# Conflict of Interest:
# Participation in Seminar and Reward Program for Specifying Systems

## Case No. 06-1

### Facts:

Engineer A receives the following solicitation from a company:

> *EFG Building Supply Company would like to invite you to participate in a new program tailored for engineers of septic/drainage systems. To qualify for this plan, attend the complimentary EFG Building Supply Company Seminar on Septic/Drainage Systems. If you are convinced of the value of our system, simply note on system plans that EFG carries septic and drainage products. For the EFG Building Supply Company Reward Program, your customer makes discounted purchases of EFG septic pipe on your EFG cash account (this is strictly a pay as you go basis). Every month you will receive a rewards certificate. This certificate is based on a percentage of monthly sales. Priority cash coupons may be redeemed at EFG and the East Westville Resort and Country Club.*

### Questions:

1. Would it be ethical for Engineer A to attend the complimentary EFG Building Supply Company Seminar on Septic/Drainage Systems?

2. Would it be ethical for Engineer A to participate in the EFG Building Supply Company Reward Program?

### References:

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| *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 III.5.* | - | *NSPE Code of Ethics:* | *Engineers shall not be influenced in their professional duties by conflicting interests.* |
| *Section III.5.a.* | - | *NSPE Code of Ethics:* | *Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.* |
| *Section III.5.b.* | - | *NSPE Code of Ethics:* | *Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the engineer in connection with work for which the engineer is responsible.* |
| *Section III.9.e.* | - | *NSPE Code of Ethics:* | *Engineers shall continue their professional development throughout their careers and should keep current in their specialty fields by engaging in professional practice, participating in continuing education courses, reading in the technical literature, and attending professional meetings and seminars.* |

### Discussion:

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The issue of conflicts of interest is among the most fundamental ethical situations faced by engineers. In the course of their professional practice, engineers face situations involving conflict of interests on an ongoing basis. Each situation must be evaluated based upon the individual and specific facts in the case as there is no one-size-fits-all rule that can be applied to conflict of interest situations. Some situations involve obvious answers while others are more complicated and require careful analysis and examination. While sometimes the appropriate response is disclosure of all of the facts and circumstances to all parties, in other cases, disclosure is insufficient and other courses of action are necessary. In other situations, the engineer must avoid the conflict entirely or else run afoul of basic ethical principles.

The NSPE Board of Ethical Review has had many occasions to examine the issue of conflicts of interest in the past. For example, in BER Case No. 60-9, the Board examined a situation involving certain engineering employees of an industrial firm who were in a position to recommend for or against the purchase of products used by the company. They regularly received cash gifts ranging from $25 to $100 from product sales people. In ruling that accepting those gifts was not ethical, the Board noted that an occasional free luncheon or dinner and a holiday or birthday present when there is a personal relationship are acceptable practice. However, cash payments to those in a position to influence decisions favorable or unfavorable to the giver are not in good taste and do immediately raise the suspicion of an ulterior motive.

In Case No. 81-4, the Board deliberated about three engineers who were principals or employees of a consulting engineering firm that did an extensive amount of design work for private developers. The engineers were involved in recommending to the developers a list of contractors and suppliers to be considered for selection on a bidding list for construction of some projects. Usually, those contractors and suppliers the engineers recommended obtained most of the contracts from the developers. Over a period of years, the officers of the contractors or suppliers developed a close business and personal relationship with the engineers. From time to time, at holidays or on the engineers' birthdays, the contractors and suppliers would give them personal gifts of substantial value, such as house furnishings, recreational equipment, or gardening equipment. In finding that it was unethical for the engineers to accept those gifts, the Board stated that engineers should "lean over backwards" to avoid acceptance of gifts from those with whom they, or their firm, do business. At that time, the Board again noted that there may be circumstances when a gift is permissible, as stated in Case No. 60-9, and does not compromise the engineer’s independent professional judgment.

In BER No. Case 87-5, the ABC Pipe Company in an effort to become known within the engineering community and, in particular, to those engineers involved in the specification of pipe in construction, sought to educate engineers about the various products available in the marketplace—the advantages and disadvantages of using one type of pipe over another. ABC sent an invitation to Engineer A, as well as other

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engineers in a particular geographic area, announcing a one-day complimentary educational seminar to educate engineers on current technological advances in the selection and use of pipe in construction. ABC agreed to host all refreshments, buffet luncheon during the seminar, and a cocktail reception immediately following. Engineer A agreed to attend. Citing NSPE Code of Ethics Section III.5.a, the Board noted that the NSPE Code unequivocally states that engineers must not accept gifts or other valuable consideration from a supplier in exchange for specifying its products. However, the Board noted that in this case, it was dealing with a material supplier who was introducing information about pipe products to engineers in the community and had chosen the form of an educational seminar as its vehicle. While ABC Pipe Company might seek to present its particular products in a favorable light and point out their many advantages over others, the Board determined that a complimentary invitation to such a seminar would not reach the level that would raise an ethical concern. The Board noted that earlier BER decisions and the pertinent provisions of the NSPE Code relate more to the circumstances in which valuable gifts are received and at least create the appearance of a *quid pro quo* or an exchange of valuable consideration for specifying the equipment. Under the facts of BER Case No. 87-5, the Board determined that Engineer A was accepting an opportunity to become educated on a particular topic consistent with current NSPE Code Section III.9.e. The Board indicated that Engineer A would be attending the seminar with many of his colleagues and there was no suggestion in the facts that anyone at ABC Pipe Company would personally seek to persuade Engineer A to specify its products. The Board further indicated that the buffet luncheon and cocktail reception immediately following the seminar as falling within the *de minimis* provisions noted earlier in BER Case Nos. 60-9 and 81-4, and thus it would not be improper for Engineer A to participate in those activities. However, the Board noted that had Engineer A agreed to accept items of substantial value (e.g., travel expenses, multi-day program, resort location, etc.) its conclusion would have been quite different.

Turning to the fact in the present case, the Board notes that consistent with its earlier decision in BER Case No. 87-5, Engineer A's mere participation in a complimentary educational seminar on septic/drainage systems does not violate the language in the NSPE Code of Ethics. Presumably Engineer A may learn technical or other information at such an event that will improve Engineer A's professional competence and allow Engineer A to better serve clients and the public. The Board's conclusions may be significantly different if the complimentary educational seminar was conducted on, for example, a cruise ship, which would turn this activity into a gift rather than an educational activity. However, much like BER Case No. 87-5, the Board believes that the complimentary seminar referenced in this case is of *de minimis* value.

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However, on the second issue, the Board does not find facts or circumstances that would warrant a determination that Engineer A's participation in the EFG Building Supply Reward Program would be ethical. Engineer A's participation in the program appears to amount to nothing more than a kick-back to specifiers (i.e., Engineer A) who specify a particular product supplied by the EFG Building Supply Company, an activity NSPE Code Sections III.5.a., III.5.b., and other provisions were designed to prevent. The fact that a purchase discount is also for the benefit of the engineer's client does not mitigate the ethical problem. The program is a blatant effort to institute a *quid pro quo* policy that undermines the credibility of engineers retained by their clients to exercise independent engineering judgment and discretion.

If after participating in the EFG Building Supply Company Seminar on Septic/Drainage Systems, Engineer A is convinced that the EFG septic/drainage system is the most advantageous system for a client, Engineer A may specify the system but must not participate in the EFG Building Supply Reward Program.

**Conclusions:**

1. It would be ethical for Engineer A to attend the complimentary EFG Building Supply Company Seminar on Septic/Drainage Systems.

2. It would not be ethical for Engineer A to participate in the EFG Building Supply Company Reward Program.

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