

Conflict-of-Interest
Purchase of Land Intended for Development by Client

Case No. 14-9

Facts:

Engineer A works for GHI Engineering and is retained by Client to prepare an engineering study of Client's parcel of land (Parcel 1). During the course of the engagement, Client requests that the engineering study be prepared in a specific manner because she intends to purchase the adjoining Parcel 2 in approximately five years for a development that requires both parcels. Based on the information revealed to Engineer A by Client, and without notifying Client, Engineer A thereafter purchases Parcel 2 for Engineer A's commercial benefit.

Question:

Was it ethical for Engineer A to purchase Parcel 2 for Engineer A's own commercial benefit under these circumstances?

NSPE Code of Ethics References:

Section I.5. Avoid deceptive acts.

Section II.4. Engineers shall act for each employer or client as faithful agents or trustees.

Section III.1. Engineers shall be guided in all their relations by the highest standards of honesty and integrity.

Section III.1.e Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.

Section III.4.a. Engineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the engineer has gained particular and specialized knowledge.

Discussion:

Conflict-of-interest situations have been presented to this Board in a variety of factual situations. Earlier Boards have noted that conflicts of interest present among the most classic and often the most challenging ethical dilemmas faced by engineers in their professional practice.

As an example of an earlier conflict-of-interest case is BER Case No. 98-11. There, an engineer was asked by a firm to prepare specifications for an air compression system. The engineer made the firm aware that she was the president (and major shareholder) of a company that manufactures and sells air compression systems and that she had no problem with preparing a set of generic specifications. For bidding purposes, the engineer also provided the firm with four other manufacturers that prepare air compression systems, and the engineer did not include her company as one of the four specified manufacturers. The board ruled that, although the engineer was the president and major shareholder in a company that manufactured and sold air compression systems, clearly

she took all necessary and reasonable steps to disclose all potential conflicts of interest. The Board noted that by immediately disclosing the fact that she had a major interest in an air compression manufacturing company, by suggesting the names of four other manufacturers, and by raising the issue before it surfaced as a result of possible appearances, the engineer acted consistently with the NSPE Code of Ethics. The Board also noted that unlike the previous versions of the NSPE Code that required the engineer to “avoid” conflicts of interest, the current NSPE Code acknowledges that conflicts do arise and impose upon the engineer the responsibility to take all reasonable steps to notify and advise the client—leaving it up to the client whether to proceed with the services of the engineer. It was the Board’s view that the engineer’s conduct was in keeping with the NSPE Code provision that engineers must disclose all known conflicts of interest that could influence or appear to influence their judgment or the quality of their services.

A year later in BER Case No. 99-9, an engineer was requested by Client Z to prepare specifications for a curtain wall system. The engineer immediately made Client Z aware that he was a minority shareholder in a curtain wall manufacturing company and that if Client Z agreed, Engineer A would be pleased to prepare a set of generic specifications for a curtain wall system. Client Z agreed but was silent on the point of having the engineer’s firm submit a proposal. Later, the engineer provided Client Z with the names of three manufacturers that prepared curtain wall systems for bidding purposes. The engineer included the name of his firm among the three manufacturers, but did not include the full specifications and other supporting material about his curtain wall manufacturing firm with the bidding material provided to the client. The engineer’s reasoning was that he could answer any questions that Client Z might have about the curtain wall manufacturing system. After evaluating the proposals solicited through documentation prepared by the engineer, and upon his recommendation, Client Z selected the engineer’s company. In finding that it was not ethical for the engineer to prepare bidding criteria, bid on the job, evaluate the bids, and recommend his company for owner selection, the NSPE Board of Ethical Review noted that it was not entirely clear why and on what basis Client Z selected Engineer A to provide the curtain wall specifications on behalf of Client Z. It could be that in the rendering of consulting services, the engineer performed professional services to the satisfaction of Client Z, and this fact may have persuaded Client Z to select his curtain wall company to manufacture the required equipment. At the same time, the Board believed the early and complete disclosure by the engineer needed to be balanced against his later inclusion of his firm on the list of potential curtain wall manufacturers without the client’s prior affirmative approval. The Board believed this point was instructive because it demonstrated his recognition of the potential for a conflict of interest in connection with the services provided to Client Z and the actions he took in regard to that potential conflict. In this connection, the Board was troubled by his conduct and lack of initial full disclosure in the face of Client Z’s failure to expressly approve the engineer’s actions.

More recently, BER Case 06-10 involved another engineer, a quality assurance manager at Company C, who learned that the purchasing manager for Company C had contracted with a new supplier of precision plastic components. It turned out that the production manager at the new supplier was the quality assurance manager's spouse—a fact unknown to everyone at Company C. The quality assurance manager did not create the situation, and there was no effort to put pressure on any party in connection with the dealings between the parties. The Board decided that the NSPE Code of Ethics required the engineer to provide full disclosure to appropriate managers within his company that he was the spouse of a key employee of a vendor and that should circumstances arise, the engineer might be required to recuse himself from specific dealings with the vendor. The Board foresaw circumstances where as quality assurance manager, he would be in a position to evaluate the quality of the vendor's product and that should any questions arise concerning the product, he might find himself in a personally conflicted situation between the interests of his employer and the interests of his spouse and her employer.

More recently, in BER Case 09-7, Engineer A had been assigned by her engineering firm to work with a local developer on a commercial development project. While performing the work, Engineer A became aware that her father, an adjacent landowner, was participating with a community group in an appeal of a zoning board's decision to grant the developer a zoning reclassification of the developer's property in order to permit the building of commercial development. Engineer A's father had the adjoining property and was planning to build a new home. In deciding that Engineer A had an ethical obligation to fully disclose this information to both the employer and developer client, the Board noted that it is for those parties to determine whether Engineer A should continue on this assignment. The Board also noted that at a minimum, the presence of a family relationship could easily create an appearance of a conflict of interest and for that reason, full, candid, and open disclosure to the employer and to the client is essential to ensure that there are no unmet expectations or misunderstandings. The Board felt the employer, as well as the client, had an interest in reviewing the situation and determining the best way to proceed and that it was possible that the client could have concluded that Engineer A was the best person to assist the client on the development project, notwithstanding her father's opposition to the development project.

Turning to the facts in the present case, the Board believes that based on the reasoning articulated in the earlier-described cases, it would be unethical for Engineer A to purchase Parcel 2 for Engineer A's own commercial benefit under any circumstances. Under the facts, Engineer A has received confidential business information within the context of a professional relationship and has sought to exploit that information for personal gain at the expense of Engineer A's client's interests outside of Engineer A's professional practice. The Board believes that this conduct clearly runs afoul of the spirit and the intent of the NSPE Code of Ethics. Such conduct violates the basic obligations that professional engineers owe to their clients as faithful agents and trustees.

Conclusion:

It would be unethical for Engineer A to purchase Parcel 2 for Engineer A's own commercial benefit under any circumstances.

Board of Ethical Review:

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