BER Case 94-3

APPROVED
May 9, 1995

Preamble	-	Code of Ethics
Section I.4.	-	Code of Ethics
Section II.4.a.	-	Code of Ethics
Section II.4.c.	-	Code of Ethics
Section III.5.a.	-	Code of Ethics
Section III.5.b.	-	Code of Ethics

CONFLICT OF INTEREST
ENGINEERING CONSULTANT SERVING AS EQUIPMENT MANUFACTURING SALES REPRESENTATIVE

FACTS:

Engineer A is a principal in a consulting engineering firm which also serves as an equipment manufacturing sales representative. When preparing specifications for the design and construction of manufacturing facilities, Engineer A almost without exception specifies the equipment and products developed by the manufacturer which Engineer A represents.

QUESTION:

Is it ethical for Engineer A to serve as an equipment manufacturing sales representative at the same time he is practicing as a consultant and to specify the equipment and products developed by the manufacturer in his role as a consultant?

REFERENCES:

Preamble	-	Engineering is an important and learned profession. The members of the profession recognize that their work has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. In the practice of their profession, engineers must perform under a standard of professional behavior which requires

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adherence to the highest principles of ethical conduct on behalf of the public, clients, employers and the profession.

Section I.4. - Act in professional matters for each employer or client as faithful agents or trustees.

Section II.4.a. - Engineers shall disclose all known or potential conflicts of interest to their employers or clients by promptly informing them of any business association, interest, or other circumstances which could influence or appear to influence their judgement or the quality of their services.

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 III.5.a. - Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.

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 role of the engineer and his relationship with equipment manufacturers has been considered by the Board on other occasions. As a general matter, engineers need to be extremely careful that their judgment as a independent professional is not unduly influenced by any relationship with such commercial entities.

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As an illustration, in BER Case 81-4, three engineers were principals or employees of a consulting engineering firm which did an extensive amount of design work for private developers. The engineers were 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 the three engineers personal gifts of substantial value such as home furnishings, recreational equipment, gardening equipment, etc. In deciding that it would be unethical for the engineers to accept these gifts, the Board noted that the case raised the idea of engineers accepting, rather than giving, gifts. Applying the principles of the earlier cases, and the language of the Code, it seemed clear to the Board that there would be, at least, a reasonable suspicion to others, and particularly to other contractors and suppliers, that acceptance of the gifts by the engineers would imply favoritism.

The Board noted that the language of Section II.4.c. covered 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 was totally unbiased and represented 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, the engineers in BER Case 81-4 did not ``offer" a gift, the Board noted that the section represented the same philosophy as Section II.4.c. The Board 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. The Board affirmed the overriding principle that engineers should ``lean over backward" to avoid acceptance of gifts from those with whom they, or their firm, do business.

More recently in BER Case 87-5, the Board considered a case involving a pipe contractor, that was interested in becoming known within the engineering community and, in particular, to those engineers involved in the specification of pipe in construction. The contractor wanted to educate engineers about the various products available in the marketplace: the advantages and disadvantages of using one type of pipe over another. The contractor sent an invitation to engineers in a particular geographic area, announcing a one-day complimentary educational seminar to educate engineers on current technological advances in the selection and use of pipe in construction. The contractor hosted all refreshments, buffet luncheon during the seminar, and a cocktail reception immediately following. An engineer agreed to attend.

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In deciding it was ethical for the engineer to attend the one-day complimentary educational seminar hosted by the contractor, the Board noted that instances where gifts or other property of monetary value are exchanged between an engineer and a potential client are extremely sensitive and do require careful scrutiny to determine if such exchanges are proper. However under the facts of BER Case 87-5, the Board noted that it was dealing with a material supplier who was introducing information about pipe products to engineers in the community and has chosen the form of an educational seminar as its vehicle. While the pipe contractor would undoubtedly seek to present its particular products in a favorable light and point out their many advantages, the Board concluded that a complimentary invitation to such a seminar would not reach the level that would raise an ethical concern. It was noted that earlier decisions and the pertinent provisions of the Code relate more to the circumstances in which valuable gifts are received and at least create the appearance of a ``quid pro quo" or an exchange of valuable consideration for specifying the equipment.

We believe this last comment by the Board in BER Case 87-5 is instructive under the facts presented in this case. Under the facts, Engineer A is serving as an equipment manufacturing sales representative and presumably receives reimbursement and commissions in his role, and at the same time he purports to be an independent consultant who will serve as an agent to represent the best interests of his client. This dual role is entirely inconsistent with the Code of Ethics and is unacceptable as it clearly raises the undeniable fact of a "quid pro quo"
or an exchange of valuable consideration for specifying a product. In addition to creating a serious conflict of interest, we would note that an engineer who specifies certain product line without regard to other competing products in the marketplace could easily cause his client to lose the benefit of new, innovative products and to incur higher costs. Such actions are directly contrary to the engineer's role as an independent professional and as an agent to the owner. Engineer A's dereliction is compounded under the facts by his apparent failure to disclose his relationship with the equipment manufacturer to his clients.

CONCLUSION:

It was unethical for Engineer A to serve as an equipment manufacturing sales representative at the same time he is practicing as a consultant and to specify the equipment and products developed by the manufacturer in his role as a consultant.

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