Report on a Case by the Board of Ethical Review

Case No. 75-13

Political Contributions to Political Action Committee

Facts:
The members of a state organization of engineers in private practice establish a political action committee for the purpose of raising funds to support candidates for state public office. The political action committee (hereafter PAC) will operate in accordance with pertinent state laws, including a requirement that contributions from individuals be reported by name, address and amount and that such records be available for public inspection. All engineers in the state are invited to contribute to the PAC in such amounts as may be desired by the individual. The funds are disbursed to candidates for public office by an executive committee of five members elected by the members (contributors) of the PAC. The contributors will not control or allocate their contributions to the PAC to any particular candidate or candidates, nor will the contributors know the amounts of funds allocated to the individual candidates except by inspection of the records in the office of the secretary of state. Engineers A, B and C propose to contribute to the PAC in the amounts of $100, $500 and $5,000 respectively, but inquire if those contributions would be ethically permissible since the firms of each of them do substantial work for state and local agencies.

Question:
May Engineers A, B and C ethically contribute to the PAC in the amounts and under the conditions as stated?

References:
Code of Ethics – Section 11(b) – "He will not pay, or 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:
We dealt with this thorny question of political contributions at some length in Case 73-6, with the result that a majority of the members of the Board of Ethical Review concluded that political contributions in any amounts permitted by law were ethically acceptable, but that contributions in the amounts of $1,000 and $5,000 by engineers who thereafter sought and were awarded state contracts were ethically improper. The reasoning of the majority was based on the criteria established in the much earlier Case 62-12, in which it had been held that political contributions in excess of $100 should be given only with the understanding that the engineer is required to divest himself or his firm of contractual relations with a public agency which is con- trolled or substantially influenced by the candidate or party to whom the contribution was made. It was recognized in the preceding cases that the figure of $100 was an arbitrary one and was intended to reflect the concept that political contributions in "nominal" amounts would not raise suspicion or

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doubt that the contributor had a motive to secure personal economic advantage by his political contribution.

In Case 73-6, we somewhat modified the $100 "nominal" criterion by recognizing that what is "nominal" for one public office candidate might be more than "nominal" in another case, and that if $100 was "nominal" in 1962, $200 might be "nominal" in 1973.

Although policy actions of the NSPE Board of Directors are not binding upon us in interpreting the Code of Ethics, it is of some pertinence that in January 1974 the Board of Directors approved a policy declaration supporting the introduction and passage of legislation at the Federal, state and local levels, as appropriate, to limit political contributions to a nominal amount to candidates or political parties on the part of those who wish to secure contracts with applicable public agencies. The basis for the NSPE Board of Directors action was a report of the Task Force on Political Involvement in Awarding Engineering Contracts. The Task Force report recommended that the limitation on political contributions be not to exceed $100, but the Board of Directors deleted the $100 figure in favor of a restriction to a "nominal amount," but did not specify how the "nominal amount" should be determined. However, the Board of Directors adopted the majority opinion of Board of Ethical Review Case 73-6 as its interpretation of a "nominal" political contribution by engineers seeking to provide engineering services to public agencies.

Two members of the Board of Ethical Review dissented in Case 73-6, contending at length and with vigor that the majority had overreacted to the problem, and that the basis for a proper decision should be the intent of the donor in making a political contribution. It was argued by the minority that it would be contrary to the responsibility of engineers to support deserving candidates for public office to limit them to a particular amount at the cost of their fore- going work for public agencies.

Since the 1962 and 1973 decisions both the Congress and many state legislatures have enacted further laws controlling or limiting the amounts of political contributions, requiring more complete disclosure of contributions and tightening the laws generally with regard to political contributions, all with the purpose of eliminating to the extent possible actual or alleged instances of political contributions being used as a means for contributors to be the recipients of economic advantages from public agencies controlled or influenced by those receiving such political contributions. Both Federal law and state laws generally recognize and permit the operations of PACs of the type stated in this case.

