Conflict of Interest – Performing Fire Investigation and Forensic Engineering Services as an Employee of a Company Owned by an Insurance Company

Case No. 17-11

Facts:

Engineer A, a professional engineer, performs fire investigations and forensic engineering services as an employee of Company X in homeowner fire damage claims as well as other accident claims made by homeowners on their homeowner's insurance policies. Company X is owned by a major national property and casualty insurance company that provides homeowners insurance policies to customers.

Question:

Would it be ethical for Engineer A to perform forensic engineering services and fire investigations as an employee of Company X?

NSPE Code of Ethics References:

Section II.4.a. - *Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment 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 outside agents in connection with the work for which they are responsible.*

Section II.5. - *Engineers shall avoid deceptive acts.*

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.1. - *Engineers shall be guided in all their relations by the highest standards of honesty and integrity.*

Section III.4.b. - *Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a specific project or proceeding in which the engineer has gained particular specialized knowledge on behalf of a former client or employer.*

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.*

NSPE BER Case References: 94-3, 81-4, 87-5

Discussion:

Conflicts of interest involving professional engineers and the question of conflicted loyalties in connection with the rendering of services is an ongoing ethical issue for professional engineers. This issue has been examined numerous times in various contexts and factual situations by the NSPE Board of Ethical Review.

For example, in BER Case 81-4, three engineers were principals or employees of a consulting engineering firm that 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 consider 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, and gardening equipment. 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 NSPE Code of Ethics, 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 Code 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 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 reflects the same ethical concept noted above. The Board affirmed the overriding principle that engineers should “lean over backward” to avoid accepting 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 who 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 invited engineers in a particular geographic area to 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.

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 had chosen the form of an educational seminar as its vehicle. While the pipe contractor would undoubtedly seek to present its 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 NSPE Code related 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.

In BER Case 94-3, Engineer A was a principal in a consulting engineering firm that also served as an equipment manufacturing sales representative. When preparing specifications for the design and construction of manufacturing facilities, Engineer A almost without exception specified the equipment and products developed by the manufacturer that Engineer A represented. The BER decided that under the facts, Engineer A was serving as an equipment manufacturing sales representative and presumably received reimbursement and commissions in his role, and at the same time he purported to be an independent consultant who served as an agent to represent the best interests of his client. This dual role was entirely inconsistent with the NSPE Code and was unacceptable because it clearly raised 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, the BER noted that an engineer who specifies a 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 were directly contrary to the engineer's role as an independent professional and as an agent to the owner. Engineer A's dereliction in BER Case 94-3 was compounded by his apparent failure to disclose his relationship with the equipment manufacturer to his clients.

Turning to the present case, the facts do not clearly indicate that Engineer A's role was to represent the interests of the insured homeowners in any fire damage or other claims that the homeowners may be making against their homeowner's insurance policy. If Engineer A's role is solely to conduct an investigation on behalf of the insurance company to provide preliminary information to the homeowner's insurance company, it would be acceptable for Engineer A to perform that function, with the stipulation that any communications with the homeowner should be prefaced with "full disclosure" regarding Engineer A's role and primary duty and loyalty. In such cases, the homeowner would be on notice to retain the services of an independent professional engineer to conduct an investigation.

Conclusion:

If Engineer A's role, for example, is solely to conduct an investigation on behalf of the insurance company to provide preliminary information to the homeowner's insurance company, it would be acceptable for Engineer A to perform that function, with the stipulation that any communications with the homeowner should be prefaced with "full disclosure" regarding Engineer A's role and primary duty and loyalty. It is understood that independent investigations should to be intended to mean investigations performed by individuals with no apparent vested interest or bias in the outcome. It would be ethical for Engineer A to perform forensic engineering services and fire investigations as an employee of Company X.

On the other hand, if Engineer A's role is to appear to be employed by an independent company and conduct an independent investigation to determine the cause of the fire or other claims that the homeowners may be making against their homeowner's insurance policy, it would be unethical for Engineer A to perform forensic engineering services and fire investigations as an employee of Company X.

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NOTE: The NSPE Board of Ethical Review considers ethical cases involving either real or hypothetical matters submitted to it from NSPE members, other engineers, public officials, and members of the public. The BER reviews each case in the context of the NSPE Code and earlier BER opinions. The facts contained in each case do not necessarily represent all of the pertinent facts submitted to or reviewed by the BER.

Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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