Report on a Case by the Board of Ethical Review

Case No. 60-9

Subject: Gifts - -Section 8-Canons of Ethics; Section 9-Canons of Ethics: Section 16-Canons of Ethics; Rule 1-Rules of Professional Conduct; Rule 4- Rules of Professional Conduct; Rule 29-Rules of Professional Conduct.

Facts:
The following situations are consolidated into one case because they involve the same ethical principles:

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 $5 per person. He also makes it a practice to give certain members of the engineering staff Christmas presents at an average cost of $10 each.

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 $25 to $100 from salesmen for particular products.

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 $4,000 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.

Questions:
1. Was it ethical for the engineers in the above instances to offer any of the gifts to the employees?

2. Was it ethical for the engineers in the above instances to accept any of the gifts tendered them?

References:
Canons of Ethics-Section 8- "The engineer will act in professional matters for each client or employer as a faithful agent or trustee."

Section 9-"He will act with fairness and justice between his client or employer and the contractor when dealing with contracts."

Section 16-"He will not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with his clients or employer in connection with work for which he is responsible."

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Rules of Professional Conduct-Rule 1-"He will be guided in all his relations by the highest standards."

Rule 4-"He will not offer to pay, either directly or indirectly, any commission, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies."

Rule 29-"He will not accept personal consideration in any form. This assures that his recommendations for the award of a contract cannot be influenced."

Discussion:
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. No blanket rule covering: all situations has been discovered. The size of the gift is usually a material factor, but must be related to the circumstances of the gift. It would hardly be felt a token gift, such as a cigar, a desk calendar, etc., would be prohibited. It has been customary in the business world for friends and business associates to tender such 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, we believe the Canons and Rules state, in substance, that an engineer may neither offer nor receive a gift which is intended to or will influence his independent professional judgment. The full application of this principle requires the impossible-that we read the state of mind of the donor or donee. Therefore, we must apply a criterion which reasonable men might reasonably infer from the circumstances; that the giving or acceptance of the benefit be a matter of "good taste," and such that among reasonable men it might not be of a nature which raises suspicions of favoritism.

Applying these general principles to the situations at hand, 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 giver are not in good taste and do immediately raise a suspicion that there is an ulterior motive. Likewise, a very expensive gift is a connotation of placing the recipient in a position of obligation.

Conclusions:
Situation "A"-Occasional free luncheons or dinners and Christmas presents of relatively small value do not exceed the bounds of ethical behavior by the giver or receiver.

Situation "B"-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

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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"-It is unethical to offer or receive such a gift. It is conceivable that the expensive gift was tendered in good faith, honestly expressing appreciation for the cooperation and assistance of the chief engineer. Nor is there any direct evidence or implication that the consulting engineer would receive preferential treatment on any future work for the company. On the other hand, the chief engineer presumably had a duty to cooper? ate with the consulting engineer, in the interest of an efficient job by the consultant. And it might be inferred by reasonable men that one who had received an expensive gift would be under at least moral pressure in any future consideration of awarding additional work to the consultant. Here, we apply the concept of "good taste" find conclude that the chief engineer should decline the gift, thereby protecting his good name and reputation, and that of his profession, from any shadow of suspicion. In accepting such a gift he might not sully his character (what he is) but he would run a definite risk of besmirching his reputation (what others think he is), for the same reasons the consultant should not tender gifts of such magnitude, even though he sincerely acts with the best motives.

Board of Ethical Review L. R. DURKEE, P. E. PHIL T. ELLIOTT, P. E. WYLIE W. GILLESPIE, P. E. A, C. KIRK WOOD, P. E. MARVIN C. NICHOLS, P. E. EZRA K. NICHOLSON, P. E. PIERCE G. ELLIS, P. E., Chairman

Note: Member Elliott makes the following additional statements: In Connection with the conclusion in Situation "A," I would like to stress the occasional free luncheons or dinners and would omit Christmas presents almost irrespective of value unless they are items which are generally distributed as advertising material by the company. I feel very strongly that Christmas presents should neither "be given nor received by engineers under the circumstances.

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