

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

### Case No. 81-2

#### Payment for Employment

##### **Facts:**

Engineer A, a recent engineering graduate seeking employment, had a direct offer from Company X for a position in its sales department, and at the same time had an offer from Company Z through an employment agency for a position in its design division. Engineer A was attracted to the second offer for work more to his liking, but the proposed salary was \$2000 year less than that offered by Company X. The employment agency told Engineer A that Company Z would not increase the amount of the proposed salary during the initial year of employment because of its salary system applicable to all newly hired engineers, but that the employment agency would, from its own funds, pay Engineer A an "acceptance bonus" of \$2000 if he accepted the offer of Company Z. Engineer A has inquired whether it would be ethical for him to accept the bonus arrangement.

##### **Question:**

Is it ethical for an engineer to accept a bonus payment from an employment agency as an inducement to accept employment with a particular employer?

##### **Reference:**

Code of Ethics - Section III.6.a. - "Engineers shall not accept remuneration from either an employee or employment agency for giving employment."

##### **Discussion:**

The ethical restriction cited has been in the Code of Ethics for a long period of time, but we have not heretofore had occasion to interpret it.

The word "engineers" is understood in the context of the full Code to refer to all engineers, whether as employers or employees. But to reflect the substantive purpose of the section, engineers in this context must refer only to those acting on behalf of an employer, since an employed engineer would not be accepting remuneration from another employee. However, while we have no question that this is the proper understanding and Case 81-2 purpose of the section, we believe that consideration should be given to rewording to better reflect this intent.

The main purpose of the prohibition would appear to be grounded in the concept that employers should not require kickbacks from employees as a condition of employment. The salary offered should be the full salary without rebate or reduction.

The operative word deals with the "giving" of employment, and thus is directed to employers rather than employees. Accordingly, an engineering employer is barred not only from taking kickbacks from employees, but also from taking a payment in any form from an employment agency for "giving" employment to an engineer who secures a position through an employment agency. We assume that the reason for the restriction on employment agencies is to prevent a secondary form of kickback arrangement in which the stated salary is reduced, in effect, by the employment agency charging the employee a substantial fee which reduces the actual income received by the employee.

That is not to say that an engineer seeking employment through an employment agency may not properly agree with the agency to pay it a commission for securing the position for the engineer. The bar applies to the employer taking any part of the commission paid by the employee to the agency as a condition of offering the employment.

The result of this reading of the Code provision is that it does not apply to Engineer A in the facts of this case. We have no doubt that in offering Engineer A an "acceptance bonus" for taking the position with Company Z, the employment agency is motivated by a desire to earn its fee from the employer.

If it thereby wishes to reduce the amount of its fee by the \$2000, it may do so as a business decision and is not controlled by the Code of Ethics. We perceive no ethical reason to prevent Engineer A from making a judgment on the type of employment preferred, and from accepting an arrangement under these circumstances to enhance his economic interest through the payment which supports that interest consistent with the preferred employment.

**Conclusion:**

It is ethical for an engineer to accept a bonus payment from an employment agency as an inducement to accept employment with a particular employer.

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