Solicitation, Networking, and Referral Organization

Case No. 05-9

Facts:
Engineer A is employed in private practice and is approached by a networking and referral organization that has multiple chapters around the world. Only one person from any given profession or line of business can join any individual chapter. The chapter that approached Engineer A includes a lawyer, contractor, investment advisor, and insurance agent. At each weekly meeting, there is usually a presentation on how to market a business and one member gives a detailed presentation about his or her business. Finally, members may exchange any referrals that they have obtained for each other during the week. The referral organization earns its revenue though annual membership fees. The members do not pay any fees to each other, and the organization does not make any referrals nor require that members make referrals to each other. Engineer A describes the organization's role as helping to bring people together to make "free referrals among themselves."

Question:
Would it be ethical for Engineer A to participate in the networking and referral organization?

References:

Section II.4.a.	-	*NSPE Code of Ethics:*	*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.c.	-	*NSPE Code of Ethics:*	*Engineers shall not solicit nor accept financial or other valuable consideration, directly or indirectly, from outside agents in connection with the work for which they are responsible.*
Section II.5.b.	-	*NSPE Code of Ethics:*	*Engineers shall not offer, give, solicit, nor receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect of intent to influencing the awarding of a contract. They shall not offer any gift or other valuable consideration in order to secure work. They shall not pay a commission, percentage, nor brokerage fee in order to secure work, except to a bona fide employee or bona fide established commercial or marketing agencies retained by them.*

Discussion:
The use of a consortium of other professionals and the ethical implications involved in such a business association has been the subject of NSPE Board of Ethical Review deliberations in the past. Whether such business associations create the potential for conflicts of interest or other circumstances that could create appearances of impropriety is often dependant upon a review of all of the facts and circumstances relating to the operation of the consortium.

For example in BER Case No. 86-1, the Board considered two situations involving an engineer's involvement in a business consortium. In the first case (Case 1), Engineer A had the opportunity to join a business consortium consisting of his engineering firm, an architectural firm, a construction firm, and a financial firm. The general purpose of the consortium was to improve general marketing and business development. To defray consortium expenses for promotion, publicity, overhead, etc., each firm was required to pay to the consortium an entrance fee plus a percentage of income derived from business successfully generated from referrals by other consortium members. In the second case, which involved the same opportunity and purpose (Case 2), Engineer B and the other members of the consortium were required to pay, to the consortium, an entrance fee. In addition, in Case 2, Engineer B was also required to pay a referral fee directly to the consortium firm member who found the new business client for Engineer B. If Engineer B found a new business client for a member of the consortium, Engineer B would

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receive a finder's fee. The Board found that while Engineer A's participation in the consortium would not be prohibited by the NSPE Code in Case 1 but that Engineer B's participation in the consortium would be unethical in Case 2. The Board specifically noted that both consortiums were formed primarily for marketing purposes and represented, in effect, a pooling of individual firm marketing capabilities and efforts through an umbrella approach. The Board compared the consortiums with typical joint ventures where one firm learns of a potential project and forms liaisons with other firms having expertise complementary to the others. In such joint ventures, marketing efforts are combined to secure the business and fee arrangements agreed to by all joint venture participants. The joint venture, in the Board's view, becomes a temporary and less structured form of a consortium widely and successfully practiced within the engineering profession. The Board noted that objectivity can also be comprised in the selection of joint venture participants as easily as that potential existed in the Cases 1 and 2. Nevertheless, the Board noted that it was an acceptable form of practice. However, the Board concluded that the matter of a referral fee, a portion of which is exchanged among consortium firm members, constituted a payment for valuable consideration in order to secure work, which is specifically prohibited in the NSPE Code.

Turning to the present case, the Board believes that the facts are clearly more in line with Case 1 of BER Case No. 86-1. Here, the structure is based upon an established model that is presumably practiced throughout the world. While that does not necessarily indicate that the practice is acceptable, it does demonstrate a level of credibility and sustainability. The arrangement outlined under the present facts appears to constitute a formalized networking circle and information exchange with no requirement that any party make a referral to another party. In addition, the fees that are paid are intended to cover chapter membership and general administrative cost, but are not provided to any individual member in consideration for a referral. Individuals are also free to make referrals outside of the network if the member so chooses. On this basis, the Board can not conclude that there is a violation of the NSPE Code of Ethics under these facts.

Conclusion:
It would be ethical for Engineer A to participate in the networking and referral organization.

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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole-proprietorships, government agencies, university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services—which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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