Gifts—Passes to Industry Trade Show

Case No. 12-6

Facts:

A national water association is holding their annual conference in a major city where Engineer A and his firm IJK Engineering are located. Engineer A and IJK Engineering have made arrangements with the national water association to purchase, for a fixed fee, an unlimited number of daily passes to the trade show portion of the conference. The normal cost of a daily pass is $150. The trade show has exhibits from manufacturers, professional service firms, and others. Engineer A and IJK Engineering distributes passes to engineers employed by IJK Engineering clients and the engineers employed by potential clients. IJK Engineering encourages the recipients of the passes to make copies and give to other fellow engineers in accordance with the arrangements.

Questions:

1. Was it ethical for Engineer A and his firm IJK Engineering to distribute passes as set forth?

2. Was it ethical for recipient engineer to accept the pass?

Reference:

Section II.5.b. - NSPE Code of Ethics: *Engineers shall not offer, give, solicit, or 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, or 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 ethics of gifts, both the giving and the receipt of, has long been a subject of question within the engineering profession. Views tend to vary with some engineers taking the hard-line view that any gift, even the giving or taking of a *de minimis* gift of little value, is unacceptable. Others take a more lenient view that the giving or the receipt of small, inexpensive gifts (e.g., pens, calendars, mugs) are an ingrained, well-established, and harmless part of society's sales and marketing culture. There is general agreement among most practitioners that, at a minimum, a line can be drawn between relatively inexpensive items and more costly or elaborate items, which raise questions of intent of both the gift donor and the gift recipient. A party's intent to influence the awarding of work, the granting of a contract, the specific terms of an agreement, renewal of an agreement, etc., (so called *quid pro quo*) and even outright bribery are logical points of inquiry where such practices occur.

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On several occasions and in a variety of contexts, the NSPE Board of Ethical Review has considered the issue of gifts. For example, one of the very first cases considered by the Board in this area was BER Case No. 60-9, where the Board considered three scenarios with the following results (all dollar figures have been adjusted for inflation):

Situation A *– A consulting engineer who has done considerable work for a public body makes it a practice to take certain staff engineering employees of the agency to lunch or dinner three or four times a year, at an average cost of $25 (per person). He also makes it a practice to give certain members of the engineering staff Christmas presents at an average cost of $50 each.*

Determination in Situation A *– The Board determined that occasional free luncheons or dinners and Christmas presents of relatively small value do not exceed the bounds of ethical behavior by the giver.*

Situation B *– Certain engineering employees of an industrial firm, who are in a position to recommend for or against the purchase of products used by the company, regularly receive cash gifts ranging from $100 to $500 from salesmen for particular products.*

Determination in Situation B *– The Board determined that inasmuch as it does not appear that the employees performed any services for the cash gifts, and in view of their position of responsibility and trust to the employer, the receipt of such cash gifts immediately raises a doubt as to the integrity of the employees and leaves an impression that the intent is to influence their discretion in favor of the giver. Acceptance of cash gifts in such circumstances is an unethical act.*

Situation C *– Upon completion of a major engineering contract held by a consulting engineer, the chief engineer of the client who worked directly and intimately with the consultant receives a new automobile of the value of approximately $25,000 from the consultant, with a letter stating that the gift is in appreciation of his close and friendly cooperation and assistance in the successful performance of the work.*

Determination in Situation C *– The Board determined that it is unethical to offer such a gift.*

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In considering these three separate situations, the Board acknowledged that the question of when a gift is intended to or becomes an inducement to influence one's impartial decision, as distinguished from an expression of friendship or a social custom, has remained a perplexing one over the years. The Board recognized that no blanket rule covering all situations exists. The size of the gift is usually a material factor, but must be related to the circumstances of the gift. It has been customary in the business world for friends and business associates to tender tokens of recognition or appreciation, and picking up the tab at a business luncheon or dinner is commonplace and well accepted in the mores of our society.

Recognizing the difficulties inherent in passing judgment on each instance, the Board noted that the NSPE Code of Ethics states, in substance, that an engineer may neither offer nor receive a gift that is intended to or will influence his independent professional judgment. However, the Board pointed out that the full application of this principle requires the impossible—that we read the state of mind of the donor or donee. Therefore, the Board sought to apply a criterion that reasonable men or women might infer from the circumstances: that the giving or acceptance of the benefit be a matter of good taste, and such that among reasonable men or women it might not be of a nature that raises suspicions of favoritism. "Applying these general principles to the situations at hand", said the Board, "we think that an occasional free luncheon or dinner, or a Christmas or birthday present when there is a personal relationship, is acceptable practice. On the other hand, cash payments to those in a position to influence decisions favorable or unfavorable to the donor are not in good taste and do immediately raise a suspicion that there is an ulterior motive. Likewise, a very expensive gift has a connotation of placing the recipient in a position of obligation."

