

Employment—Cash Door Prize

Case No. 10-3

Facts:

Engineer A works for UVW Engineering. As part of Engineer A's activities and employment responsibilities on behalf of UVW Engineering, he attends various conferences and trade shows. While attending a recent conference and trade show at UVW Engineering's expense, Engineer A won a door prize worth \$5,000.

Question:

Would it be ethical for Engineer A to keep the door prize or is he required to remit the prize to UVW Engineering?

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.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:

The NSPE Code of Ethics encourages engineers to seek opportunities for professional development throughout their careers and to keep current in their specialty fields by, among other activities, participating in continuing education courses and other activities. Today, there are a variety of both public and private continuing education course providers that offer in-class, web-based, and various other methods in delivering continuing education content. With the proliferation of these course providers, some providers have engaged in creative methods to attract engineers to their programs, including the offering of gifts or opportunities to receive gifts to registrants.

In the past, the NSPE Board of Ethical Review has considered some of the ethical issues that this case presents. For example, in BER Case No. 87-5, the ABC Pipe Company was interested in becoming known within the engineering community and, in particular, to those engineers involved in the specification of pipe in construction. ABC

wanted 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 proposed to host all refreshments, a buffet luncheon during the seminar, and a cocktail reception immediately following. Engineer A attended the seminar. In determining that it was ethical for Engineer A to attend the one-day complimentary educational seminar hosted by the ABC Pipe Company, the Board recognized that the case involved a material supplier who was introducing information about pipe products to engineers in the community and had chosen the forum of an educational seminar as the vehicle. The Board noted that while ABC Pipe Company would presumably seek 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 raise an ethical concern and did not create the appearance of a "quid pro quo" or an exchange of valuable consideration for specifying the equipment.

Under the facts of Case No. 87-5, Engineer A was, in the Board's view, accepting an opportunity to become educated on a particular topic consistent with the NSPE Code. In addition, Engineer A would be attending the seminar with many of his engineering colleagues, without any 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 minimis" provisions noted in BER Case Nos. 60-9 and 81-4, and therefore it would not be improper for Engineer A to participate in those activities. The Board did note, however, that had Engineer A agreed to accept items of substantial value (e.g., travel expenses, multiday program, resort location), its conclusion would have been quite different.

Later, in BER Case No. 04-7, the Board considered facts involving Engineer A, an executive engineer employee of an industrial corporation who occasionally received invitations from vendors to attend multiday seminars at resort locations. Engineer A received an invitation from Vendor X regarding a seminar at a ski resort location 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.

Following its review of the facts, the Board decided that (1) it was unethical for Engineer A to accept the offer of a multiday seminar at a ski resort since it is a gift of substantial value, and that (2) it was unethical for Engineer A to agree to have his firm establish a raffle, selling tickets and conducting a drawing for the seminar with the money from the

sale of the tickets contributed to a local charity. In referencing the earlier Case No. 87-5, the Board noted that its findings in Case No. 87-5 were based upon the understanding that Engineer A or one of the employees within his company would not directly benefit in what amounted to an appearance of a two-way quid pro quo.

The question for the Board therefore is whether the benefits provided by the raffle (donation of raffle money to a charity) mitigate the appearance of a quid pro quo created by the invitation to the ski resort seminar. In deciding this issue, the Board considered 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 carefully weighing those factors, the Board concluded that establishing a raffle, did not mitigate the overriding concern about the acceptance of a gift of substantial value and was therefore inconsistent with the NSPE Code of Ethics.

The Board noted that while such an act, on its face, might present an attractive approach, the approach ignores several underlying issues. Among those include the essential point raised in Case No. 87-5 regarding the nature, intent, and impact of a gift of substantial value. The Board noted 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 received 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, was not consistent with the NSPE Code or earlier BER opinions. In closing, the Board noted 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 might have been different.

Turning to the facts in the present case, the Board believes the two earlier cases (BER Case Nos. 87-5 and 04-7) are instructive and helpful to the analysis of the present case. In contrast to the two cases, the present case did not involve a gift from vendor by which a conflict of interest could easily arise. Also, based upon the facts, the gift was not directed at Engineer A, but instead was a door prize apparently based solely upon chance and not any direct attempt to influence Engineer A or UVW Engineering. Having said that, the Board is also of the opinion that in view of the fact that Engineer A attended the educational event at the expense of UVW Engineering, Engineer A, as a representative of his employer, had an ethical obligation to, at a minimum, report and disclose the door prize to UVW Engineering. Obtaining a financial windfall within the scope of employment is not a private matter but is instead a matter of which an employer should be made aware. The ultimate decision as to the best method of addressing this matter is solely between Engineer A and UVW Engineering.

Conclusion:

Engineer A has an ethical obligation to, at a minimum, report the substantial door prize to UVW Engineering since Engineer A attended the educational event at the expense of UVW Engineering. The ultimate decision as to the best method of addressing this matter is solely between Engineer A and UVW Engineering.

Board of Ethical Review:

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