

Payment of Fee Due Tied to Charitable Contribution

Case No. 19-2

Facts:

Engineer A has a consulting engineering firm and enters into an agreement with a not-for-profit organization to design a renovation of one of the organization's buildings. Following the execution of the agreement, the organization proposes a series of design changes that cause the services to exceed the budgeted amounts. Because the organization has limited resources and because the organization's mission is charitable, Engineer A does not immediately invoice the organization for the design changes. Engineer A proposes that in lieu of immediate payment from the organization, Engineer A will delay submitting the invoice, make a personal charitable cash contribution to the organization for an amount approximating the amount of the invoice (but not claim a tax deduction for the contribution), and thereafter invoice the organization, with the organization paying Engineer A's firm for his engineering design services.

Question:

Was it ethical for Engineer A to propose that in lieu of immediate payment from the organization, Engineer A will delay submitting the invoice, make a personal charitable cash contribution to the organization for an amount approximating the amount of the invoice (but not claim a tax deduction for the contribution), and thereafter invoice the organization, with the organization paying Engineer A for his engineering design services?

NSPE Code of Ethics References:

- Section I.6. – Engineers, in the fulfillment of their professional duties, shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
- Section II.1.d. – Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.*
- Section II.3.c. – Engineers shall issue no statements, criticisms, or arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.*
- Section III.2.a. – Engineers are encouraged to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health, and well-being of their community.*

NSPE BER Case References: [87-5](#), [04-7](#)

Discussion:

The ethical duty of professional engineers to support civic activities is fundamental to their role in demonstrating a commitment to the public. NSPE Code of Ethics Section III.2.a. encourages engineers to participate in civic affairs and other activities to advance the well-being of their community.

The issue of how community service affects professional practice was addressed in [BER Case 04-7](#), a case involving a potential donation to a local charity. In that case, Engineer A was an engineer executive employee of an industrial corporation and occasionally received invitations from vendors to attend multiday seminars at resort locations. Engineer A received an invitation from Vendor X to a seminar at a ski resort and was unable to attend the event due to a scheduling conflict. After conferring with the Company Director of Human Resources, Engineer A agreed to establish a “raffle,” sell tickets to all company employees, and conduct a “drawing” for the seminar, with the money from the sale of the tickets contributed to a local charity. In that case, the NSPE Board of Ethical Review decided that (1) it was unethical for Engineer A to accept the offer of a multiday seminar at a ski resort because it was a gift of substantial value and (2) that it was unethical for Engineer A to agree to have his firm establish a “raffle,” sell tickets, and conduct a “drawing” for the seminar, with the money from the sale of the tickets contributed to the local charity.

First, the Board was faced with the question of whether the benefits provided by the raffle (donation of money derived from the raffle to a charity) mitigated the appearance of a “quid pro quo” created by the invitation to the ski resort seminar. In addressing this issue, the Board considered the following: the nature of the invitation and its value, both to the vendor and the engineering company; the intentions of the vendor; the impact of the value and benefits received by the company and one of its employees as well as the obvious benefit to the charity; the dispersal of the benefit among all company employees as opposed to Engineer A; and the legitimate needs of a vendor to establish good will with a client. After weighing these factors, the Board concluded that establishing a “raffle,” selling tickets to all company employees, and conducting a “drawing” for the seminar with the money from the sale of the tickets contributed to a local charity did not mitigate the overriding concern about the acceptance of a gift of substantial value and would, therefore, not be consistent with the NSPE Code of Ethics. The Board noted that while such an approach might have some upsides, that approach ignored several underlying issues (e.g., see [BER Case 87-5](#) regarding the nature, intent, and impact of a gift of substantial value). The Board determined that regardless of the mechanism by which that gift was distributed within the engineering company—here, a raffle for all employees—and despite whatever secondary benefits that might be obtained by the charity, the receipt of the substantial gift by the company would have at the very least an appearance of an effort by the vendor to influence the judgment of the company. Such action, said the Board of Ethical Review, was not consistent with the NSPE Code or the board’s earlier opinions.

In the present case, the Board believes the circumstances are substantially different than those in [BER Case 04-7](#). The ethical focus in BER Case 04-7 turned on the acceptance of a gift of substantial value and a subsequent effort to rationalize acceptance of the gift through a charitable contribution. In

contrast, the present case involves what appear to be two independent but somewhat related issues: (1) the invoicing and payment of a fee due for professional services rendered and (2) a voluntary charitable contribution to a not-for-profit organization. The former situation suggests an apparent attempt to sanitize an apparently unethical act with a charitable act. The latter situation suggests an innovative means of both satisfying a commercial debt while, at the same time, making a voluntary contribution to a not-for-profit organization. It is the NSPE Board of Ethical Review's opinion that Engineer A's actions are consistent with the NSPE Code of Ethics, assuming they are done lawfully. They do not suggest any illegal or fraudulent activity, and they appear consistent with the professional engineer's obligation to participate in civic affairs and other activities to advance the well-being of their community. At the same time, the NSPE Board of Ethical Review strongly encourages Engineer A to be cautious of any appearance of impropriety and to seek advice and assistance with appropriate legal and tax professionals.

Conclusion:

Engineer A's actions are consistent with the professional engineer's obligation to participate in civic affairs and other activities to advance the well-being of their community, assuming these actions are lawful and do not involve any illegal or fraudulent activity. The board strongly encourages Engineer A to be cautious of any appearance of impropriety and to seek advice and assistance with appropriate legal and tax professionals.

Board of Ethical Review:

Vincent P. Drnevich, Ph.D., P.E., F.NSPE
Mark H. Dubbin, P.E., LEED AP
Jeffrey H. Greenfield, Ph.D., P.E., F.NSPE
Kenneth L. McGowan, P.E., F.NSPE
Craig N. Musselman, P.E., F.NSPE
Hugh Veit, P.E.
Susan K. Sprague, P.E., F.NSPE (*Chair*)

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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 of Ethics 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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