Later in BER Case No. 79-8, Engineer A was a principal in an engineering firm that had performed work for a local water district. Engineer A gave Engineer B, the executive director of the water district, a hunting rifle. This fact was later reported in the local newspaper, quoting other public officials in the community to the effect that it was improper for the executive director to keep the rifle in light of the relationship between the water district and Engineer A. One of the quoted officials commented that he did not object to small, personal gifts, but it was "inappropriate" to keep an "expensive" rifle, noting that the executive director had "considerable influence" in the award of contracts. The cost of the rifle was not given, but local engineers who raised the question from the standpoint of engineering ethics estimated its retail value in excess of $1,500 (dollar figure adjusted for inflation). In concluding that (1) it was not ethical for Engineer A to give a public official of an agency with whom he has had contractual relations a personal gift, as described, and that (2) it was not ethical for Engineer B to accept the gift of Engineer A, the Board, citing BER Case No. 60-9, noted the difficulty of knowing what was in the minds of the two engineers. However, the Board determined that the NSPE Code language must be read with the result being that both the giving and receiving of the rifle was ethically improper. Even giving both engineers the benefit of

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the doubt as to their intentions, the controlling factor is the impression created in the public mind. Using the criteria set forth in BER Case No. 60-9, the Board decided that it did not need to decide precisely whether a $1,500 gift is too much to qualify as a token gift; it is enough that it is well beyond a nominal expression of friendship or esteem, such as the kinds of token gifts described in the BER Case No. 60-9 criteria.

More recently, in BER Case 05-6, Engineer A performed engineering services as an employee of the State Department of Transportation. Part of Engineer A's responsibilities was to serve as liaison with the consulting engineers and contractors that performed design and construction work for SDOT. Over the years, following completion of various successful projects, consulting engineering companies (including Engineer B's company) and contractors had offered the following to Engineer A from time to time:

1. Free tickets to the engineering company's box seats at a major league sporting event;

2. An invitation to a cocktail reception, celebrating the recently successful project with various other project participants;

3. An invitation to a dinner party hosted by the company to celebrate the recently successful project with various other project participants; and

4. An invitation to participate in a golf outing with company employees with various other project participants.

In deciding that 1) it would be ethical for Engineer A to accept such gifts as described in

1, 2, 3, or 4, and that 2) it would be ethical for Engineer B to offer such gifts as described in 1, 2, 3, or 4, the Board of Ethical Review concluded that the situations described in Situations 1, 2, 3, and 4, without more details, were not of a sufficient level to constitute an ethical violation. According to the Board, Situation 1 described a very common situation that has long existed within our culture and within the general business community, whereby customers or clients are occasionally invited to sporting events or other entertainment events to enhance ongoing working relationships that may exist between the client and the services provider. Unless the event in question involved more than a nominal cost (e.g., expense-paid trips to the Super Bowl), the Board was hesitant to conclude that such activities are strictly prohibited under the NSPE Code. Situations 2 and 3 were not unlike the situations described in BER Case No. 60-9 and, again, were intended to enhance ongoing working relationships that may exist between the client and the service provider or to celebrate mutually attained project achievements. Again, in the absence of some indication of some extravagance or excessiveness, the Board could not condemn such events as constituting a violation

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of the NSPE Code of Ethics. Finally, Situation 4 related to the hosting of a recreational event involving firm employees and other project participants that is presumably intended to strengthen working relations among the parties. Without more information (e.g., extravagant or excessive costs associated with the event), and in line with earlier NSPE BER decisions, the Board was not inclined to conclude that a violation had occurred.

Having said that the situations described in 1, 2, 3, and 4 were not on their face a violation of the NSPE Code, the Board also recognized that as an employee of the SDOT, Engineer A must be mindful of all applicable rules and regulations that would apply to SDOT employees and would ultimately govern. Engineer A clearly had an obligation to adhere to those rules and regulations, which may prohibit the receipt of such gifts. In addition, as a party contracting with SDOT, Engineer B and his firm may be barred from providing such gifts to SDOT employees. The Board's opinion was in no way intended to offer an opinion or a judgment on the appropriateness or the applicability of such rules. However, in the context of this case, the Board did not believe there was any intent on the part of Engineer B to influence the judgment of Engineer A.

Using the reasoning applied to these earlier discussed cases, and based upon the language in the NSPE Code of Ethics, it is the Board's view that under the present facts, Engineer A and his firm IJK Engineering acted ethically in distributing the passes as set forth. For the same reasons, it is the Board's view that it was ethical for recipient engineers to accept the passes. Engineer A and his firm IJK Engineering engaged in what appears to be a generally accepted marketing activity to provide both current and potential clients access to an industry trade program where those current and potential clients could observe new and innovative water and related technology. The open-ended and flexible agreement between IJK Engineering and the national water association, which allowed individuals to copy the invitation and distribute it broadly to the greater engineering community, suggests that the understood intent of Engineer A and IJK Engineering was to support the national water association, and aid in the dispersion of information and knowledge about water issues in order to create general business good will. Clearly, there is nothing under the facts to suggest that Engineer A or IJK Engineering intended to use the tickets as "*quid pro quo*" to improperly influence the granting of any contract, the specific terms of any agreement, the renewal of any agreement, etc.

Conclusions:

1. It was ethical for Engineer A and his firm IJK Engineering to distribute the passes as set forth.

2. It was ethical for the recipient engineers to accept the passes.

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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, and 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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