

A Question of Ethics

A CASE STUDY

SITUATION: An ASCE section officer living in a large midwestern city submits a complaint to the Committee on Professional Conduct (CPC) detailing the indictment of a county official and several engineering and construction firm executives on charges of bribery and conspiracy. According to media reports provided by the section officer, the county official, whose responsibilities included supervising public works projects undertaken by the county, had accepted gifts of goods and services from local design and construction firms in exchange for funneling millions of dollars in no-bid projects to those firms.

The CPC then obtains a copy of the federal indictment, which provides a detailed description of the design, construction, and landscaping of a luxury vacation home belonging to the county official—work that was performed either at no cost or at prices drastically below market rates by the firms named in the indictment. Among the executives said to have taken part in this scheme is a civil engineer and ASCE member. As a principal of an engineering design firm, this member is alleged to have donated a number of goods and services to the vacation home project, including providing a staff member to serve as a full-time construction superintendent for the duration of the 15-month project. The indictment further lists the significant number of contracts awarded to the member's firm during that period, contracts that were approved either by the county official alone or by a

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review committee acting on that official's recommendations.

QUESTION: Did the engineer's actions in donating goods and services or subsidizing the construction of a public official's vacation home in exchange for favored treatment in securing public construction contracts violate ASCE's Code of Ethics?

DISCUSSION: Category (a) in the guidelines to practice for canon 5 of the Code of Ethics reads as follows: "Engineers shall not give, solicit, or receive either directly or indirectly, any political contribution, gratuity, or unlawful consideration in order to secure work." At the time of this investigation, category (a) in the guidelines for canon 6 further stated that "engineers shall not...knowingly engage in business or professional practices of a fraudulent, dishonest, or unethical nature."

On the basis of the information in the media reports and the criminal indictment, the CPC believed it had sufficient evidence to open an investigation into the ethics charge, and it drafted a letter to the member advis-

ing him of the pending case. Unfortunately, the CPC was unable to solicit a response from the member to the notice of violation; while certified letters were signed for and accepted by the member and by his attorney, neither individual accepted the CPC's repeated invitations to offer a defense to the charge.

With no response from the ASCE member, the committee was forced to rely on public filings and transcripts of the criminal proceedings for further details. In court documents filed by the ASCE member's counsel, the defendant claimed that the goods and services provided to the public official were not intended to influence the official to act improperly but rather were offered merely as a gesture of friendship, with no expected return "other than perhaps a thank you." The defense further stated that the charge of bribery was unsubstantiated because prosecutors were unable to link the donated services to a desire to influence any particular transaction. The defense contended that the services were at most an attempt to create general goodwill between the parties rather than a specific "quid pro quo."

Neither the criminal jury nor the CPC was convinced by the member's claim that the goods and services had been provided with no intent to exert undue influence on the official's selection of professional service providers for public projects. At trial, the member was found guilty of bribery and conspiracy and received a 45-month criminal sentence, and his firm was assessed a substantial criminal fine. Meanwhile, the

CPC held that the member had violated canons 5 and 6 of ASCE's Code of Ethics and recommended to the Board of Direction that he be expelled from the Society.

The member was again advised of the committee's decision, both directly and through counsel, but he again declined to respond to the notice of proceedings. Under the Society's rules of policy and procedure, when a member fails to present a defense either in writing or in person to an alleged violation of the Code of Ethics, the Board of Direction is entitled to reach a decision based on a presentation of charges and other supplemental materials and to impose disciplinary actions on the member if it finds the charges have been substantiated.

The Board of Direction reviewed the CPC's summary of charges and the trial documentation and voted to uphold the committee's recommendations. The member was expelled from the Society, and notice of his expulsion appeared in a Society publication.

Members who have an ethics question or would like to file a complaint with the Committee on Professional Conduct may call ASCE's hotline at (703) 295-6061 or (800) 548-ASCE (2723), extension 6061. The attorneys staffing this line can provide advice on how to handle an ethics issue or file a complaint. Please note that individual facts and circumstances vary from case to case and that the general summary information contained in these case studies is not to be construed as a precedent binding upon the Society.