

A Fair Deal in Fairview? (Case 1034)

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The Case:

In the early 1980s, Fairview, a medium-sized city, established a Community Service Corporation (CSC) for the purpose of, among other things, revitalizing the City's downtown area. The Fairview CSC was envisioned as a catalytic, coordinating, and creative force to partner with national, state, and other local organizations that seek to solve problems through service by means of entrepreneurial, innovative, effective, and efficient utilization of its resources and influence.

After doing an economic feasibility study and making a survey of Fairview's retailers, the CSC leadership concluded that a significant catalyst needed to be established in Fairview's downtown area. As an example, a consultant suggested an "off-price mall." Using the statistical data developed, the group put together a brochure to entice developers to undertake the project, and numerous brochures were sent out but no one responded.

So it went for several years, with really nothing going on in the way of downtown growth or revitalization. But things magically began to happen when Arthur, a principal in a local structural, environmental and civil engineering firm, was elected president of the Fairview CSC.

A long-time resident of Fairview, Arthur had the personal devotion, the vision, the political connections, and the effervescent energy needed to get the revitalization going. An active citizen nearing retirement age, this was one of many volunteer positions Arthur participated in, and he received no compensation for any of his services.

Fairview's first revitalization success accomplished under Arthur's leadership was to persuade the state government to build a state office building in the downtown area and to concentrate a number of its offices in the building.

Shortly after completion of that project, a second effort, to encourage the federal government to fund the construction of a federal courthouse and office building, was also successful.

To add to these projects, a "capstone" development has just been announced. This new development includes a high rise county office building with an underground connection to the federal building and a city building, along with a

central fire station, police station and city hall.

The Fairview community is ecstatic. Arthur has enjoyed a high profile and has generally been acknowledged as a leader in these efforts, and his selfless service in these wonderful successes is being praised throughout the City.

Selections are in the process of being made for the design work of the federal courthouse and office building project, and the Fairview CSC – even though they are not the “Owner” – is one of the organizations that will directly participate in influencing the awarding of contracts. Larger design firms are beginning to contact smaller local consulting firms, including Arthur’s firm, soliciting their participation.

Actually, in the case of Arthur’s firm, just one year ago Arthur transferred leadership to his son, David, who is now the president and chief executive officer. Arthur is the chairman and principal stockholder of the firm.

A major design firm submitting a proposal to lead the design effort for the courthouse/ office building project asks David and Arthur to partner with them by providing the production aspects of the civil/structural work. Arthur’s firm was not involved in the previous (state office building) project, so this as a highly-significant and appealing opportunity, all the sweeter when viewed as the well-deserved pay-off for Arthur’s years of volunteer service, local presence, and investment in the Fairview community.

But therein lies the hitch. Monroe, a competitor engineer in Fairview, has become aware of the possible teaming of Arthur and David’s firm with the other company (not him). Monroe realizes the connections and unique influence Arthur has had throughout the project development process in his role as president of the CSC, and even though Arthur has publicly gone on record that he will abstain from deliberations about the awarding of any engineering contracts, this does not satisfy Monroe.

Monroe has written letters to the editor of the Fairview newspaper decrying any type of involvement in the project by Arthur and David’s firm as a conflict of interest. Further, Monroe has started “discussions” of the issue in the State professional engineering community, couched in language about protecting the ethics of the profession.

How should Arthur and David respond?

Note:

This case is based on National Society of Professional Engineers Board of Ethical Review Case 92-5, “Conflict of Interest – Community Service”, and is used with permission.

Alternate Approaches and Survey Results for “A Fair Deal In Fairview?” (Case 1034)

