

Conflict of Interest—
Bridge Construction Inspection and Shop Drawing Preparation

Case No. 18-4

Facts:

Engineer A, P.E., serves as a construction inspector on a bridge that is being extensively renovated. Engineer A's employer, ABC Engineering, holds the construction inspection services contract with the Town of Bridgeton, where the bridge is located. The general contractor on the bridge project is Engineer A's former employer, XYZ Construction Company. After leaving XYZ as a full-time employee, Engineer A continued to perform occasional jobs for the company on a part-time basis. One such task was the preparation of shop drawings for the bridge renovation project. Engineer A did not disclose his relationship with XYZ Construction to ABC Engineering or to the Town of Bridgeton.

Question:

What are Engineer A's ethical obligations under the circumstances?

NSPE Code of Ethics References:

- Section I.5. - *Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts.*
- Section II.1. - *Engineers shall hold paramount the safety, health, and welfare of the public.*
- Section II.4. - *Engineers shall act for each employer or client as faithful agents or trustees.*
- 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 for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.*
- Section III.1.c. - *Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.*
- Section III.6.b. - *Engineers in salaried positions shall accept part-time engineering work only to the extent consistent with policies of the employer and in accordance with ethical considerations.*

NSPE BER Case References: 97-1, 02-8, 14-1

Discussion:

Full disclosure in cases of potential conflicts of interests is one of the most critical ethical responsibilities professional engineers must adhere to in their practice. On several occasions, the NSPE Board of Ethical Review has examined this important obligation, particularly when an engineer engages in "moonlighting."

For example, in BER Case 02-8, the BER noted that while at one time there was serious ethical concern over such practice on the part of employed engineers, in recent years the issue has been more muted as an ethical matter. Among the more significant considerations in this area are the extent to which such practice may constitute a conflict of interest; whether the individual is using the materials, equipment, and resources of the individual's full-time employer in pursuing and performing part-time work; and whether such practices are consistent with the policies and procedures of the employer. Other questions arise relating to whether such practices may have an adverse effect on the professional liability of the employer and other professional practice areas. As with all such cases, a review of the facts and circumstances is critical to a determination of the ethical issues.

The BER has noted that these cases frequently raise the question of whether an engineer can ethically devote appropriate attention to the engineering and professional responsibilities involved. In BER Case 97-1, Engineer A held a full-time engineering position with a government agency and was also employed on a part-time basis by an engineering firm. Finding no ethical violation, the BER noted that with regard to Engineer A's dual role as a government employee and a private employee, both the state government agency and the engineering firm were aware of Engineer A's activities as a dual employee and did not object to these activities. However, the BER also indicated that should a conflict of interest arise (e.g., in which Engineer A's or the firm's activities conflicted with the governmental employer's activities or interests), Engineer A would need to carefully address those activities consistent with NSPE Code Sections III.6.b., II.4.a., II.4.b., and other applicable provisions of the Code.

In BER Case 14-1, Engineer A was an assistant director of public works in Somecity. As part of his job, Engineer A was involved in selecting and hiring engineering consultants for projects in Somecity. These projects involved local, state, and federal funds. Engineer A also worked part-time as an independent consulting engineer and teamed with Engineer B on federal and state-funded projects in another city in the same state. Based on the limited facts presented, the BER determined that it was unethical for Engineer A to work with Engineer B as a consultant on federal and state projects. The BER determined that Engineer A's working with Engineer B as a consultant on federal- and state-funded projects could create the appearance of a conflict of interest. Before Engineer A undertook any work as an independent consultant, the BER noted, he must advise and secure the permission of the appropriate authorities in Somecity; and because the work in question involved local, state, and federal resources, Engineer A must also make absolutely certain that his actions would be consistent and in conformance with applicable local, state, and federal procurement laws and conflict-of-interest provisions as well as with state engineering licensure laws and regulations.

The facts in BER Case No. 14-1 involved an assistant director of public works with direct involvement in selecting and hiring engineering consultants for projects. In that case, the BER foresaw, at the very least, the potential appearance of a conflict of interest in Engineer A's roles as assistant director of public works and as an engineer who had teamed with Engineer B on

projects in the same state. While the outside consulting work in question involved projects in another city in the same state, Engineer A exposed himself and the engineering profession to public criticism, particularly if the work in question was the same or similar to the work Engineer A was performing in his role as an assistant director of public works. Moreover, the BER noted that Engineer A's impartiality and judgment could be called into question, particularly in the event a conflict or dispute arose in connection with his private work.

Turning to the facts in the present case, it is the BER's view that Engineer A's actions were inconsistent with the NSPE Code of Ethics because, at a minimum, they raise the appearance of a conflict of interest. Although Engineer A is currently a full-time employee of ABC Engineering, his role as a part-time contract employee of XYZ Construction could raise questions of dual loyalty—the very essence of a conflict of interest. Moreover, the very nature of the work Engineer A is performing for XYZ Construction and for ABC Engineering—shop drawing preparation and construction inspection—raises the issue that Engineer A, as an employee of ABC Engineering, may be reviewing work he prepared for XYZ Construction. Under the facts, there is no indication that Engineer A discussed performing services for XYZ Construction with ABC Engineering or that ABC Engineering has any company policy regarding the performance of services outside of normal business hours or the scope of employment.

For these reasons, in order to fulfill the ethical obligations outlined in the NSPE Code of Ethics for Engineers, Engineer A must immediately cease performing work for XYZ Construction and fully disclose the shop drawing preparation work as well as any other services he has performed on behalf of XYZ Construction to ABC Engineering with notice and agreement from the Town of Bridgeton.

Conclusion:

Engineer A has an ethical obligation to immediately cease performing work for XYZ Construction and to fully disclose the work he has performed for XYZ Construction to ABC Engineering with notice and agreement from the Town of Bridgeton.

Board of Ethical Review:

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