

Gift—Charity Fundraiser **Raffling Off Vendor Invitation to Seminar at Resort Location**

Case No. 04-7

Facts:

Engineer A is an engineer executive employee of an industrial corporation and occasionally receives invitations from vendors to attend multi-day seminars at resort locations. Engineer A receives an invitation from Vendor X regarding a seminar at a ski resort location and is unable to attend the event due to a scheduling conflict. After conferring with the Company Director of Human Resources, Engineer A agrees 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.

Question:

Was it ethical 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 a local charity?

References:

- Section II.4.c. - NSPE Code of Ethics: *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 III.2.a. - NSPE Code of Ethics: *Engineers shall seek opportunities to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health and well-being of their community.*
- Section III.5.b. - NSPE Code of Ethics: *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.*
- Section III.9.e. - NSPE Code of Ethics: *Engineers shall continue their professional development throughout their careers and should keep current in their specialty fields by engaging in professional practice, participating in continuing education courses, reading in the technical literature and attending professional meetings and seminars*

Discussion:

As with many Board of Ethical Review cases, the facts in this case present a balancing of competing interests and concerns and the appropriateness of an engineer’s actions in addressing these interests and concerns.

As an example, NSPE BER Case No. 87-5 discussed a company, the ABC Pipe Company, that was interested in becoming known within the engineering community and, in particular, to those engineers involved in the specification of pipe in construction. ABC sought to educate engineers about the various products available in the marketplace—the advantages and disadvantages of using one type of pipe over

another. ABC sent an invitation to Engineer A, as well as other engineers in a particular geographic area, announcing a one-day complimentary educational seminar to educate engineers on current technological advances in the selection and use of pipe in construction. ABC offered to host all refreshments, a buffet luncheon during the seminar, and a cocktail reception immediately following. Engineer A agreed to attend and then subsequently attended the seminar.

In ruling that was ethical for Engineer A to attend the one-day complimentary educational seminar hosted by the ABC Pipe Company, 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. The Board also stated that in the past, the Board has examined the question from two perspectives: (1) where an engineer provides a client with a gift or valuable consideration under circumstances that could create the appearance of seeking to influence the client's judgment, and (2) where a supplier provides the engineer with a gift or valuable consideration under circumstances that could create an appearance that the supplier was seeking to influence the engineer's judgment. In BER Case No. 87-5, the Board found that the facts involved a material supplier who was merely introducing information about pipe products to engineers in the community, and who had chosen the form of an educational seminar as its vehicle. While ABC Pipe Company might have sought to present its particular products in a favorable light and point out their many advantages over others', a complimentary invitation to such a seminar would not reach the level that would raise an ethical concern. The Board noted that earlier Board opinions and the pertinent provisions of the NSPE Code relate 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. Under the facts in BER Case No. 87-5, Engineer A was accepting an opportunity to become educated on a particular topic consistent with his job duties. Engineer A would be attending the seminar with many of his colleagues, and there would be no suggestion in the facts that anyone at ABC Pipe Company would personally seek to persuade Engineer A to specify its products. The Board also viewed the buffet luncheon and cocktail reception immediately following the seminar as falling within the "de minimus" provisions noted in BER Case Nos. 60-9 and 81-4, and thus it would not be improper for Engineer A to participate in those activities. Importantly, however, the Board noted that "had Engineer A agreed to accept items of substantial value (e.g., travel expenses, multi-day program, resort location, etc.) our conclusion would have been quite different."

While we agree with the Board's statement in BER Case No. 87-5, it is important to note that this finding is based upon the understanding that Engineer A or one of the employees within his company would not directly benefit in what amounts to an appearance of a two-way "quid pro quo". However, the facts in the present case indicate a novel approach to dispensing with the vendor's invitation—a raffle among all company employees.

The question for the Board therefore is whether the benefits provided by the raffle (donation of money derived from the raffle to a charity) mitigate the appearance of a

“quid pro quo” created by the invitation to the ski resort seminar. In determining this issue, the Board must consider 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.

Having weighed these factors, the Board must conclude 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 does 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 believes that while such an approach, on its face, might present an attractive approach, the approach ignores several underlying issues. Among these include the essential point raised in BER Case No. 87-5 regarding the nature, intent and impact of a gift of substantial value. The Board believes that regardless of the mechanism by which that gift is distributed within the engineering company—here a raffle for all employees—and despite whatever secondary benefits that might be received by the charity, the receipt of the substantial gift by the company will have at the very least an appearance of an effort by the vendor to influence the judgment of the company. Such action is not consistent with the NSPE Code or earlier opinions of the NSPE Board of Ethical Review.

In closing, the Board would note that had Engineer A first discussed the idea of a raffle with Vendor X, obtained its permission, and limited the raffle only to qualified technical and professional personnel, the result may have been different.

Conclusions:

1. It was unethical for Engineer A to accept the offer of a multi-day seminar at a ski resort since it is a gift of substantial value.
2. 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 a local charity.

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