

## **Conflict of Interest—Chairman of Editorial Board of Technical Society Publication**

### **Case No. 18-2**

#### **Facts:**

Engineer A is a board member of an engineering technical society and is actively encouraging the society to enter into an agreement with Jones Publishing, a technical journal publisher, to annually publish technical articles and content generated by the society's members. During the recent engineering technical society board of director meetings, Engineer A expressed strong resistance to exploring other publishing options to determine what terms and conditions other technical journal publishers might offer to the society. Under a separate private, undisclosed side agreement with Jones Publishing, Engineer A would be given a visible and prestigious position as chairman of the editorial board for another journal published by Jones Publishing if the engineering technical society agrees to enter into the agreement with the company.

#### **Question:**

What are Engineer A's ethical responsibilities under the circumstances?

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

- Section I.5. - Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts.*
- Section II.4. - Engineers shall act for each employer or client as faithful agents or trustees.*
- 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.b. - Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.*
- 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.*

#### **NSPE BER Case References: 59-3, 60-5, 62-7, 63-5, 82-6, 85-4, 99-2**

#### **Discussion:**

Conflicts of interest are among the most prevalent ethical concerns facing engineering practitioners. Over the years, the Board of Ethical Review has considered numerous cases dealing with the multifaceted issues involved in situations in which engineers are faced with conflicts involving clients, employees, or other engineers. At one time, the NSPE Code of Ethics specifically prohibited engineers from becoming involved in cases or situations in which a conflict of interest was present. This was based on the view that professional engineers must at all times be above reproach and avoid any situation that could be perceived as compromising their professional judgment and integrity as independent professionals. (See BER Case Nos. 59-3, 60-5, 62-7, and 63-5 for examples of cases in which the Board expressed the view that engineers had a strict obligation to avoid conflicts of interest).

Over time, the NSPE Code and the Board of Ethical Review have moderated to the point of recognizing that certain types of conflicts of interest are difficult, if not impossible, to avoid and that the more realistic approach for individual engineers faced with this type of ethical conflict is to fully disclose the nature and extent of the conflict to the appropriate parties involved or impacted by the conflict. This is based on the view that the parties that are most affected by the conflict and who have the most at stake (e.g., clients, employers, other engineering firms, etc.) are in the best position to determine whether their interests will be compromised by the conflict. While sometimes perceived conflicts of interest are resolved by the parties as a result of full disclosure, in other instances the conflicts are deeper and require the engineer to disassociate from a specific project. In past years, the Board has considered the issue of conflicts of interest in various contexts.

For example, in BER Case No. 82-6, an engineer was retained by the US government to study the causes of a dam failure. Later, the engineer was retained by the contractor on the dam project who had filed a claim against the government for additional compensation. The Board concluded that it was not ethical for the engineer to be retained as an expert witness for the contractor under these circumstances.

In BER Case No. 85-4, a forensic engineer was hired as a consultant by an attorney to provide an engineering and safety analysis report and courtroom testimony in support of a plaintiff in a personal injury case. Following the engineer's review and analysis, the engineer determined that he could not provide an analysis favorable to the plaintiff because the results of the report suggested that the plaintiff, and not the defendant, was at fault in the case. After the engineer's services were terminated and his fee paid in full, an attorney representing the defendant in the case sought to retain the engineer to provide an independent and separate engineering and safety analysis report. The engineer agreed.

In concluding that it was not ethical for the engineer to agree to provide a separate engineering and safety analysis report, the Board noted that the mere fact that the engineer ceased performing services for the first attorney would not be an adequate solution to the ethical dilemma at hand. The Board stated that the engineer, throughout his first analysis, had access to information, documents, etc. that were made available to him by the attorney in a cooperative and mutually beneficial manner. The Board rejected the proposition that following the termination of a relationship with that attorney, the engineer would “blot out” all of that information from his mind and start from “square one” in performing his engineering and safety analysis report. The Board commented that, in their view, the real reason for the attorney's hiring of the engineer was his belief that the engineer would provide a report that would be favorable.

In Case 99-2, the BER was confronted with the question of whether it was ethical for Engineer A to not fully disclose the size and extent of his laboratory and clients to a coal mine owner. In that case, Engineer A, a mining engineer, was retained by a company that owned land on which coal mines were located. Engineer A provided engineering services and surveys to determine the location of coal veins in the mine, assigned coal contractors to the locations in the mine, and

performed other engineering services as required. Engineer A also owned a laboratory that evaluated the quality of coal mined by coal contractors that contracted with the coal mine owner. The quality and cost of mining the coal varied. Although Engineer A mentioned that he owned a laboratory, Engineer A never informed the coal mine owner about the size and the extent of his laboratory, which was substantial and employed several other engineers and technicians, nor about his clients who were mining the owner's coal. In deciding that it was not ethical for Engineer A to not fully disclose the size and extent of his laboratory and his clients to the coal mine owner, the BER determined that Engineer A had an obligation to fully disclose the nature and extent of his laboratory practice to the mine owner in order for the owner to fully understand the implications of the relationship between the two activities. The mine owner's business practices could be called into question by virtue of unknowingly permitting Engineer A to engage in such activities in connection with his mines. Therefore, Engineer A should have been much more forthcoming with the information. The Board believed having not provided the information was a violation of the NSPE Code of Ethics.

Turning to the facts in the present case, the BER believes Engineer A has a trust relationship in his role as a board member of an engineering technical society and therefore must provide full disclosure regarding the side agreement with Jones Publishing to become chairman of the editorial board prior to the engineering society's formal consideration and voting on the matter. The BER believes that conflicts of interest do not necessarily only involve financial considerations. Organizational conflicts of interest can also arise. Professional engineers often find themselves involved with and representing multiple organization interests in their professional activities. Furthermore, in the BER's view, Engineer A should also recuse himself from his role as a board member acting on this issue for the engineering technical society or, if appropriate, resign as a board member of the engineering technical society.

### **Conclusion:**

Engineer A has a trust relationship in his role as a board member of an engineering technical society and therefore must provide full disclosure regarding the side agreement with Jones Publishing to become chairman of the editorial board prior to the engineering society's formal consideration and voting on the matter. Furthermore, Engineer A should recuse himself from his role as a board member acting on this issue for the engineering technical society or, if appropriate, resign as a board member of the engineering technical society.

### **Board of Ethical Review:**

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