

## **Conflict of Interest—Design of Playground As Favor To Public Official**

Case No. 16-11

### **Facts:**

Engineer A is the owner of an engineering firm in a small town. Engineer A and his firm frequently perform engineering services for the town and also for other local agencies that are overseen by the town council. Recently Engineer A and his firm were selected by a local agency to design a major public project in the town. Following the firm's completion of the project, Engineer B, the town engineer who leads a panel that approves the selection of engineering firms performing services for the town and other local agencies, asks Engineer A and his firm to donate engineering services to design a playground on behalf of a local not-for-profit organization that the city council member is active in and supports. Before Engineer A has a chance to reply, Engineer B advises Engineer A that Engineer A's firm's design of the playground will "keep Engineer A and his firm in good graces" with Engineer B regarding future work with the town or other public work.

### **Questions:**

1. Was it ethical, under the facts, for Engineer B to ask Engineer A and his firm to donate engineering services to design a playground on behalf of a local not-for-profit organization that the city council member is active in and supports?
2. Would it be ethical for Engineer A to donate engineering services for the playground design under the circumstances?

### **NSPE Code of Ethics References:**

- Section II.5.b. - Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding 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.*
- Section III.2. - Engineers shall at all times strive to serve the public interest.*
- Section III.3. - Engineers shall avoid all conduct or practice that deceives the public.*
- 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.6. - Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.*

### **NSPE BER Case References: 79-8; 05-6**

**Discussion:**

The obligation of professional engineers to be of constructive service to the community and serve the public interest has been a hallmark of professional engineering. Professional engineers contribute to communities by serving on public boards and civic groups, volunteering with not-for-profit community and youth groups, supporting and contributing to important public and private initiatives, and in many other ways.

In performing their professional services, professional engineers must be mindful that such service is personal in nature and a reflection of their values and commitment. Such service in many ways reflects who they are as professionals but should be viewed as separate and apart from what should be expected from them in their business relations with clients. To this point, it would be a mistake for either a professional engineer or a client to mix or confuse an individual's role in performing as a professional engineer and the individual's role in making contributions to the public. While these two roles may be complementary, there is a potential danger when the two are intermingled.

In the present case, a representative of a public client (Engineer B) has an expectation (and express authority) that a professional engineer (Engineer A) will donate engineering services which, while a public good (the design of a local playground) that will benefit the community, will also have the effect of enhancing the personal and political interests of the representative of the public client (Engineer B). In effect, Engineer A and his firm are under a degree of duress—the implicit promise of future work or the withholding of future work—if Engineer A does not accede to Engineer B's personal request to donate services.

In BER Case 79-8, Engineer A, a principal in an engineering firm that had performed work for a local water district, gave Engineer B, the executive director of the water district, a hunting rifle. This fact was reported in the local newspaper, quoting other public officials in the community to the effect that it was improper for the executive director to keep the rifle in light of the relationship between the water district and Engineer A. One of the quoted officials commented that he did not object to small personal gifts, but it was “inappropriate” to keep an “expensive” rifle, noting that the executive director had “considerable influence” in the award of contracts. The cost of the rifle was not given, but local engineers who raised the question from the standpoint of engineering ethics estimated its retail value at \$500. The Board of Ethical Review concluded that it was not ethical for Engineer A to give a public official of an agency with whom he has had contractual relations a personal gift and that it was not ethical for Engineer B to accept the gift of Engineer A.

In more recent years, the NSPE Board of Ethical Review considered cases involving gifts to public officials, including state department of transportation employees. In BER Case 05-6, the BER was faced with a series of gift scenarios and in conclusion noted that engineers must be mindful of all rules and regulations that would apply to government employees and would

ultimately govern. Engineers have an obligation to adhere to those rules and regulations, which may prohibit the receipt of such gifts. In addition, for parties contracting with state government, engineers may be barred from providing such gifts to government employees.

In the present case, Engineer A may have had a desire to support this initiative separate and apart from Engineer B's request to support the playground project. However, Engineer B improperly entangled Engineer A and his firm's professional services with Engineer B's request for support for the playground project. Engineer A must clearly communicate with Engineer B—a party who has influence and authority over the selection of engineering firms to perform work for the town—that Engineer A has no intention of abiding by Engineer B's request to assist with the playground project as a condition for future work with the town or other public work. Any other action would amount to an effort to make a contribution (in-kind services) to influence the award of a future contract.

**Conclusions:**

1. It was not ethical for Engineer B to ask Engineer A and his firm to donate engineering services for the design of a playground on behalf of a local not-for-profit organization that Engineer B is active in and supports.
2. It would not be ethical for Engineer A to agree to donate engineering services for the design of the playground under the circumstances.

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