Report on a Case by the Board of Ethical Review

Case No. 88-2

Political Contributions

Facts:
Engineer A is the principal in a small-sized consulting engineering firm. Approximately 50 percent of the work performed by Engineer A's firm is performed for the county in which the firm is located. The value of the work for the firm is estimated to be approximately $150,000 per year.

Engineer A is requested to make a $5,000 political contribution, the maximum amount allowed by law, to help pay the cost of the media campaign of the county board chairman. After subsequent thought, Engineer A makes a $2,000 contribution to the campaign of the chairman, a person Engineer A has known for many years through mutual public service activities as well as their activities on behalf of the same political party. The county board chairman serves in a part-time capacity and receives $9,000 per year for his services. Other members of the board receive $8,000 per year for their services.

As required under the laws of his state, Engineer A reports the campaign contributions to the state board of elections, and correctly certifies that the contributions do not exceed the limits set by the law of the state. These contributions and the contributions of other firms in the county are reported by members of the local media who appear to suggest that Engineer A and other firms have contributed to the campaign in anticipation of receiving work from the county. Engineer A continues to perform work for the county after making political contributions.

Question:
Is it unethical for Engineer A to continue to perform work for the county after making the $2,000 contribution to the campaign of the county board chairman?

References:
Code of Ethics - Section II.3.a. - "Engineers shall be objective and truthful in professional reports, statements or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony."

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 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."

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Section III.1.f. "Engineers shall avoid any act tending to promote their own interest at the expense of the dignity and integrity of the profession."

Discussion:
For many years, the engineering profession has been grappling with the ethical issues involved with political contributions by individuals to state and local candidates. Political contributions was the subject of a keynote address by the National Society of Professional Engineers at a recent national meeting and continues to be examined by a special task force charged with developing a political contributions policy.

Over the years, the Board of Ethical Review has had occasion to examine the question of political contributions. Case 62-12, the first case of its kind, involved engineers who were officers or partners of various organizations such as consulting firms, construction companies, or manufacturing companies who made it a practice to contribute to campaign funds on behalf of those seeking public office. The engineers also contributed as individuals to both major political parties and in some cases to rival candidates for the same office. The Board ruled that it was not unethical for an engineer to contribute to a political party or a candidate per se, but it is unethical to make contributions in the expectation of being awarded contracts on the basis of favoritism. The Board began its discussion by noting: "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 party or candidate of his choice for political office. Such interest and activity is to be encouraged."

The Board noted however: "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 concluding its discussion, the Board noted: "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."

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Thereafter, in Case 73-6, Engineers A, B, and C made political contributions in the sums of $150, $1,000, and $5,000, 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. With two members dissenting, the Board found that 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, that Engineer A was not unethical for taking state contracts under the circumstances since the contribution was in a nominal amount, but that Engineers B and C were unethical for taking state contracts under the circumstances since their contributions were each over a nominal amount. The dissenting position criticized the majority conclusion that Engineers B and C were unethical noting: "As long as the present system of financing political campaigns is in effect, and in 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."

The Board also had the opportunity to discuss the issue of engineer political contributions to state and local candidates in other Cases (75-13 and 76-12). However, Cases 62-12 and 73-6 provide the greatest insight into the ethical dilemma faced by engineers who perform governmental or public works. We do not wish to address the issue of contributions to political action committees which has been addressed in Case 75-13 and determined to be entirely proper.

What we are faced with here is a fundamental clash between deeply rooted ethical principles and a profession faced by the pressures of the business environment. The language in the Code is clear; this Board has interpreted the language on more than two occasions and has been fairly consistent in its BER interpretation. Nevertheless, we continue to hear the refrain from many within the profession that "engineers are pressured into making contributions," and "it's a matter of survival." We must respond, however, that fundamental ethical principles stated in unequivocal terms cannot be bent or broken for economic expediency or gain.

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It has been 26 years since the Board decided Case 62-12 and 15 years since its decision was affirmed in Case 73-6. The NSPE Code of Ethics language on the question of political contributions (II.5.b.) has not been modified in any substantive manner since that time. While we recognize the difficulties encountered by many engineers who seek to perform public work and the pressures involved, we can find no justification for modifying our long-held view as enunciated in Case 62-12 and restated in Case 73-6 that direct contributions to candidates for political office in a nominal amount are permissible under the Code but that political contributions in excess of a nominal amount are violative of the Code.

Under the facts of this case, the requested political contribution of $5,000 was not a nominal contribution for the office of chairman of the county board and therefore was in violation of the Code of Ethics. Nominal political contributions should be evaluated on a case-by-case basis depending upon the nature of the political office involved, the size of the jurisdiction which the public official serves, and other appropriate considerations based upon the unique nature of the office. But with most provisions of the Code, the greatest responsibility falls upon the shoulders of individual engineers who must make a decision based upon their own consciences as to what is appropriate. In this particular case it is our judgment that a political contribution of $2,000 represents the upper limit of a nominal contribution and therefore is not in violation of the Code.

Conclusion:
It would not be unethical for Engineer A to perform work for the county after making a nominal political contribution of $2,000 to the reelection campaign of the county board chairman.

*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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