



NATIONAL SOCIETY OF
PROFESSIONAL ENGINEERS

BOARD *of* ETHICAL REVIEW



CASE REVIEW:

Influence– Campaign Contributors

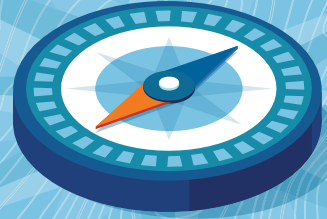
CASE NO. 21-01
APPROVED OCTOBER 13, 2022

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FACTS:

Engineer A is the president of a consulting engineering firm, Company XYZ, that provides engineering services for public entities in its region. A significant percentage of the firm's work over the past ten years has been on behalf of County X. Each year, County X issues Requests for Proposals for upcoming projects. Company XYZ is regularly awarded one or more projects by the County. County Commissioner B (one of three Commissioners) is facing a hotly contested race for reelection. County Commissioner B broadly solicits campaign contributions, pointing each potential donor to state statutes that provide the legal limits on campaign contributions in the amount of \$5,000 and noting that the list of individual campaign contributions is made public as required by law. Engineer A feels compelled to help support County Commissioner B with whom he has developed a good working relationship over the years but is concerned about a potential perception of impropriety by members of the public or competitors if Engineer A's contribution is at a significant level, since County Commissioner B regularly votes on decisions to retain Company XYZ. Engineer A made a campaign contribution in the amount of \$100, which was consistent with Company XYZ's policy on giving and receiving gifts. It was one of the smaller campaign contributions received by County Commissioner B.

QUESTIONS:

1. Was Engineer A's \$100 campaign contribution ethical?
2. Was Engineer A's concern about the perception of impropriety valid, and would a more significant contribution up to the legal contribution limit be ethical?

NSPE CODE OF ETHICS REFERENCES:

- 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.5.b. Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract. They shall not offer any gift or

other valuable consideration in order to secure work. They shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a bona fide employee or bona fide established commercial or marketing agencies retained by them.

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

Section III.2.a. Engineers are encouraged to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health, and well-being of their community.

NSPE BER CASE REFERENCES:

[66-6](#), [88-2](#), [19-2](#)

DISCUSSION:

It is a personal right of citizenship, and the NSPE Code of Ethics for Engineers encourages engineers to participate in civic affairs for advancement of the safety, health, and well-being of their community. Such participation allows communities to benefit from engineering knowledge, expertise, and judgment. Likewise, as an engineer's career matures and the engineer develops expertise, that engineer's professional influence expands. Influence based upon experience and expertise is both natural and healthy. The focus of this case, though, is the possibility of improper influence: influence achieved not by experience and expertise but by direct contribution.

NSPE Code of Ethics Section III.2.a. encourages engineers to participate in civic affairs and other activities to advance the well-being of their community. The Board recently considered the interaction between

community service and professional practice in BER Case [19-2](#). In that case, Engineer A has a consulting engineering firm and enters into an agreement with a not-for-profit organization to design a renovation of one of the organization's buildings. Following the execution of the agreement, the organization proposes a series of design changes that cause the services to exceed the budgeted amounts. Because the organization has limited resources and because the organization's mission is charitable, Engineer A does not immediately invoice the organization for the design changes. Engineer A proposes that in lieu of immediate payment from the organization, Engineer A will delay submitting the invoice, make a personal charitable cash contribution to the organization for an amount approximating the amount of the invoice (but not claim a tax deduction for the contribution), and thereafter invoice the organization, with the organization paying Engineer A's firm for his engineering design services.

In finding that Engineer A's actions were consistent with the professional engineer's obligation to participate in civic affairs and other activities to advance the well-being of their community, the Board noted that making a voluntary contribution to a not-for-profit organization is consistent with the NSPE Code of Ethics, assuming this is done lawfully. At the same time, the NSPE Board of Ethical Review strongly noted Engineer A's obligation to be cautious of any appearance of impropriety and to seek advice and assistance with appropriate legal and tax professionals. The point is that while participation in civic affairs is encouraged, the Board recognizes "situations involving political considerations are... fraught with many dangers and frequently result in suspicion of unethical behavior (BER Case [66-6](#))."

