

Michael Davis' Commentary on "Taking a Position of Influence"

Commentary On
Taking a Position of Influence

This is a case about conflict of interest in two professions, engineering and university teaching. Until recently, only a few professions, most notably law and public accounting, paid much attention to conflict of interest. Engineering codes of ethics did not include a general provision on conflict of interest until the mid-1970s. The NSPE's code still relies heavily on the older language, grouping most (but not all) conflict of interest provisions under Rule 3's "[acting] for each client or employer as faithful agents and trustees." Colleges and universities only began to worry much about conflict of interest in the mid-1980s. Even now they seem to worry about it far less than they should.

The first question, then, is which profession's standards apply to "you." Will you be serving on the committee (primarily) as a member of the faculty, as a member of the engineering faculty, or as a member of the National Society of Professional Engineers? The answer, it seems, is that Vice-President Jackson wants you because of your reputation as a researcher, that is, because you have been a good (academic) engineer. He probably does not know, and would not care if he did know, that you are a member of the NSPE. So, it seems, you must respond to him as an engineer, using the NSPE code or some other engineering code) as a guide to understanding what your profession requires of you in these circumstances.

The essence of conflict of interest is the undermining of independent judgment. Your training and experience as an engineer give powers of judgment others lack. Part of being a professional is exercising those powers in a certain way, that is, according to the (morally permissible) standards your profession sets. So, for example, people ask engineers to do certain jobs because they want such jobs done in the way engineers characteristically do them.

An engineer can fail to meet professional standards either by failing in competence or by failing in independence. An engineer fails in competence when she acts without knowing what members of her profession expect each other to know when they take on a job of that sort. An engineer fails in independence if, while competent for the job, she is subject to pressures, loyalties, commitments, or the like that make her less likely than otherwise to do the job as a competent member of the profession would. A conflict of interest makes an engineer less reliable than she would otherwise be.

Since their usefulness to employer, client, and public depends in part on their being reliable agents, engineers should generally avoid conflicts of interest. Sometimes, however, the conflict is not serious enough and costs of avoidance are high enough that avoiding the conflict may not make sense for client, employer, or public. When that is so, you need not avoid the conflict--provided you meet two conditions.

First, you must have the informed consent of your employer or client. Part of being a faithful agent is warning your principal when your judgment is not as reliable as it would normally be. Your principal can then decide whether he prefers to avoid the conflict by replacing you or accept the conflict, taking the necessary precautions and hoping for the best. That decision is his, not yours.

Second, you must be satisfied that you can do what is asked of you in a way that will not bring you or your profession in disrepute. (Cf. NSPE Code III.3.) Appearances can be as important as reality. The consent of your employer or client is part, but only part, of maintaining appearances. The rest is your responsibility, not your employer's or client's.

You warned the VP of your conflict of interest. He understood the problem well enough to offer a common means of avoiding it: don't participate in any decision that directly affects you. He still wants you to serve on the committee. Should you? You have much to consider.

One thing you need to consider is whether you can take the VP's consent as that of your employer, the university. You also need to decide whether you have a client as well as an employer (for example, the academic community). For brevity, let's just assume that you have no client here (the academic community being more like the public than a client) and that the VP's consent is your employer's consent (though, in a any large organization, that assumption is by no means safe).

Next you must consider whether that consent is sufficiently well informed. Information can seldom be complete. You have, however, not done all a faithful agent or trustee reasonably could do under the circumstances. You have not tried to bring home to the VP all the problems inherent in what he is asking of you. In particular, you have not pointed out two conflict problems and one appearance problem his response ignores. These problems are also reasons for you to reject serving on the committee even with the VP's informed consent.

One problem you have not pointed out concerns your ability to judge the proposals competing with yours. Since you are doling from a limited pot, you have some incentive to judge other proposals more harshly than you would otherwise. Not only do you stand to benefit from so judging them, but you may also compare them to your own, giving your own the benefit of the doubt while not doing the same for others. We all tend to favor our own work. You may well not do it deliberately or even knowingly. You may do it nonetheless. Or you may try to compensate for that tendency. You may then "bend over backward to be fair" and, by so doing, judge other proposals less harshly than you would otherwise. The problem of conflict of interest is not that you will necessarily serve yourself at the expense of those you are supposed to serve. Even you cannot know whose interest you will in fact serve.

Your presence on the committee may produce a similar problem for other committee members. Leaving the room when your proposal is discussed reminds everyone else who proposal it is (or, if reviewing is blind, actually tells them.) Since people generally favor people they know over people they do not know, those with whom they work over strangers, and so on, leaving the room avoids the effect of discussing the proposal with you present by generating another (though somewhat less serious) tendency to favor you (or to bend over backward not to favor you). Has the VP weighed these effects before pressing you to serve?

That leaves the problem of appearances. The appearance of wrongdoing is itself something to be avoided. For those who do not know the truth, the appearance is indistinguishable from the thing itself. The mere appearance can therefore do as much harm to cooperation among members of a profession as real wrongdoing. The message conveyed is that cooperation is falling apart and everyone would do well to serve herself.

An appearance is something that more information would dispel. But if you cannot provide enough information to dispel the appearance before it does harm, you must

view serving on the committee (while applying for a grant from it) as including the harm.

I believe it was Charles De Gaulle who remarked, "The indispensable man, the cemeteries are full of them." You might remind the VP of that when you respectfully, but firmly, decline to serve--or give up your plan to submit a proposal.