

## **Report on a Case by the Board of Ethical Review**

### **Case No. 79-8**

#### **Gift to Public Official**

##### **Facts:**

Engineer A, a principal in an engineering firm which had performed work for a local water district, gave Engineer B, the executive director of the water district, a hunting rifle. This fact was reported in the local newspaper, quoting other public officials in the community to the effect that it was improper for the executive director to keep the rifle in light of the relationship between the water district and Engineer A. One of the quoted officials commented that he did not object to small personal gifts, but it was "inappropriate" to keep an "expensive" rifle, noting that the executive director had "considerable influence" in the award of contracts. The cost of the rifle was not given, but local engineers who raised the question from the standpoint of engineering ethics estimated its retail value at \$500.

##### **Questions:**

1. Was it ethical for Engineer A to give a public official of an agency with whom he has had contractual relations a personal gift, as described?
2. Was it ethical for Engineer B to accept the gift of Engineer A?

##### **References:**

Code of Ethics - Section 3 - "The Engineer will avoid all conduct or practice likely to discredit the profession or deceive the public."

Section 11(a) - "He will not pay, or offer to pay, either directly or indirectly, any political contribution, or a gift, or other consideration in order to secure work. He will not pay a commission, percentage, or brokerage fee in order to secure work except to bona fide employees or bona fide established commercial or marketing agencies retained by him."

##### **Discussion:**

Before turning to the substantive question, we emphasize that our purpose is restricted to dealing with the ethics of the two engineers involved in the statement of facts, and not to pass upon the political or legal aspects of the case.

As indicated in the facts, we are concerned again with the problem of defining the intent of the engineer offering a gift. Was it given ". . . in order to secure work," or was the gift a reflection of a purely personal relationship having no bearing on the award of contracts for professional services?

It is obviously not possible to answer these questions in a clear and positive way, not being able to read what was in the mind of the donor. As long ago as 1960, however, we dealt with a similar case and made the following observation:

"The question of when a gift is intended to or becomes an inducement to influence one's impartial decision, as distinguished from an expression of friendship or a social custom, has remained a perplexing one over the years. No blanket rule covering all situations has been discovered. The size of the gift is usually a material factor, but must be related to the circumstances of the gift. It would hardly be felt a token gift, such as a cigar, a desk calendar, etc., would be prohibited. It has been customary in the business world for friends and business associates to tender such tokens of recognition or appreciation, and 'picking up the tab' at a business luncheon or dinner is commonplace and well accepted in the mores of our society."

Recognizing the difficulties inherent in passing judgment on each instance, we believe the Canons and Rules state, in substance, that an engineer may neither offer nor receive a gift which is intended to or will influence his independent professional judgment. The full application of this principle requires the impossible that we read the state of mind of the donor or donee. Therefore, we must apply a criterion which reasonable men might reasonably infer from the circumstances; that the giving or acceptance of the benefit be a matter of 'good taste', and such that among reasonable men it might not be of a nature which raises suspicions of favoritism.

"Applying these general principles to the situations at hand, we think that an occasional free luncheon or dinner, or a Christmas or birthday present when there is a personal relationship, is acceptable practice. On the other hand, cash payments to those in a position to influence decisions favorable or unfavorable to the giver are not in good taste and do immediately raise a suspicion that there is an ulterior motive. Likewise, a very expensive gift has a connotation of placing the recipient in a position of obligation. (Case 60-9)."

In addition to the ethical concern of Engineer A's action, in this situation we also have to consider the application of 11(a) to the role of Engineer B in accepting the gift. A literal reading of 11(a) restricts its application to those who make the gift for the purpose of securing work. Under that reading, 11(a) would not apply to Engineer B, which may suggest that the code language in point should be revised to broaden its application to cover this type of situation.

The fact that 11(a) does not specifically apply to Engineer B, however, does not mean that he may escape ethical responsibility for his acceptance of the gift. We think that 3 of the code comes into play under these facts. The mandate of that provision is that engineers must avoid conduct which may "likely" discredit the profession. Whether or not Engineer B might be influenced to favor Engineer A in the future, it seems inescapable that the acceptance of the gift by an engineer holding public office would expose the profession to public scorn and suspicion of wrongdoing.

We turn to another semantic problem of 11(a); it is written in terms of a gift ". . .to secure work," whereas under this set of facts Engineer A had had a previous commission with the agency, but was not then known to be seeking further work from the agency. It may be reasonably assumed that Engineer A would continue to seek further assignments from the water district in view of his previous work. If the gift was intended to enhance his position it would be within the meaning of the present language.

Again recognizing the difficulty of knowing what was in the minds of the two engineers, we believe that when 11(a) is read in conjunction with 3, the result must be that both the giving and receiving of the rifle was ethically improper. Even giving both engineers the benefit of the doubt as to their intentions, the controlling factor is the impression created in the public mind. Utilizing the criteria set forth in Case 60-9, we need not decide precisely whether a \$500 gift is too much to qualify as a "token" gift; it is enough that it is well beyond a nominal expression of friendship or esteem, such as the kinds of token gifts recited in the Case 60-9 criteria.

**Conclusions:\***

1. It was not ethical for Engineer A to give a public official of an agency with whom he has had contractual relations a personal gift, as described.
2. It was not ethical for Engineer B to accept the gift of Engineer A.

\*Note: This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

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