The engineer would be justified in charging a fee for an analysis of the report as related to the problem of the mining company, or for its application to the requirements of the client.

This case should be distinguished from the performance of a service for a private client in the first instance because in such case the current client would not have any right or ownership in the original work.

Conclusion:

During negotiations the engineer is ethically required to advise the mining company of the existence and availability of the report he prepared for the government.

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