The primary difference in this case and that decided in Case 73-6 is that in the 1973 decision the contributions were made directly to the candidate for public office, whereas the facts before us entail an evaluation of the difference, if any, when the contributions are made to a PAC. On the surface, it would be material if the difference in procedure meant that the political candidate, if successful, could not associate a particular political contribution with a particular individual or firm seeking contracts with public agencies which he might influence. That would be the result of the co-mingling of the funds of the

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contributors in the PAC and the allocation of those joint funds to candidates by a group separate from the contributors. Thus, at least in theory, a successful candidate for, say, governor of the state, would only know that he had been financially supported by "the engineers" of the state, and not by any particular engineer or engineers who might seek his favor. If that were the case we would be disposed to hold that §11(b) would not be offended by a political contribution of any amount, without limit, except as limited by law.

But here reality catches up with theory. The successful candidate for governor, because of the requirement for public disclosure of all contributions to the PAC, could know the names of the engineers who had contributed and the amount of their contributions to the PAC. He could not be certain of the particular contributor's intent or desire with regard to his candidacy, but he could reasonably assume that the executive committee in allocating the joint funds had generally reflected the political views of the contributors, and thereby further assume that the engineers who contributed substantial amounts were his 112 political supporters.

It may be that by this logic we arrive at the practical result that engineers wishing to provide services to public agencies are foreclosed from making political contributions in excess of a "nominal" amount even to a joint fund, such as a PAC. The improper influence on account of political contribution, if any, is barred by §11(b) "either directly or indirectly." Therefore, we must resolve whether the possible degree of improper influence under the circumstances described is of such a nature as to fall within the "indirect" reference in the language of §11(b). Ideally, the solution should be found in having sufficient interested engineers to contribute amounts within the "nominal" test so that the profession might properly support candidates reflecting their concepts and philosophies of government without any suspicion attaching of "buying" favoritism by virtue of large contributions. Practically, it has been difficult for all self-interest groups operating through PACs to obtain this kind of broad support to the extent required to raise substantial funds for political purposes.

There is perhaps no completely acceptable answer to the problem; engineers have a right to participate in the political process within the confines of applicable laws, and they have a duty under the Code of Ethics to refrain from that activity under circumstances in which they may be suspect of improper motivation. On balance, we believe that the PAC provides the best vehicle to accommodate both standards and that the possibility of identifying "large" contributors through the PAC procedure with a particular candidate who might render favors to the "large" contributors is remote enough to warrant acceptance of the indicated amounts in this case, or other amounts permitted by applicable laws. Almost need- less to say, any political contribution in excess of that permitted by law would be per se an offense under §11(b).

Conclusion:*
Engineers A, B and C may ethically contribute to the PAC in the amounts and under the conditions as stated.

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Board of Ethical Review: William J. Deevy, P.E., William R. Gibbs, P.E., Donald C. Peters, P.E., James F. Shivler, Jr., P.E., L. W. Sprandel, P.E., Robert E. Stiemke, P.E., Chairman.

Dissenting Opinion: It should be stated at the outset that Board opinions do not find individuals guilty of unethical practice; an individual can be found guilty of an ethical violation only after detailed investigation and review of the specific circumstances of his case. Board opinions in cases such as this can only provide guidance to conduct which will avoid public suspicion of unethical conduct.

In Case 73-6 we stated the view that "In each specific case the ethical engineer must apply the Caesar's wife test (avoidance of suspicion) for himself and be willing thereafter to be judged by his professional peers." Subsequently the Board of Directors of the Society endorsed legislation, as appropriate, to limit to a nominal amount political contributions to candidates or political parties by those engineers involved in contracts with applicable public agencies.

If an engineer involved in government contracts makes contributions larger than nominal to a Political Action Committee and the Committee then makes contributions larger than nominal to a political candidate influential in the award of those contracts, these facts will be readily available to any enterprising investigative reporter. Obviously, no unethical conduct will have been proven at this point but suspicion may very readily occur. The possibility of occurrence of such a set of circumstances is not remote.

In my opinion the proper advice of the Board to our potential contributors to a Political Action Committee should again be to apply the nominal test. The $100 and $500 contributions of Engineers A and B are nominal and permissible; the $5,000 contribution of Engineer C exceeds a nominal amount and is not. *Joseph N. Littlefield, P.E.*

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