Gifts and Marketing—Engineering Ethics Course

Case No. 12-9

Facts:

Engineering Firm ABC has a continuing education department. The primary role of the department is to provide training for the staff that includes support for certain requirements of the state licensing board for professional engineers. The state licensing board for professional engineers requires 15 hours of continuing education to renew a professional engineering license, of which 1 hour must be an ethics course. As a service to the engineering profession, the continuing education department offers ethics courses to engineers who are not employees of the Firm. The course is open to any engineer who wishes to take the course. Attendees are from other firms, cities, districts, counties, state, and federal governments, etc. Many attendees are from clients of the Firm, but most are not. While the purpose of the course is not business development, it could result in a business contact potentially leading to future work for the Firm. No follow-up is made by the Firm to the attendees, except that a certificate is issued at the end of the course. A fee of $25 is charged to cover the cost of the lunch and some administrative support services. It is not intended for Engineering Firm ABC to make a profit from the course.

Questions:

1. Is it ethical for Engineering Firm ABC to offer the ethics course as set forth above?

2. Is it ethical for Engineering Firm ABC to offer the ethics course without charging the $25 fee?

References:

Section I.6.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
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 or intent of 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.*
Section III.2.a.	-	*NSPE Code of Ethics:*	*Engineers are encouraged to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health, and well-being of their community.*
Section III.8.a.	-	*NSPE Code of Ethics:*	*Engineers shall conform with state registration laws in the practice of engineering.*

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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:

State engineering licensure laws have been implemented for the protection of the public health, safety, and welfare. In order to ensure that professional engineers maintain their technical and professional competence, more than 40 state legislatures around the country have implemented mandatory continuing professional competency requirements. Of those states, several have imposed mandatory professional engineering ethics education requirements. A wide variety of options, including classroom and online instruction, are available to professional engineers in order to fulfill these requirements.

In the past, the NSPE Board of Ethical Review has had occasion to consider the issue of educational seminars as gifts. For example in BER Case No. 87-5, the ABC Pipe Company was interested in becoming known within the engineering community and, in particular, to those engineers involved in the specification of pipe in construction. ABC would like to educate engineers about the various products available in the marketplace and the advantages and disadvantages of using one type of pipe over another. ABC sent an invitation to Engineer A, as well as other 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 would host all refreshments, a buffet luncheon during the seminar, and a post-seminar cocktail reception. Engineer A agrees to attend. In concluding that it was ethical for Engineer A to attend the one-day complimentary educational seminar hosted by the ABC Pipe Company, the Board noted that in this case, they were dealing with a material supplier who was introducing information about pipe products to engineers in the community and had chosen an educational seminar as its vehicle. While ABC Pipe Company would seek to present its own products in a favorable light and point out their many advantages over others', a complimentary invitation to such a seminar did not reach the level that would raise an ethical concern. The Board cited earlier decisions and pertinent provisions of the NSPE Code of Ethics that related more to the circumstances in which valuable gifts were received and at least created the appearance of a "*quid pro quo*" or an exchange of valuable consideration for specifying the equipment. Under the facts of Case No. 87-5, Engineer A was accepting an opportunity to become educated on a particular topic consistent with NSPE Code Section III.11.a. 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.

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Later, in BER Case No. 04-7, Engineer A was an engineer executive of an industrial corporation and occasionally received invitations from vendors to attend multiday seminars at resort locations. Engineer A received an invitation from Vendor X regarding a seminar at a ski resort location and was unable to attend the event due to a scheduling conflict. After conferring with the Company Director of Human Resources, Engineer A agreed to establish a raffle, sell tickets to all company employees, and conduct a drawing for the seminar with the money from the sale of the tickets contributed to a local charity. The Board decided that it was unethical for Engineer A to accept the offer of a multiday seminar at a ski resort since it is a gift of substantial value and it was unethical for Engineer A to agree to have his firm establish a raffle, sell tickets, and conduct a drawing for the seminar with the money from the sale of the tickets contributed to a local charity. The Board concluded that establishing a raffle, selling tickets to all company employees, and conducting a drawing for the seminar, with the money from the sale of the tickets contributed to a local charity, did not mitigate the overriding concern about the acceptance of a gift of substantial value and would, therefore, not be consistent with the NSPE Code. The Board believed that while such an approach, on its face, might be rational, the approach ignores several underlying issues. Among these include the essential point raised in Case No. 87-5 regarding the nature, intent, and impact of a gift of substantial value. The Board believed that regardless of the mechanism by which that gift is distributed within the engineering company—here, a raffle for all employees—and despite whatever secondary benefits that might be received by the charity, the receipt of the substantial gift by the company would have at the very least an appearance of an effort by the vendor to influence the judgment of the company. Such action was neither consistent with the NSPE Code nor with earlier opinions of the NSPE Board of Ethical Review.

In the present case, it is the Board's view that Engineering Firm ABC's actions are consistent with the spirit and the intent of the NSPE Code of Ethics. ABC's offer to provide an ethics course to engineers outside the firm at cost is an honorable and responsible effort to enhance the reputation and usefulness of the engineering profession. The actions of ABC in this regard advances the health, welfare, and safety of the community in a manner consistent with the professional engineering licensure laws and regulations. Moreover, ABC's actions recognize the importance of all professional engineers extending their knowledge by keeping current on technical and professional developments. By its actions, ABC does not discriminate against any individual or institution, and makes its ethics course available to all. The fact that the ethics course could potentially result in a new client to ABC is at most an incidental result and is certainly not a prime motivation for ABC offering the course.

On the second question, unlike previous BER cases involving gifts, the program itself and the nominal cost of the program does not amount to valuable consideration as the circumstances (covering lunch and administrative support services) do not in any way suggest a "*quid pro quo*" in order to solicit a contract or any other business opportunity,

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either in the offering of the program to the outside parties or the receipt of the payment by ABC. Therefore, ABC's decision whether to charge or not charge does not affect the Board's view that the offering of the program is consistent with the NSPE Code.

Conclusions:

1. It is ethical for Engineering Firm ABC to offer ethics course as set forth above.

2. It is ethical for Engineering Firm ABC to offer the ethics course without charging the $25 fee.

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NOTE: The NSPE Board of Ethical Review considers ethical cases involving either real or hypothetical matters submitted to it from NSPE members, other engineers, public officials, and members of the public. The BER reviews each case in the context of the NSPE Code and earlier BER opinions. The facts contained in each case do not necessarily represent all of the pertinent facts submitted to or reviewed by the BER.

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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