BER Case [88-2](#) is illustrative of the tensions associated with political contributions. In this case, Engineer A is

the principal in a small-sized consulting engineering firm. Approximately 50 percent of the work performed by Engineer A's firm is performed for the county in which the firm is located. The value of the work for the firm is estimated to be approximately \$150,000 per year. Engineer A is requested to make a \$5,000 political contribution, the maximum amount allowed by law, to help pay the cost of the media campaign of the county board chairman. After subsequent thought, Engineer A makes a \$2,000 contribution to the campaign of the chairman, a person Engineer A has known for many years through mutual public service activities as well as their activities on behalf of the same political party.

As required under the laws of his state, Engineer A reports the campaign contributions to the state board of elections, and correctly certifies that the contributions do not exceed the limits set by the law of the state. These contributions and the contributions of other firms in the county are reported by members of the local media who appear to suggest that Engineer A and other firms have contributed to the campaign in anticipation of receiving work from the county. Engineer A continues to perform work for the county after making political contributions.

There, the Board found it would not be unethical for Engineer A to perform work for the county after making a nominal political contribution of \$2,000 to the reelection campaign of the county board chair. Here again, the Board affirmed NSPE Code of Ethics provisions that political contributions must not be made to curry favor and place the engineer in a favorable position to secure contracts through the influence of the candidate elected to a public office. Further, the Board noted "political contributions should be evaluated on a case-by-case basis depending upon the nature of the political office involved, the size of the jurisdiction which the public official serves, and other appropriate

considerations based upon the unique nature of the office. As with most provisions of the Code, the greatest responsibility falls upon the shoulders of individual engineers who must make a decision based upon their own consciences as to what is appropriate." This is fully consistent with the engineer's professional obligation not to promote self-interest over the dignity and integrity of the profession, as laid out in Section III.1.e.

Thus, the key question becomes "What is the donor-engineer's purpose in making the contribution?" Turning to the facts in this (21-01) case, while Engineer A appears to have carefully followed the requirements of the local campaign financing law, his experience and expertise expand his influence. His position as President of XYZ firm expands his influence even further. Both of these spheres are healthy and natural. However, when that sphere of at-least-apparent-influence is further expanded by a monetary contribution, the expression of the sphere of influence becomes shaky.

The BER believes that Engineer A had an obligation to carefully balance the appearance of impropriety with Engineer A's purpose/intent in making the contribution. The level of concern would have been even higher had the local campaign financing law not required the disclosure of the contribution. Overall, while individual members of the BER might have come to a decision not to contribute because of the possible perception of impropriety (i.e., failing personal "smell tests"), overall, the BER concluded that such an evaluation must be made on an individual's case-by-case basis and was not unethical based on Engineer A's careful consideration of the potential for perceived impropriety.

Previous NSPE cases considered by the BER similar to Case BER [88-2](#) concluded that it may, under certain circumstances, be ethical for Engineer A to provide a more significant contribution, perhaps up to the legal

limit. Views within the current BER were split between those BER members who believed that a substantial legal contribution might be deemed ethical depending upon the intent of the donor and the specific circumstances regarding the appearance of impropriety, and those BER members who felt that a more substantial contribution might or would run afoul of the NSPE Code of Ethics Section II.5.b, which in relevant part states: “Engineers shall not offer... any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract.”

As the value of the contribution increases, the likelihood of members of the public reasonably construing the contribution as having the effect or intent of influencing the award of a contract also increases.

CONCLUSIONS:

1. Engineer A’s decision to contribute a nominal amount to the campaign of County Commissioner B was not unethical. The BER recommends that such a contribution be intentionally and carefully considered in terms of the possible perception of impropriety and consequent damage to the profession. In this case, Engineer A balanced those considerations.
2. Campaign contributions in excess of a nominal amount need to be carefully considered from an ethical standpoint with respect to the intent of the contribution and whether members of the public might reasonably construe the contribution as influencing the award of a contract.

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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code of Ethics to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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