

Political Contributions – Fundraising Barbeque

Case No. 06-12

Facts:

Engineers from a variety of engineering firms were invited to participate in a fundraising barbeque held by the deputy secretary of the State Department of Transportation for the governor's re-election campaign. Some of the engineers were designated as "sponsors" because they gave \$250, \$500, or \$1,000 at the fundraiser. Among the individuals invited were a number of engineers who work for engineering companies that do business with the State DOT. When questioned, the engineers indicated that their contributions would have no bearing on their firm's selection to do business with the state. At the time of the fundraiser, some of the firms were in the process of negotiating contracts with the State DOT. The deputy secretary of the State DOT has no role in approving engineering contracts.

Question:

Was it ethical for the engineers to participate in the fundraiser?

References:

- Section II.5.b. - NSPE Code of Ethics: *Engineers shall not offer, give, solicit, nor 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.6. - NSPE Code of Ethics: *Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.*

Discussion:

Ethical and related issues involving political contributions by individual engineers and firms has been an issue that the engineering profession has addressed and continues to address. The issue has a variety of facets, including the well-acknowledged need for professional engineers to become actively involved in the political process to effect legislative, legal, and regulatory policy contrasted with the appearance of individuals and companies making political contributions with the expectation or at least in anticipation of favorable consideration for future public engineering work and other related issues. Clearly, this is a complicated issue with no easy solution.

Over the years, NSPE has studied the issue in significant depth and taken a position to encourage all engineers to support political candidates who have demonstrated through their activities a commitment to ethical professional practices. NSPE cautions, however, that consistent with the NSPE Code of Ethics, that it is unprofessional for engineers, either on their own behalf or on behalf of their firms or employers to make political contributions in the form of either cash or services in a manner intended to influence the award and administration of contracts involving a public authority, or which may have the appearance of influencing the award and administration of contracts involving a public authority. Therefore, consistent with its values, goals, and Code, NSPE

1. Encourages, endorses, and supports the enactment of public disclosure laws, which identify political contributions to federal, state, and local candidates.
2. Endorses the enactment of laws and rules, administered by state ethics and election commissions and professional and trade licensing boards, which are intended to assist candidates for public office and professionals in avoiding ethical and legal conflicts relating to political contributions.
3. Endorses the establishment of state ethics and election commissions to monitor these laws in those states where such commissions do not currently exist, and advocates that state ethics and election commissions and licensing boards for all professions and trades be empowered to establish rules and limits for contributions.

(Excerpted from NSPE Professional Policy No. 146-Political Contributions)

Furthermore, NSPE endorses that these boards and commissions be empowered to establish penalties and take appropriate enforcement action against parties that fail to follow the requirements of the laws and rules.

Similarly, the NSPE Board of Ethical Review has examined this issue on previous occasions. In BER Case No. 88-2, Engineer A was the principal in a small-sized consulting engineering firm. Approximately 50% of the work performed by Engineer A's firm was performed for the county in which the firm is located. The value of the work for the firm was estimated at \$150,000 per year. Engineer A was requested to make a \$5,000 political contribution, the maximum amount allowed by law, to help pay the cost of the media campaign of the county board chairman. After subsequent thought, Engineer A makes a \$2,000 contribution to the campaign of the chairman, a person Engineer A has known for many years through mutual public service activities as well as their activities on behalf of the same political party. The county board chairman serves in a part-time capacity and receives \$9,000 per year for his services. Other members of the board receive \$8,000 per year for their services. As required under the laws of his state, Engineer A reported the campaign contributions to the state board of elections and correctly certified that the contributions did not exceed the limits set by the law of the state. The contributions and the contributions of other firms in the county were

reported by members of the local media who appeared to suggest that Engineer A and other firms had contributed to the campaign in anticipation of receiving work from the county. Engineer A continued to perform work for the county after making political contributions. In deciding that it would not be unethical for Engineer A to perform work for the county after making a nominal political contribution of \$2,000 to the reelection campaign of the county board chairman, the board noted that while it recognized the difficulties encountered by many engineers who seek to perform public work and the pressures involved, the board could find no justification for modifying its long-held view as enunciated in BER Case No. 62-12 and restated in BER Case No. 73-6 that direct contributions to candidates for political office in a nominal amount are permissible under the Code but that political contributions in excess of a nominal amount are a violation of the Code. Under the facts of this case, said the board, the requested political contribution of \$5,000 was not a nominal contribution for the office of chairman of the county board and, therefore, would be in violation of the Code. Said the board, nominal political contributions should be evaluated on a case-by-case basis depending upon the nature of the political office involved, the size of the jurisdiction that the public official serves, and other appropriate considerations based upon the unique nature of the office. But with most provisions of the Code, the greatest responsibility, said the board, falls upon the shoulders of individual engineers who must make a decision based upon their own consciences as to what is appropriate. In this particular case it was the board's judgment that a political contribution of \$2,000 represents the upper limit of a nominal contribution and, therefore, is not in violation of the Code.

Turning to the facts in the present case, it would appear that a \$250 contribution or contributions in the range of \$250 are well within the definition of nominal contributions to a state gubernatorial campaign and, therefore, clearly fall within what is acceptable under the language of the Code. Notwithstanding the facts and circumstances involved, it is difficult, if not impossible, to believe that a political contribution of this magnitude could create any expectation or other basis to affect the selection or receipt of future state or other engineering work. The board's view might be altered if there was some suggestion in the facts that there was a coordinated effort to have a large number of individuals from one firm make individual contributions to a candidate for public office, resulting in a large contribution from what would be perceived as a special commercial interest. However, those facts do not appear to be present in this case.

Conclusion:

It was ethical for the engineers to participate in the fundraiser, given that (1) the contribution amounts were not excessive, (2) there was no linkage between the contributions and the selection of the firms for state work, and (3) the contributions are publicly disclosed.

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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 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 NSPE 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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