Report on a Case by the Board of Ethical Review

Case No. 73-6

Political Contributions

Facts:
Engineers A, B, and C made political contributions in the sums of $150, $1000 and $5000, respectively, to a candidate for governor of the state in which the firms they are associated with as principals are located. The candidate they supported was victorious. Subsequently, the firms in which A, B, and C are principals received several state contracts for engineering services with total fees ranging from $75,000 to $4 million over a two-year period. The amount of political contribution made by each engineer and the amount of total fees from the state contracts paid to his firm were later disclosed in a local newspaper. It has been alleged in the local newspapers that the engineers acted unethically.

Questions:
1. At the time they made their contributions, were Engineers A, B, and C acting unethically?

2. Were Engineers A, B, and C unethical for taking the state contracts under the circumstances?

References:
Code of Ethics Section 3-"The Engineer will avoid all conduct or practice likely to discredit or unfavorably reflect upon the dignity or honor of the profession."

Section 4-"The Engineer will endeavor to extend public knowledge and appreciation of engineering and its achievements and to protect the engineering profession from misrepresentation and misunderstanding."

Section 11(b)-"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."

Discussion:
Before turning to the substantive point of the case, we deal with a technicality which has been raised regarding the wording of Section 11(b). As written, it prohibits an improper "offer to pay . .." but does not specifically prohibit an improper payment. We believe that the intent is without doubt that an improper payment as well as an offer to pay is outlawed, and, in fact, it could be argued on technical grounds that a defined improper payment is covered in the present wording because a payment carries with it the offer. Be that technicality as it may, we will suggest that the code be amended to remove any doubt of the intent and have the operative words state: "He will not pay, or offer to pay…"

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Coming to the substantive issues, this case is an opportunity to review a basic finding in point made over ten years ago in Case 62-12. Because of the importance of the issue before us, we believe it helpful to set out in considerable portion the reasoning in Case 62-12 which led then to the commentary in the discussion, now receiving considerable attention-that political contributions in excess of $100 should be given only with the understanding that the engineer ethically may be required to divest himself or his firm of contractual relations with the public agency which is controlled or substantially influenced by the candidate or party to whom the contribution was made. We recognized in 1962 that there might be justifiable exceptions to the suggestion, but in such cases the burden of proof should be on the engineer to show that his political contribution was not the basis for his receiving a contract. We recognized then, as we do now, that it is difficult for an engineer to prove that a contribution of more than a nominal amount did not have any influence on the receipt of a contract. In reaching our conclusion in the 1962 case we said:

"Here we must deal with motivation- what was in the mind of the contributor. It is beyond doubt that the engineer as a responsible citizen has and should have the same opportunity as others to hold political views and support the candidate of his choice for political office. Such interest and activity are to be encouraged.

"The implication of the facts, however, is that the political contributions were made to curry favor and place the engineer, and through him his firm, in a favorable position to secure contracts through the influence of the candidate elected to a public office which determines the award of such contracts.

"In essence, the question raised here is similar to that posed in Case 60-9, involving the giving of or receiving gifts. There we said, 'no blanket rule covering all situations has been discovered,' and further that'.. .we must apply a criterion which reasonable men might reasonably infer from the circumstances.. ..'

"The size of the contribution relative to the public office being sought is a material factor. A nominal donation would not imply that the contribution would result in favoritism, whereas a donation of several thousand dollars might well carry such a connotation. The nature of the office is another material factor-is it one which carries with it the power to determine whether a firm would be given a contract by the public body?"

"It is hardly possible to draw a precise line in dollar amounts for the purpose of defining when a political contribution becomes an improper incentive to secure contracts on the basis of favoritism. As in all ethical applications, the only sound rule is that when conduct may raise suspicion and doubt as to motive, it is the better part of wisdom to stay well within the line.

"The engineer has a right to give political contributions, but he has a duty under Canon 19 [now Section 4 of the code] to avoid doing so in such a manner that the engineering

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profession will be exposed to misunderstanding and distrust on the part of the public. Furthermore, Rule 4 [now Section 11 (b) of the code] specifically prohibits political contributions intended to influence the award of contracts.

