2022 NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS MILTON F. LUNCH ETHICS CONTEST

INVITATION
Match your wits and knowledge of engineering ethics with experienced professional engineers and engineering students throughout the country! All current NSPE individual members and NSPE chapters (including current student members) are invited to participate in the 2022 NSPE Milton F. Lunch Ethics Contest.

NSPE state societies and local chapters are encouraged to consider using this contest as a state or chapter activity to generate member discussion and spur greater interest in engineering ethics.

HOW TO PARTICIPATE
This year, NSPE’s Board of Ethical Review is furnishing you with three key ethical issues. You are to select one and develop a submission (video, photo essay, poster, written essay, or PowerPoint presentation not to exceed 1,000 words) that expresses your views and demonstrates an understanding of the ethical issues involved. Participants are encouraged (but not required) to consider and cite in the submission the NSPE Code of Ethics and previous NSPE Board of Ethical Review opinions. The BER Case Search Database, the NSPE Ethics Reference Guide, and the NSPE Ethics Study Guide might also be helpful to you.

CONTEST RULES
All submission entries must be received by May 13, 2022. Email or mail entries to:

2022 NSPE Milton F. Lunch Ethics Contest
NSPE Legal Department
1420 King Street, Suite #302
Alexandria, VA 22314
legal@nspe.org

This year, NSPE will provide the author of the winning entry an award of $2,000, a certificate, and recognition in PE magazine.

JUDGING CRITERIA
The judges will use the following criteria:

- Quality of the entry in form and presentation. (Clarity, composition, and expression are important. Your essay, video, photo essay, poster, or PowerPoint should be a finished piece and “ready to go.”);
- Demonstration of understanding the implications concerning ethical or unethical behavior; and
- Comprehensive analysis and arguments supporting your conclusions. (This may include new thoughts or other expressions about engineering ethics and professional practice.)

Good luck, fellow professional engineers and student engineers!

Sincerely,

Mark H. Dubbin, P.E.
Chair, NSPE Board of Ethical Review

Milton “Milt” F. Lunch, NSPE’s general counsel from the 1940s until the 1980s, was critical to the establishment of the NSPE Board of Ethical Review and the development of the NSPE Code of Ethics in the 1950s. During his tenure as NSPE general counsel, Milt presented numerous papers and authored influential articles about the importance of licensure, ethics, and professionalism. He passed away in 2001.
Choose only ONE of the following ethical issues:

**Ethical Issue #1: Campaign Contributions**

**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 C (one of a commission of three) is facing a hotly contested race for reelection. County Commissioner C broadly solicits campaign contributions, pointing each potential donor to state statutes that provide the legal limits on campaign contributions. Engineer A decides to make a personal contribution in the amount of $2,500 to County Commissioner C’s campaign, an amount that is within the statutory guidelines for campaign contributions. During the campaign, the list of contributors and amounts is made public as required by state law. Engineer B, who works for a firm that regularly competes with Company XYZ for County projects, notices that Engineer A’s contribution was one of the larger amounts on County Commissioner C’s donor list, and files a complaint with the State PE Board.

**Questions:**
1. Was Engineer A’s campaign contribution ethical?
2. Was Engineer B’s complaint to the State PE Board ethical?

**Ethical Issue #2: Climate Change/Flooding**

**Facts:**
Engineer A is a consulting engineer representing Client B, a developer who is proposing to develop a health care facility that requires a significant upgrade to the property’s access road that crosses a tidal saltmarsh. Engineer A’s scope includes design and local permitting of the roadway, including an upgrade of the tidal crossing from a small culvert to a small bridge, increasing its hydraulic capacity. Local development regulations require design to accommodate a 25-year fresh water storm, and assume that future weather conditions will be consistent with updated historical data. The local development regulations and national design codes and standards have not yet been updated to reflect changing conditions and weather patterns, including effects of sea level rise and changes in precipitation intensities and recurrence intervals effected by ongoing climate change. It is Engineer A’s judgment, based on hydraulic evaluation procedures presented at a recent transportation agency conference, that the proposed project may result in some upstream homes becoming uninhabitable a decade or more earlier than would otherwise be the case. Engineer A proposes a complex and costly hydrologic and hydraulic analysis by a specialized subconsultant to predict the extent to which sea level rise and the increased hydraulic capacity of the tidal crossing will result in flood damage to a neighborhood of twenty upstream homes during future high tides and storm surges, anticipating this to be a difficult question to answer in the project’s public hearings. Client B directs Engineer A to proceed without the costly analysis unless and until such an analysis is requested by the applicable regulatory authorities.

**Questions:**
1. Does Engineer A have an ethical obligation to address or evaluate the impacts of a project on public health, safety, and welfare with respect to climate change induced conditions that have not yet occurred?
2. In this set of circumstances, what are Engineer A’s reasonable courses of action with respect to engineering ethics?
Ethical Issue #3: Total Life Cost
Engineer A works for an organization that for years has operated a fossil fueled co-generation facility primarily to supply thermal energy for process needs. The facility has the capability to produce electric energy when thermal energy needs are satisfied, in fact, there are times when a significant portion of the organization's electric energy is supplied by the co-generation facility. The generator is approaching the end of its useful life and will require a substantial investment to remain operational.

Recently, stakeholders have expressed interest in reducing the organization's carbon footprint, and these stakeholders suggest that the facility eliminate the generator and replace it with solar panels. After careful study of the facility electric load profile and the capability of the proposed solar energy system, Engineer A is satisfied that under normal conditions, the system of solar panels can supply electric energy equivalent to that provided by the existing generator. Capital constraints prevent the organization from installing a system of batteries to store energy for use at night or in bad weather, but the cost of installing the solar panels is essentially the same as the cost to rebuild the generator.

