APPROVED -- 12/17/96

I.5. - Code of Ethics: Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts.

II.1.d. - Code of Ethics: Engineers shall not permit the use of their name or associate in business ventures with any person or firm which they believe is engaged in fraudulent or dishonest enterprise.

GIFTS TO FOREIGN OFFICIALS

FACTS:

Engineer A is a consulting engineer who does work in the United States and abroad. Engineer A is contacted by the government of Country A and asked to submit a proposal on a major water project being constructed in Country A. As part of the project, Engineer A is encouraged to associate with and retain Engineer B, a local engineer in Country A, who Engineer A has worked with in the past on private projects in Country A. One of the acceptable "customs" in Country A is for consultants such as engineers to give substantial gifts to public officials in connection with the awarding of public works contracts. Engineer A recognizes that the giving of such gifts may be a violation of U.S. law -- although they may not technically be a violation of the law in Country A. Engineer B proposes to Engineer A that if the project is awarded to Engineer A's firm, Engineer B will handle "business arrangements" in Country A and that Engineer A be involved in overall management of the project as well as all technical matters.

QUESTION:

Would it be ethical for Engineer A to proceed with the project under these circumstances?

DISCUSSION:

With the increase in international engineering practice as a result of the North America Free Trade Agreement (NAFTA) and the General Agreement on Trade in Services (GATS), engineers are being exposed to differing design selection methods. These practices are in many cases quite similar to the practices used in the United States and elsewhere; however in some cases, particularly in the developing world and in some cultures, there are sometimes different methods of selection. Some of these methods involve a design selection process which is more deliberative, more subjective and more personal than the methods employed in the U.S. Engineers need to be sensitive to these differences, practicing in a manner that is consistent with the ethical principles of the U.S. engineering community, and at the same time being respectful of the differing cultural traditions and expectations that manifest themselves in other societies. Engineers must not take actions that bring dishonor on other engineers, and this is

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equally true when engineers are practicing in the international arena (see NSPE Code Section II.1.d.).

Engineers must always follow their ethical compass on matters of this type, and there can be no doubt that as a matter of general principle, engineers must be consistent in their ethical conduct regardless of where it is the engineer is rendering professional services. While certain conduct may be acceptable or even the generally accepted rule in other cultures, such conduct does not necessarily become acceptable for engineers who adhere to a code of ethics containing proscriptions in these areas. While engineers must be careful not to pass judgment on a particular matter, engineers who are faced with this type of ethical quandary should make every attempt to carefully, delicately, and diplomatically sidestep the matter in order to remove any appearance of an ethical conflict.

Turning to the facts of the case, it is clear that Engineer A is being asked to participate in a project under circumstances that may involve a violation of U.S. law as well as the NSPE Code of Ethics. While being respectful of all of the parties involved in this matter, Engineer A should diplomatically indicate that while Engineer A would be interested in participating in the project; in question and offering the professional service, under the described arrangement, it would be illegal and unethical for Engineer A to participate in the project and that while Engineer A would be willing to consider an alternative arrangement under circumstances that were consistent with U.S. law and engineering ethics, the present arrangement would not be acceptable.

In the seventies, the Board of Ethical Review noted that the so-called “When in Rome...” rule, whereby engineers could engage in the legal and ethical practices of the host country was not consistent with the NSPE Code of Ethics (see BER Case 76-6). The Board of Ethical Review’s decision at that time was proper then and continues to be proper today. It should be noted that the facts in 76-6 involved a direct “kickback” between engineer and public official, while the present case involves the “encouragement” by a foreign official to “associate” with a local engineer. Situational ethics cannot be practiced any more in the professional practice area than it can in any technical area of practice. If we were to decide otherwise, it would not be much of a leap to suggest that engineers practicing in another country could engage in practices that could weaken the protections afforded to the citizens of that country because engineers would only be bound by the requirements, however little that might exist in that country. We believe that such an approach is wholly unacceptable and refuse to follow that path. Earlier and subsequent BER cases also support this view (see BER cases 87-5, 79-8, 87-4, 81-4).

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CONCLUSION: It would be unethical for Engineer A to proceed with the project under the circumstances.

BOARD OF ETHICAL REVIEW
James G. Fuller, P.E.
William W. Middleton, P. E.
Robert L. Nichols, P.E.
William E. Norris, P.E.
Paul E. Pritzker, P.E.
Jimmy H. Smith, P.E.
C. Allen Wortley, P.E. (Observer)

Donald L. Hiatte, P.E., Chairman

***** Note -- In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer and it is incumbent on a member of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.

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