"At the risk of being arbitrary, therefore, we would suggest that any political contribution in excess of $100 should be given only with the understanding that the engineer ethically may be required to divest himself or his firm of contractual relations with the public agency which is controlled or substantially influenced by the candidate or party to whom the contribution was made. There may well be exceptions, but we feel that the engineer must expect to carry the burden of proof that the award of a contract to him or his firm which it is charged was made on the basis of his political financial support was not, in fact, a result of his contribution beyond the suggested limit."

More than ten years have elapsed since the earlier case, and we are now asked if developments during that period warrant a change in approach or conclusion to the difficult question of political contributions.

After further analysis, we find no fundamental disagreement with what was said in the 1962 case in terms of basic principle. The basic problem has not changed-how the profession and the public may properly or improperly relate the amount of a political contribution to the later receipt of contracts from the recipient of the earlier contribution, directly or indirectly. Without some effective guideline for this purpose the profession and the public are left with the almost impossible task of proving a direct connection between the two events. The engineering profession owes a better answer to the public than to merely say that nothing improper has occurred unless the public, through its appointed officials, can prove a connection between the political contribution and the award of public contracts. The other side of the dilemma also remains-the right (and some would say duty) of engineers to actively participate in the political processes of their nation, state, and local community. We would point out at this juncture that to actively participate in the political process cannot be construed to mean solely the donation of money to the coffers of a candidate or party.

The 1962 decision recognized that the suggested limitation of $100 was arbitrary, but noted, as quoted above, what has become the "Caesar's wife" philosophy-that Caesar's wife must be above suspicion. So too the ethical engineer.

On that basis we reaffirm the principle, philosophy, and conclusion of the 1962 case with some refinements arising from the experience since that date. We would not be as arbitrary now in prescribing an exact figure of $100, or any other precise amount. Rather, we would suggest that the guideline for engineers wishing to make political contributions should be to hold the amount to a "nominal" sum. A contribution of $100 might be very generous for a candidate for a minor local office, whereas it would be nominal for a statewide office. A contribution of more than $100 might be justified as nominal under some circumstances. It was recognized in the 1962 case that it is not possible to draw a

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precise line in dollar amounts. On the basis of inflation since 1962, however, if $100 was nominal then, perhaps $200 would be a nominal limit now.

We would also add more emphasis to a point made only in passing in the 1962 case. The engineer who feels deeply for a particular candidate for political office has the option and right to contribute whatever amount his political devotion may call for, but in going beyond the nominal test he should be willing to recognize that his larger contribution ethically carries with it the duty to refrain from subsequent rewards from contracts, the awarding of which might be influenced by the persons he supported. Conversely, an engineer cannot ethically make contributions exceeding a nominal amount if he is working under or seeking to work under a contract, the award of which is controlled or substantially influenced by the recipient of his contribution.

Our dissertation and conclusion leave the profession with less than the clear, pragmatic, and definitive guideline which all might desire. But each situation must be resolved on its own facts and circumstances. We believe that the engineer who wants to be ethical in this context will find the answer in the nominal test which can satisfy his conscience and his desire to do his part in the political process. In each case the ethical engineer must apply the Caesar's wife test for himself and be willing thereafter to be judged by his professional peers. Our commentary and conclusion are limited to the ethical aspects of the problem and do not relate to possible legislative action and legal restraints now under discussion in some quarters which may be imposed on those seeking or holding contracts from public bodies.

While we believe the cited code references provide adequate justification for application of the nominal test as outlined, we believe that the code should be amended to provide specific reference to this test.

Conclusions*:

1. In the absence of a showing of improper intent, Engineers A, B, and C were not acting unethically at the time they made their contributions.

2. Engineer A was not unethical for taking state contracts under the circumstances since his contribution was in a nominal amount. Engineers B and C were unethical for taking state contracts under the circumstances since their contributions were each over a nominal amount.

Board of Ethical Review: William J. Deevy, P.E.; Joseph N. Littlefield, P.E.; James D. Maloney, P.E.; Robert E. Stiemke, P.E.

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Dissenting Opinion:
It is believed that the board may be overreacting in its majority opinion to current events concerning political activities and engineering contracts and thereby inviting even graver consequences of depriving the country of the advice, intelligence, and sincere efforts of engineers who strive to elect the best candidates to office and to provide the highest quality of government. As in the previously cited Case 62-12, the basis for a proper decision in this case is the intent of the donor in making a political contribution.

