

## **PERSPECTIVE**

### **My Client, the Government Employee**

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A situation recently arose which I thought presented some truly challenging questions. It borders along the fringes of the topics of bribery and kickbacks, but more importantly, how these can sneak up on you.

I was made aware of a situation involving a consulting company, a government agency, and a private citizen (Jill). The hook in this situation is that the private citizen is employed in a position of responsibility within the government agency. In the past, the consulting company had worked for the agency and the project was administered by Jill. The project went well and all were pleased.

Jill was so pleased that when she decided to commence her own private project, she called the same consultant. The consultant had a good experience previously as well and accepted the job. Shortly thereafter, the opportunity for a business lunch arose. The consultant wanted to pick up the tab. In many instances, even though the current relationship is private, Jill is still a public servant and the meal may be an illicit gratuity.<sup>1</sup> The two parties split the bill and the project moved forward.

A few weeks later, the consultant, in conducting his due diligence, learns that the actual property in question is subject to numerous ecological restrictions and it is highly unlikely that Jill will be able to complete her project. The consultant files a report explaining these restrictions and the assessment. The report includes the discovery, the restricting laws, the hurdles, and the reasons for the recommendation to proceed only with the understanding that the project could be very expensive and may fail. The consultant attaches an invoice for the work conducted.

Jill's reaction is to tell the consultant that, as a government agent, she already knew of these restrictions and did not ask that they be discovered.<sup>2</sup> She refuses to pay the bill. In her refusal, she does offer to compensate the consultant but at a lower fee. She adjusts it in accordance with her own criteria of how much the work was worth and sends a check.

The consultant is now trapped in an ethical conflict.

If the consultant cashes the check and lets it go at that, the residual situation is that he has provided services to an employee of his previous client without compensation: a kickback. If the consultant adjusts the bill just because Jill says so, the situation is the same: a kickback.

If the consultant does not accept the lower payment, but asks for payment in full, the likelihood of Jill recommending approval of any new agency work with that consultant is slim. In this particular instance, Jill provided an ample amount of innuendo that maintaining their professional relationship hinged greatly on resolving the current bill in a favorable manner. While the term extortion comes to mind, I am not sure of the formal definition and hesitate to enter that area of discussion without legal advice.

If the consultant simply voids the bill and walks away, he is still in a kickback situation. If the consultant later bids on and receives a government contract which Jill facilitated, then the term bribery arises.

This situation is intended to demonstrate that problem situations can and will unexpectedly arise which place the professional in untenable positions. To overreact and say that consultants should not work for private citizens employed by government would leave that group without professional help. This entire situation can be complicated further if it was Jill's husband, not Jill herself who balked at the results of the consultant. Jill still gains, but is not the primary player.

In this situation, the consultant probably should have seen the potential for a problem before it arose and referred Jill to another firm. To resolve it, there are two options. One is that the consultant can take Jill to small claims court and terminate his relationship with Jill and her agency. The other choice is to keep the invoice listed as unpaid or uncollectible (not forgiven) and to avoid any further work for the agency in question until Jill leaves her position. The best choice is to not mix your public and private clients in the first place.

Notes

1. Check your local laws.
2. The situation could just as easily involve a successfully completed project and the client simply disagrees with the billed amount.

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