

Report on a Case by the Board of Ethical Review

Case No. 69-13

Conflict of Interest Stock and Land Ownership

Facts:

Case 1-Engineer A is a partner in an engineering consulting firm, which is engaged primarily in the design of electrical systems for clients. Prior to his entry into the consulting field, Engineer A had purchased 20 shares of stock in a company which manufactures electrical products of the type often specified by engineers. His interest in the manufacturing company represents less than one-tenth of one percent of the total stock outstanding.

Case 2-Engineer B is a consulting engineer engaged primarily in the design of mechanical systems for clients. During the course of his practice he invested his personal funds in mutual fund shares. The mutual fund, from time to time, invests in the stock of companies which produce the type of mechanical equipment which he may specify for his clients.

Case 3-Engineer C is an officer of an incorporated engineering consulting firm which is engaged primarily in civil engineering projects for clients. Early in his life he had acquired a tract of land by inheritance, which is an area presently being developed for residential and industrial use. His firm has been retained to study and recommend a water and sewer system in the general area of his land interests.

Questions:

Case 1-May Engineer A ethically specify the products of the electrical company in which he holds stock?

Case 2-May Engineer B ethically specify the products of companies in which the mutual fund holds shares?

Case 3-May Engineer C ethically design a water and sewer system in the general area of his land interests?

References:

Code of Ethics-Section 8- "The Engineer will endeavor to avoid a conflict of interest with his employer or client, but when unavoidable, the Engineer shall fully disclose the circumstances to his employer or client."

Section 8(a)-"The Engineer will inform his client or employer of any business connections, interests, or circumstances which may be deemed as influencing his judgment or the quality of his services to his client or employer."

Discussion:

This is a companion case to Case No. 69-8, in which we held it to be a violation of the code for engineer-principals of a consulting firm to own and operate a separate corporation for the marketing of products which the firm might specify or recommend to a client. Our conclusion in that case was based on the injunction of Section 8 that "the engineer will endeavor to avoid a conflict of interest," and on the "unavoidable implication that their professional judgment might have been compromised even if only by a subconscious process." However, we recognized that his holding did not resolve all conflict of interest problems with regard to minimal or nominal degrees of ownership.

In evaluating the three situations described herein, we start from the premise that the duty of the engineer under the code is not only to avoid a clear conflict of interest, when possible, but also to avoid the appearance of impropriety. This requires a balancing of equities and the ethical obligation weighed against practical situations which may arise in fact circumstances where the conflict of interest arises beyond the control of the engineer.

In Case 1 the potential or actual conflict of interest was theoretically present when Engineer A entered the field of electrical design, but not when he acquired the stock. The practical question, then, is whether he is ethically required to dispose of his stock in order to be ethically able to specify the products of the company in which he has a financial interest? If so, he may be required to suffer a financial loss depending on the state of the market at the time of his sale. In the alternative, may Engineer A ethically take the position that to avoid the conflict he will not specify the products of the company in which he holds stock? On this approach he may be doing his client a disservice if he truly believes that the products of that company are the best for the needs of the client.

It would be tempting to conclude that there is no "real" conflict of interest in this situation because the degree of financial gain to Engineer A by the specification of the products of the manufacturing company are so minimal in profit to him that his judgment would not be biased. We reject this rationalization, however, because it is impossible to define that degree of financial gain which would, in the mind of Engineer A, be so small as to not prejudice his decision. We recognize also that there is a subconscious motivation to support the business of a company in which a person holds a financial interest.

The situation is quite different in Case 2. Here Engineer B has no control over the investment decisions of the mutual fund managers. The mutual fund may hold stock in companies which produce mechanical equipment he may specify but may divest itself of such stock at any time. In fact, the mutual fund shareowners probably do not know from day to day or month to month the investment portfolio of the mutual fund unless they make special inquiry. Under these circumstances the chance of Engineer B being influenced to prefer the products of a particular manufacturing company is so remote that it can be disregarded.

The facts in Case 3 are even more difficult of resolution. There was no conflict of interest when Engineer C entered his practice. The conflict developed in the normal course of his practice when it became apparent that his study and recommendations could lead to the location of a water and sewer system which might cause a considerable appreciation in the value of his land depending on the exact location of certain system elements in proximity to his land. It is abundantly clear from what we have said previously that Engineer C must make full disclosure of his personal interest to his client before proceeding with the project. However, we do not believe that such disclosure is enough under the code. He is required to avoid a conflict of interest. He can avoid such a conflict under these facts by either disposing of his land holdings prior to undertaking the commission or by declining to perform the services if it is not feasible or desirable for him to dispose of his land at the particular time.

This is a harsh result, but so long as men are in their motivations somewhat lower than the angels/' it is a necessary conclusion to achieve compliance with both the letter and the spirit of the code of ethics. The real test of ethical conduct is not when compliance with the code comports with the interests of those it is intended to govern, but when compliance is adverse to personal interests.

Conclusions:*

Case 1-Engineer A may not ethically specify the products of the electrical company in which he holds stock.

Case 2-Engineer B may ethically specify the products of companies in which the mutual fund holds shares.

Case 3-Engineer C may not ethically design a water and sewer system in the general area of his land interests.

***Note-**This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

BOARD OF ETHICAL REVIEW CASE REPORTS: The Board of Ethical Review was established to provide service to the membership of the NSPE by rendering impartial opinions pertaining to the interpretation of the NSPE code of ethics.

BOARD OF ETHICAL REVIEW: Frank H. Bridgers, P.E.; C.C. Hallvik, P.E.; Sherman Smith, P.E.; Kurt F. Wendt, P.E.; Albert L. Wolfe, P.E.; T.C. Cooke, P.E., chairman.