It is probable that all but a very small number of engineers make political contributions for the highly laudable and very commendable reasons of having governmental affairs in the hands of reasoning and dedicated officeholders who will sponsor, support, and enact legislation which is in the public interest and who will endeavor to have such legislation efficiently and equitably administered. As long as the present system of financing political campaigns is in effect, and in the light of the conclusions reached in this case, any engineer who relies on governmental or public works type of engagements for a substantial portion of his practice would have to refrain from acting meaningfully and constructively in the political process. With candidates dependent on donations and contributions for financing campaigns, it is naive to assume that any elected legislator is going to heed the advice or requests for support of legislation and administration by persons who have not given him strong support of his campaign efforts including the financing of such efforts.

As a result of an extension of the philosophy expressed by the majority opinion in this case, a rather ridiculous situation could occur in which a large consulting firm which normally provides extensive services in public works could be precluded from any such work for a period of several years if any member of that firm donated as little as $200 to one of the major political parties. Such preclusion would be based on the premise that the party might have an effect on the contract award and this practice cannot be tolerated for the sake of "appearances" (i.e., from Section 3 of the code he ". .. will avoid all conduct or practice likely to ... unfavorably reflect upon the dignity or honor of the profession").

This is not a reasonable attitude when, particularly at the Federal government level, there are numerous agencies with adequate procedures and well-qualified personnel completely competent to select and negotiate with engineers for professional services with freedom from political coercion and with proper regard for the public interest. It is an inconceivably unjust situation when a firm would be required to refrain from working in any of the thousands of political jurisdictions in the United States on the basis of a contribution to a major political party.

It would have been far better for the profession and its societies to have acted as zealously, as now is proposed, in ferreting out and disciplining wrongdoers prior to the time the acts of these persons came to public attention. Apparently, their improprieties were well enough known by engineers that action could have been taken.

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The views stated herein are not expected to be popular in light of the excited and urgent determination for taking positive action at this time to reassure the public that the engineering profession is an honorable one that should not be censured totally because of the transgressions of a few of its members. Certainly, the situation today which has been created by the improper conduct of a small number of engineers is deplorable and cannot be tolerated. However, the very urgency of demands for action makes it all the more imperative that other opinions be stated for all to consider.

Following a course of action expected to avoid any and all appearances of influence on the political process would mean that engineers and the engineering profession would be abandoning all responsibilities in this area to special interest groups such as labor unions, trade groups, business associations, and others which already have a disproportionate and overweening influence in public affairs. Also, unfortunately, the engineers who will refrain from participating in the political process as a result of this ruling are the ethical ones who would not have engaged in improper activities under these circumstances anyway, while the persons whose truly dishonest as well as unethical acts have created the present concern will be undeterred by the decision. The only benefit, therefore, is the one of "appearance"-really a public relations effort. The profession should be able to accomplish the public relations goal more effectively than by this means.

The discussion and conclusion of Case 62-12, repeated here, offer a better solution than the conclusion in this case. From the earlier case discussion: "There may well be exceptions, but we feel that the engineer must expect to carry the burden of proof that the award of a contract made to him or his firm . .. was not a result of his contribution;" and the conclusion: "It is not unethical for an engineer to contribute to a political party or candidate, per se, but it is unethical to make contributions in the expectation of being awarded contracts on the basis of favoritism."

A statement in the discussion of Case 73-6: "In each case the ethical engineer must apply the Caesar's wife test for himself and be willing thereafter to be judged by his professional peers" is compatible with the philosophy of Case 62-12, and incompatible with Conclusion 2 of Case 73-6 wherein engineers B and C were adjudged to be unethical for the sake of appearances because their contributions exceeded the nominal amount.

To take the extreme example, the engineer making a contribution of $500 on a national campaign fund basis to a major political party should be able to engage in work for a remote community whose public affairs are conducted by a governing body with a majority of members from the party to which he contributed without being adjudged unethical unless he had the opportunity to demonstrate that his selection was unaffected by his contribution (e.g., there was no reasonable expectation that members of the governing body could be aware of his contribution or even of his political affiliation or views).

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The philosophy established by the precedent of the conclusions of this case will not provide the desired deterrent to undesired and dishonest acts. Only a major change in the methods of raising political funds which would apply to all persons, or possibly the formation of a legal special interest group representing engineers through which the profession can act, appears to offer viable alternatives to appropriate activity by engineers within the present system.

William R. Gibbs, P.E., chairman; Donald C. Peters, P.E.

*__Note__-This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

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