When discussing the analysis of the electric load profile with a representative of the local electric utility, Engineer A learns that the utility resource planners reviewed their current generation mix and believe that during extreme weather events, they may be forced to institute rolling outages to keep system generating facilities on-line.

Engineer A is preparing a report that will be presented to the board to consider the new solar project, and is convinced that the solar project, when considered in isolation, is viable and will satisfy those stakeholders interested in reducing the organization's carbon footprint. Engineer A also realizes that the organization's move to solar production will stress the utility generation mix even more.

Questions:
1. Should Engineer A include information about the utility generation mix and rolling blackouts in the report to the board?
2. Should Engineer A include information about the implications of the lack of a battery system?
II. Rules of Practice

1. Engineers shall hold paramount the safety, health, and welfare of the public.
   a. If engineers’ judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.
   b. Engineers shall approve only those engineering documents that are in conformity with applicable standards.
   c. Engineers shall not reveal facts, data, or information without the prior consent of the client or employer except as authorized or required by law or this Code.
   d. Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.
   e. Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.
   f. Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.

2. Engineers shall perform services only in the areas of their competence.
   a. Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved.
   b. Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control.
   c. Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineer who prepared the segment.

3. Engineers shall issue public statements only in an objective and truthful manner.
   a. Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.
   b. Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.
   c. Engineers shall issue no statements, criticisms, or arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.

4. Engineers shall act for each employer or client as faithful agents or trustees.
   a. Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.
   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.
   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.
   d. Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.
   e. Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.

5. Engineers shall avoid deceptive acts.
   a. Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates’ qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.
   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.

III. Professional Obligations

1. Engineers shall be guided in all their relations by the highest standards of honesty and integrity.
   a. Engineers shall acknowledge their errors and shall not distort or alter the facts.
   b. Engineers shall advise their clients or employers when they believe a project will not be successful.
   c. Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.
   d. Engineers shall not attempt to attract an engineer from another employer by false or misleading pretenses.
   e. Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.
   f. Engineers shall treat all persons with dignity, respect, fairness, and without discrimination.

2. Engineers shall at all times strive to serve the public interest.
   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.
   b. Engineers shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.
   c. Engineers are encouraged to extend public knowledge and appreciation of engineering and its achievements.
   d. Engineers are encouraged to adhere to the principles of sustainable development1 in order to protect the environment for future generations.
   e. 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 seminar.

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3. Engineers shall avoid all conduct or practice that deceives the public.
   a. Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.
   b. Consistent with the foregoing, engineers may advertise for recruitment of personnel.
   c. Consistent with the foregoing, engineers may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.

4. Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.
   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.
   b. Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a specific project or proceeding in which the engineer has gained particular specialized knowledge on behalf of a former client or employer.

5. Engineers shall not be influenced in their professional duties by conflicting interests.
   a. Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.
   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.

6. Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.
   a. Engineers shall not request, propose, or accept a commission on a contingent basis under circumstances in which their judgment may be compromised.
   b. Engineers in salaried positions shall accept part-time engineering work only to the extent consistent with policies of the employer and in accordance with ethical considerations.
   c. Engineers shall not, without consent, use equipment, supplies, laboratory, or office facilities of an employer to carry on outside private practice.

7. Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.
   a. Engineers in private practice shall not review the work of another engineer for the same client, except with the knowledge of such engineer, or unless the connection of such engineer with the work has been terminated.
   b. Engineers in governmental, industrial, or educational employ are entitled to review and evaluate the work of other engineers when so required by their employment duties.
   c. Engineers in sales or industrial employ are entitled to make engineering comparisons of represented products with products of other suppliers.

8. Engineers shall accept personal responsibility for their professional activities, provided, however, that engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the engineer's interests cannot otherwise be protected.
   a. Engineers shall conform with state registration laws in the practice of engineering.
   b. Engineers shall not use association with a nonengineer, a corporation, or partnership as a "cloak" for unethical acts.

9. Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.
   a. Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.
   b. Engineers using designs supplied by a client recognize that the designs remain the property of the client and may not be duplicated by the engineer for others without express permission.
   c. Engineers, before undertaking work for others in connection with which the engineer may make improvements, plans, designs, inventions, or other records that may justify copyrights or patents, should enter into a positive agreement regarding ownership.
   d. Engineers' designs, data, records, and notes referring exclusively to an employer's work are the employer's property. The employer should indemnify the engineer for use of the information for any purpose other than the original purpose.

Footnote 1 “Sustainable development” is the challenge of meeting human needs for natural resources, industrial products, energy, food, transportation, shelter, and effective waste management while conserving and protecting environmental quality and the natural resource base essential for future development.

Statement by NSPE Executive Committee
In order to correct misunderstandings which have been indicated in some instances since the issuance of the Supreme Court decision and the entry of the Final Judgment, it is noted that in its decision of April 25, 1978, the Supreme Court of the United States declared: “The Sherman Act does not require competitive bidding.”

It is further noted that as made clear in the Supreme Court decision:
1. Engineers and firms may individually refuse to bid for engineering services.
2. Clients are not required to seek bids for engineering services.
3. Federal, state, and local laws governing procedures to procure engineering services are not affected, and remain in full force and effect.
4. State societies and local chapters are free to actively and aggressively seek legislation for professional selection and negotiation procedures by public agencies.
5. State registration board rules of professional conduct, including rules prohibiting competitive bidding for engineering services, are not affected and remain in full force and effect. State registration boards with authority to adopt rules of professional conduct may adopt rules governing procedures to obtain engineering services.
6. As noted by the Supreme Court, “nothing in the judgment prevents NSPE and its members from attempting to influence governmental action . . .”

Note: In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer, and it is incumbent on members of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.

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