

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

### Case No. 74-2

### Conflict of Interest - Municipal Engineer

#### Facts:

A state law requires that every municipality have a municipal engineer whose duties and compensation are to be fixed by a municipal ordinance. The duties of the municipal engineer vary by size and nature of the municipalities but generally consist of attending meetings of public bodies of the municipality, providing general advice on engineering matters, maintaining tax maps, reviewing site plans and subdivision maps, preparing cost estimates for proposed facilities, handling complaints from citizens on engineering-related problems (drainage, roads, and the like), and advising on the retention of consultants for project requirements. Many of the smaller communities in the state do not have and cannot afford full-time municipal engineers or supporting staff personnel for a full-time office. In such instances the smaller communities retain the services of a consulting firm in private practice and appoint a principal of the firm as the municipal engineer. Such a municipal engineer is paid either on a cost-plus basis or a flat monthly retainer-usually a relatively low amount. The municipal engineer's firm is thereafter usually retained for engineering services for capital improvement projects needed by the municipality.

#### Question:

Is it ethical for an engineer to serve as a municipal engineer and participate in a consulting firm providing engineering services to the same municipality under the conditions stated above?

#### Reference:

Code of Ethics-Section 8(b)-"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:

It is believed that the public interest in this case is best served by providing to the small municipalities the most competent engineering services which they can acquire. It is assumed that the state law is intended to achieve this end. However, it is not clear whether the intent is to require that the municipal engineer must be an employee of the municipality in the formal sense. For the purpose of this discussion an "employee" is defined as one who is subject to the direction of his employer-in this case the appropriate municipal authorities. Further, such an employee would be in a salaried position like those of similarly employed persons who are considered to be on the municipal staff and for whom the municipality complies with the existing regulations regarding taxes, employee benefits, and the like.

The facts in this case seem to say that these small municipalities are really trying to comply with the legal requirements by designating competent engineers as "municipal engineers" (their terminology) even though they are not "employees" as defined above. The engineers, in many instances, are paid for these services on a fee or retainer basis and as such are acting in the traditional and accepted role as consultants whose recommendations are approved or disapproved by the appropriate municipal processes. There seems no ethical reason to believe that the engineering consultant cannot act as the "municipal engineer."

Continuity of municipal engineering services tends to insure the best services to the municipality, assuming that the best available are utilized. Therefore, it would seem that the engineer-consultant who is designated as the "municipal engineer" should not be barred from serving the municipality as the one to furnish complete engineering services through his own organization if he is qualified. However, it must be evident that the relationship between the engineer and the municipality must be one of engineer to client (municipality) and not engineer to employer (municipality) for this principle to be valid in accordance with the mandate of Section 8(b).

**Conclusion:\***

Because it is considered that the engineer, in this case, is not a bona fide "employee" of the municipality but a consultant called the "municipal engineer," whose compensation is on a retainer or fee basis, it is not unethical for him to serve as the "municipal engineer" and participate in a consulting firm providing engineering services to the same municipality under the conditions stated above.

**\*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.

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