Report on a Case by the Board of Ethical Review

Case No. 81-4

Gifts to Engineers

Facts:
Engineers A, B, and C are principals or employees of a consulting engineering firm which does an extensive amount of design work for private developers. The engineers are involved in recommending to the developers a list of contractors and suppliers to be considered for selection on a bidding list for construction of the projects. Usually, the contractors and suppliers recommended by the engineers for the selected bidding list obtain most of the contracts from the developers. Over a period of years the officers of the contractors or suppliers developed a close business and personal relationship with the engineers of the firm.

From time to time, at holidays or on birthdays of the engineers with whom they dealt, the contractors and suppliers would give Engineers A, B, and C personal gifts of substantial value, such as home furnishings, recreational equipment, gardening equipment, etc.

Question:
Was it ethical for Engineers A, B, and C to accept gifts from the contractors and suppliers?

References:
Code of Ethics-Section II.4.c.-"Engineers shall not solicit or accept financial or other valuable consideration, directly or indirectly, from contractors, their agents, or other parties in connection with work for employers or clients for which they are responsible."

Section II.5.b.-"Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any political contribution in an amount intended to influence the award of a contract by public authority, or which may be reasonably construed by the public of having the effect or intent to influence the award of a contract. 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.5.b.-"Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the Engineer in connection with work for which the Engineer is responsible."

Discussion:
The previous cases dealing with gifts have been under what may be called "reverse facts", in that the gifts were given by the engineers to those in the position of being able to influence the award of contracts for engineering services.

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In Case 79-8, an engineer in private practice gave a gift to an engineer in a public agency, and we held that it was unethical for the one engineer to make the gift, and unethical for the other engineer to accept it. But the primary thrust of the discussion revolved around the Code section barring the use of gifts by engineers to secure work. In that emphasis we referred to the criteria established in Case 60-9 on the issue of whether the gift was of a nature which might influence the award of work to engineers.

In Case 76-6 we dealt again with a gift by an engineer to an official of a foreign country, and also ruled that, notwithstanding the practice in the foreign country for officials to receive gifts from those who do business with the agency of the foreign country, it was unethical for the engineer to offer the gift.

In the first case involving gifts (Case 60-9), we looked at three circumstances, one of which involved engineering employees of an industrial company, who were in a position to recommend for or against the purchase of products, accepting nominal cash gifts from salesmen of particular products being offered their employer. In that case we also held that acceptance of even nominal gifts raised a question of integrity and hence was unethical.

The emphasis in the case before us raises more pertinently the idea of engineers accepting, rather than giving, gifts. Applying the principles of the earlier cases, and the language of the Code, as cited above in several sections, it seems clear that there would be, at least, a reasonable suspicion to others, and particularly to other contractors and suppliers, that acceptance of the gifts by Engineers A, B, and C would imply favoritism.

The language of Section II.4.c. covers acceptance of gifts, as well as their solicitation by engineers, and extends to the impact of such action on clients. Thus, the clients (developers) of the engineering firm may be led to question whether the recommendation of particular contractors or suppliers is totally unbiased and represents the independent judgment of the consulting firm. The first part of Section II.5.b. deals with political contributions, but applies equally to offering any gift in order to secure work. While under that language, Engineers A, B, and C did not in this case "offer" a gift, the section represents the same philosophy as Section II.5.c. And we have also cited Section III.5.b., even though its emphasis is on acceptance of commissions or allowances from contractors dealing with clients of the engineer, because it is a reflection of the same ethical concept noted above.

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When read in the context of the thrust of the entire Code on the matter of gifts, and in line with the ethical precept we have stated in the earlier cited cases, we affirm the overriding principle that engineers should "lean over backward" to avoid acceptance of gifts from those with whom they, or their firm, do business. We leave aside for this case the related issue of when a gift is permissible in terms of an expression of friendship or social custom, such as a calendar, a cigar, or picking up the check at a luncheon meeting. For general guidance on that point we refer the reader to the discussion of Case 60-9, namely that the guideline is that a gift of that nature be limited to those which will not raise any inference of compromising the independent professional judgment of the engineer, or that the giving or acceptance of such a gift be governed by the normal standards of good taste and acceptable custom.

Conclusion:*
It was not ethical for Engineers A, B, and C to accept gifts from the contractors and suppliers.

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