Related Services for Private Party Following Public Employment -- NSPE Case No. 78-10

Year

1978

Description

The situation of engineers leaving public employ and then working in the same area in the private sector is a delicate issue. The engineer has had access to government knowledge that a private client may desire. This is a historical case reviewed by the NSPE Board of Ethical Review in 1978 that raises questions about the ethical permissibility of such employment.

Body

Facts

Engineer A had been employed for many years by a county and had specialized during a large part of that time in evaluating the engineering aspects of county zoning petitions. Engineer A retired from public employment and opened a consulting office to engage in that type of work for private clients. He was retained by the XYZ Development Corporation, which had pending before the county zoning board a petition for a zoning variance to permit it to proceed with the development of a major housing development. In order to obtain the variance, XYZ had to

demonstrate the technical feasibility of a major water system consistent with environmental impact on adjacent communities. Engineer A, while employed by the county, had been involved in the XYZ petition and had made some preliminary technical evaluations on it. Citizen groups opposing the granting of the variance have formally objected to Engineer A's being allowed to participate in further proceedings as an expert witness in support of the petition.

Question

- Is it ethical for Engineer A to represent the XYZ Development Corporation on a matter on which he had done some work for the county?

References

- *Code of Ethics* - Section 3 - "The Engineer will avoid all conduct or practice likely to discredit the profession or deceive the public."
- 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."

Discussion

This case illustrates a question which has become an issue of considerable study and debate in recent years, often referred to as the "revolving door" issue, in which professionals employed by a unit of government leave that employment and become private practitioners to specialize in and represent clients before their previous employing agency in the particular field of specialization.

We read Section 7(a) to refer primarily to situations in which an engineer may act to the detriment of a former employer by engaging in activities directly related to the work he had done for the former employer on a particular project or assignment. In Case 74-4, for example, we said that the thrust of Section 7(a) "...is to protect an

employer and parties having an interest in his practice from a former employee utilizing this special knowledge to their detriment...." Under that reading, we have to ask in this case who, if anyone, would be "victimized" by the action of Engineer A in now representing the interests of the XYZ company.

By virtue of his long experience and expertise gained in the subject matter while employed by the county, Engineer A has gained detailed information on the internal procedures and policies of the county zoning authorities and that was undoubtedly a factor in XYZ's decision to retain Engineer A. We may also assume that during his involvement in the work of the county zoning authorities he has gained close personal contacts with the public officials and other staff members who are involved in the decision whether to grant the variance.

In this situation the public, or at least that part of it which is concerned with the variance issue, may be regarded as an "interested party" under the wording of Section 7(a).

To the extent that this case is controlled by Section 7(a), we are confronted with the wording of that provision which sets out the limitations on the basis of "while in the employ of others." In this case Engineer A made his arrangement with XYZ only after leaving county employment. Thus, he was not in the employ of others when he agreed to do the work on a specific project in which he had been directly involved while a county employee. It follows that if the facts were to the effect that Engineer A had made his arrangement with XYZ before leaving county employment he would be in violation of Section 7(a). We cannot assume that as a fact, however, even though there may well be some question raised on that score.

Taking a broader view of the fundamental issue in this case, we believe that the circumstances are such that Section 3, even though a more general statement of ethical concern, is pertinent. Giving Engineer A the benefit of the doubt as to his motive and purpose in taking on a case for a private client in which he had been directly involved as a public employee, we are concerned that his action is of a nature which may arouse public suspicion and open the way for charges which could reflect upon the profession. While all actions of engineers cannot be judged ethically on the sole basis of what some elements of the public might think or allege, in this kind of situation there is at least enough doubt to suggest that Engineer A's action was inappropriate and should be avoided in the larger interest of protecting the profession from misunderstanding.

Conclusion

It was not unethical for Engineer A to represent the XYZ Development Corporation on a matter on which he had done some work for the county, but this type of arrangement under these circumstances should be regarded as inappropriate.

Board of Ethical Review

- Louis A. Bacon, P.E.
- Robert R. Evans, P.E.
- James G. Johnstone, P.E.
- Robert H. Perrine, P.E.
- James F. Shivler, Jr., P.E.
- Donald C. Peters, P.E., chairman

Dissenting Opinion

Any action taken by a professional engineer which would tend to throw suspicion on the integrity of an engineering decision or places the integrity of the profession in a suspect position by the public sector must be considered critically in the general light of Section 3. Since Engineer A has been involved in a specific question involving the XYZ Development Corporation while employed by the county, his appearance on behalf of the XYZ Development Corporation in the same case at a later date could be viewed by the public as a change of position based on Engineer A's self-interest. This could readily be used to impute the integrity of Engineer A's professional standing and additionally reflect adversely on the profession as a whole. While an interpretation of Section 3 represents a judgment factor which cannot be identified as right or wrong, in the last analysis Engineer A's action tends to sully the integrity of the profession. Thus we believe that Engineer A's action was not only inappropriate but was not ethical in fulfilling the spirit or intent of Section 3.

- James G. Johnstone, P.E.
- Robert H. Perrine, P.E.
- Robert R. Evans, P.E.

Note: Member Sprandel did not participate in the consideration or decision of this case.

NSPE Code of Ethics An earlier version may have been used in this case.

Notes

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For a version of this case adapted for classroom use, see: Related Work Done by a Private Party Following Public Employment (adapted from NSPE Case No. 78-10).

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