1. Pursue the opportunity, vigorously. There is nothing unethical about proactive business opportunity development. Arthur and David should accept partnership on the project. They were invited, and they have earned respect by their previous efforts on behalf of the community. While recusing himself from deliberations about consultant selection on the project, Arthur should stay involved with the Community Service Corporation and advise his son and the out-of-town firm how to best position themselves during proposing and negotiating.
Percentage of votes agreeing: 12%
2. Check the law, carefully. Arthur and David should carefully review their State licensure law provisions having to do with conflicts of interest. Further, they should personally visit their State Engineering Licensure Board to explain their own position on what is happening with respect to the project and the safeguards that have been put in place to avoid the appearance of a conflict of interest, and they should request that the Engineering Licensure Board undertake a review and render an opinion.
Percentage of votes agreeing: 31%
3. Invite third party opinion, publicly. Arthur and David should approach the State Society of Professional Engineers regarding their firm's intent to pursue the opportunity to participate in the design of the project and call for an open forum within the state professional community on the ethical issues. In so doing, Arthur should clearly and explicitly document how he will continue to abstain from assisting the Community Service Corporation in providing input to contract awards.
Percentage of votes agreeing: 14%
4. Change the RFP, slightly. Arthur should use his influence with the Community Service Corporation to remove subconsultant services from consideration as part of the selection of the prime consultant. This diffuses the conflict-of-interest issue, and once the prime consultant is selected, that firm will be free to choose whichever subconsultants they need for the project on the basis of qualifications. Arthur's firm still stands in good stead to win the contract, but without the ethical complications.
Percentage of votes agreeing: 6%
5. Share the wealth, generously. Realizing that there will be plenty of work to go around, Arthur should influence the Community Service Corporation to devise a system whereby project work can be shared on a rotation basis among local firms, including his firm, Monroe's firm, and other local design consultants.
Percentage of votes agreeing: 2%

6. Create distance, deliberately. Given Arthur's history and success with the Community Service Corporation, the only way Arthur can ethically pursue the work with the out-of-town firm and avoid the conflict of interest is to create distance between himself and the project. Arthur must delegate all contact on this project to another senior manager in his firm and divorce himself and his son from the project. Also, Arthur must exclude himself physically from all deliberation by the Community Service Corporation related to the project.
Percentage of votes agreeing: 4%
7. Curtail CSC activity, temporarily. Arthur realizes that if he remains as president of the Community Service Corporation and his firm pursues this project, there will be at least the appearance of a conflict of interest. Therefore, his firm should pursue the project but Arthur should take a sabbatical from the Community Service Corporation until *the consultant is selected*.
Percentage of votes agreeing: 2%
8. Curtail CSC activity, definitively. Arthur realizes that if he remains as president of the Community Service Corporation and his firm pursues this project, there will be at least the appearance of a conflict of interest. Therefore, his firm should pursue the project but Arthur should take a sabbatical from the Community Service Corporation until *construction is completed*.
Percentage of votes agreeing: 2%
9. Curtail CSC activity, completely. Arthur realizes that if he remains as president of the Community Service Corporation and his firm pursues this project, there will be at least the appearance of a conflict of interest. Therefore, his firm should pursue the project but Arthur should *resign from the Community Service Corporation*.
Percentage of votes agreeing: 8%
10. Walk away, happily. Arthur and David should decline involvement in the project, thus protecting their reputations and enhancing their high esteem in Fairview. Arthur should have realized when he accepted the presidency of the Community Service Corporation that his position would sooner or later place him and his firm in this predicament. If he truly intended that his work for the CSC be a service to the community, Arthur can rejoice at his success in that area and not allow short-term impact on his firm to dampen his civic enthusiasm.
Percentage of votes agreeing: 18%

Forum Comments from Respondents

1. Only by walking away from the project and forsaking any chance of profit can Arthur dispel all appearance of conflict and leave everyone feeling

assured of his sense of civic duty. Simply resigning from the CSC while still pursuing the project is insufficient sacrifice, because the CSC presidency is a volunteer position.

2. Arthur was a non-paid executive so he did not benefit financially from his community service. In order not to have any potential conflict of interest issues he should resign his position completely before his firm seeks the job.
3. In the long run, refusing the contract will protect his firm and the legacy he has built in his community. Certainly, Arthur's work with the CSC was on a charity/volunteer basis, and his pay-off was building a city and better community. He has also built for himself a fine reputation and a new understanding of how civic projects get off the ground. This experience will become invaluable in other contracts in the future that have no conflict of interest and will grow his firm. Arthur's character appears to be honest, however even an appearance of an ethical lapse can destroy a lifetime of building a reputation, years of work at the CSC, and make receiving future work from competing firms impossible. Arthur should leave this opportunity to others not associated with the CSC.
4. Arthur's obligations to act faithfully and avoid deceptive acts require that he make a decision about whether to remain on the CSC or continue his affiliation with the company he founded. Technically or not Arthur is still seen as a principal figure within the company he founded—it is assumed that he is not yet ready to give up his stake. The greatest consequence would be realized if Arthur continued on his present course. Were he to do this and the CSC awarded the contract to the major design firm, Arthur would be ethically obligated to step down from the CSC, or, either vacate his position from his company or have his company withdraw from the design firm partnership. In so doing, Arthur puts his fellow CSC committee members in an awkward predicament and he may even cause them to arbitrarily select a different company. The end result is that the integrity of the CSC, the integrity of the design firm, and Arthur's own integrity might reasonably be challenged. The lesser consequence would be incurred should Arthur permanently resign his post from the CSC. Then, should Arthur's partnership get the contract, the integrity of the CSC might be brought into question but this issue would be entirely the responsibility of the CSC committee members. Should the contract go to another design firm, Arthur has simply to look for another challenge or seek reappointment to the CSC. In any event, Arthur would bear no responsibility or obligation for choices made by the CSC members.

