

Gifts—Mining Safety Boots

Case No. 20-05

Facts:

Engineer A works for an insurance company, and part of his work involves visits to remote mining sites to assess compliance with best practices as outlined by the company as well as compliance with codes, standards, and state and federal regulations. At a remote site visit to Mine M, Engineer A begins the day with a meeting with facility management to review prior visits, documentation of safety records, and other applicable information. Management at the remote site brought their safety compliance specialists to the site to assist with the visit and to respond quickly to Engineer A's findings. As Engineer A prepares to begin inspection of the mine, he realizes he forgot to bring the necessary PPE—he does not have his safety boots. Mine M staff offer him a new pair of safety boots; they routinely make boots available to visitors to the mine who may not have the necessary PPE. Engineer A's company has a policy that forbids accepting gifts valued at more than \$100, and because he has recently purchased new safety boots, Engineer A knows the boots Mine M is offering are valued at more than \$100. If he returns to his motel to get his own boots, he will be unable to complete the inspection, and the visit would have to be rescheduled because the mine owner's safety specialists are not able to be on site the next day.

Question:

What should Engineer A do?

NSPE Code of Ethics References:

- Section I.4. - Engineers, in the fulfillment of their professional duties, shall act for each employer or client as faithful agents or trustees.*
- Section I.6. - Engineers, in the fulfillment of their professional duties, shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
- Section II.4.b. - Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.*
- Section II.4.c. - 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. - 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.*

NSPE BER Case References: [60-9](#), [05-6](#), [12-6](#)

Discussion:

Since 1958, the NSPE Board of Ethical Review has considered at least 11 cases where engineers either offer or receive gifts of various types. A starting point for many of these cases is [Case 60-9](#), in which three situations were analyzed. For the purposes of our case, the first situation is most relevant. A consulting engineer made it a practice to take certain staff engineers of a state agency to lunch or dinner several times a year and made it a practice to distribute Christmas gifts to staff engineers. In today's dollars, the lunches are valued at \$45, and the holiday gifts are about \$90.

In this case from 1960, the Board noted that “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.” They noted the size of the gift is an important factor along with established customs such as a “picking up the tab” for business lunches. In 1960, because they felt it was impossible to understand the gifting intentions of the donor or donors, the Board stated “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.” They concluded that offering and accepting free lunches, dinners, and gifts of small value does not exceed the bounds of ethical behavior.

[BER Case 05-6](#) is similar in that Engineer A is a State Department of Transportation (SDOT) employee who works with consulting engineers and contractors. At the completion of successful projects, the contractors and engineers have offered to Engineer A items including tickets to box seats at major league sporting events along with invitations to receptions, dinners, and golf outings with other project participants. The Board applied [Case 60-9](#) as a guideline and concluded that making or accepting the offers described above did not constitute an ethical violation. They again pointed to cultural acceptance within the general business community of these situations, provided they were not extravagant or excessive (e.g., an expense-paid trip to the Super Bowl). The Board was careful to point out that although these situations may not constitute a violation of the NSPE Code of Ethics, Engineer A as well as the engineering firms and contractors may be in violation of SDOT rules and regulations.

Finally, [BER Case 12-6](#) involves a situation where Engineer A and his firm, IJK Engineering arranged with a national water association to purchase, for a fixed fee, an unlimited number of daily passes to the water association’s trade show. A normal daily pass for the trade show is valued at \$150. IJK Engineering distributes passes to clients and potential clients and encourages them to make additional copies to give to other engineers in accordance with the arrangements made with the water works association. The Board noted that some engineers take a “hard-line view that any gift, even the giving or taking of a *de minimis* gift of little value is unacceptable.” They also reviewed the cases above and decided that Engineer A and IJK Engineering acted ethically in distributing passes. Further, it was ethical for recipient engineers to accept the passes. IJK Engineering engaged in what is generally accepted marketing activity

to encourage access to an industry trade program and to “aid in the dispersion of information and knowledge about water issues in order to create general business good will.”

In the case at hand, the boots Engineer A is offered are not “extraordinary or excessive”; Mine M makes boots available to visitors generally. The “hard-line” approach referred to in [Case 12-6](#) can cite Code Sections II.4.b., II.4.c., and III.5.b. as provisions that prevent Engineer A from accepting and using the boots. Further, Engineer A’s company has a policy that prohibits accepting gifts valued at more than \$100, and Engineer A has good reason to believe the value of the boots is more than this amount.

Engineer A also has an obligation to act for his employer and client as a faithful agent or trustee. His firm and the client have taken pains to assemble people and information at a remote site to facilitate his inspection; these efforts may be wasted if the inspection is not completed that day.

Many resources for ethical engineering decision-making identify steps for breaking down the thought process.¹ Although Engineer A likely does not have the time to formally follow all these steps, Engineer A can look at the big picture and identify that both employer and client have expended considerable resources to complete a timely inspection—both are penalized if the inspection does not move forward. Engineer A can also identify alternate approaches to solve the problem. While company policy prohibits employees from accepting gifts, Engineer A may be able to simply use the boots during the visit and return them or to pay for them. Options for action include professionally and respectfully declining the offer of boots and postponing the inspection, or accepting the boots and informing the employer.

Two other items are of note in this discussion. The BER, in [Case 60-9](#) referred to “good taste” in the process of making decisions regarding gifts. Certainly “good taste” has changed with time, and it is important to acknowledge that change. An acceptable lunch in 1960 may be viewed differently today. Finally, this discussion made no reference to state law governing the practice of engineering.

Conclusion:

It would be ethical for Engineer A to use the safety boots during his inspection of the mine. When the inspection visit is complete, Engineer A may either return the safety boots or pay for them. Engineer A should report the incident and circumstances to the employer.

Board of Ethical Review:

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¹ Consider, for example, the [NSPE Ethics Reference Guide](#).

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