Comments from Board of Review Members

1. Some observations on this case: 1) Each professional must have and trust his or her own "ethics compass", and follow its guidance; 2) It is very difficult

to co-calibrate the ethical compasses of those holding different worldviews, even if they are from within a single profession; and 3) Codified ethical standards are not clubs or wedges for forcing someone else to change their behavior; they are the "the wicks of the candles" with which we should light our own way.

2. David and Arthur are in a pickle. No matter how "clean" the selection process actually is, there will be an unavoidable perception that the process has been influenced by Arthur's position and influence. Is it a "conflict of interests?" It doesn't matter; it will be perceived as one. Because the services Arthur and David's firm provide are "lower-tier" subconsulting services, one solution to the dilemma would be to remove subconsultant services from selection of the prime consultant - Architecture based services. Once the Architect is selected, he can be free to choose whichever subconsultants he needs for the project. Arthur's firm still stands in good stead to win that contract, but his influence over the selection process has been greatly diminished.

Alternatively, Arthur's best choice is to remove his firm from the proposal process completely, so that the project can proceed without contestation. His new position within the firm is irrelevant as he is still the principal shareholder and so the one who stands to gain the most from this engagement. Arthur should have realized when he accepted the presidency of the organization that his position would sooner or later place him and his firm in this predicament. It's unfortunate that his great efforts are so poorly rewarded, but perhaps they'll at least name a building in his honor.

Arthur's weakest choice is to go on the offensive and confront Monroe's allegations as ridiculous and unfounded. He will initially win the press war, but ultimately, the tarnish the project, his tenure as president, and his firm. The project itself will wear will overshadow all the good things he was able to accomplish for the community.

3. The conflict of interest is not the same in all states, at least from the perspective of engineering licensure law. Some state statutes are very specific and some are broad. Two examples are:

South Carolina: "When in public service as a member, advisor, or employee of a government body or department, the Engineer or Land Surveyor shall not participate in considerations or actions with respect to services provided by him or his organization in private engineering or land surveying practices."

Georgia: Same as above plus – "...An engineer shall not solicit or accept an engineering contract from a governmental body on which a principal or officer of his organization serves as a member."

Either of these can be interpreted to give Arthur some leeway. The first says that he must exclude himself from any activities during proposing and negotiating the work and maybe from the active participation in the project if his firm is awarded the contract. The second is similar but since the

Community Service Corporation is not the "Owner", Arthur may have a loophole provided service on the Community Service Corporation is not interpreted as "advisory" to the "Owner."

4. David and Arthur should submit Monroe's letter to the State Board of Engineers (SBOE), together with the description of what is happening with respect to the "capstone" project and the safeguards that have been put in place to avoid the appearance of a conflict of interest, and request that the SBOE's Ethics Committee undertake a review and render an opinion. They should then write to the community service organization and the newspaper and inform both that if the SBOE's Ethics Committee rules against them, then their firm will not participate in the project. If they prevail, their competitor looks like a jerk. If not, then they've done the right thing.
5. All codes of ethics in the engineering profession prohibit "conflicts of interest." The case herein raises the possibility of a conflict of interest. It should be noted that (1) Arthur is involved in the Community Service Corporation, and the Community Service Corporation is not the owner of the project, and (2) Arthur has excused himself from participating in the selection of the consultant. There is no indication that the Community Service Corporation will be involved in the design phase of the project. Therefore, there is no conflict of interest, and David's and Arthur's firm is free to pursue the assignment.
6. The case focuses on Arthur and David for good reason, but the situation can easily be looked at from other perspectives. For example, was Monroe's action ethical? Was Monroe's real concern protecting the integrity of the profession, or was he using an ethics smokescreen to get the work?