

Office of Government Ethics

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Letter to a Federal Employee dated February 28, 1996

During a conference call concerning your Qualified Diversified Trust on February 27, 1996, in which members of the staff of this Office participated, you raised the issue of whether you are permitted to direct the trustee and investment manager concerning sector allocations. For example, would you be permitted to direct that the fiduciaries sell all equity positions and place the portfolio of the trust entirely in bonds? As related to me, your position appears to be that communications that do not reveal the identity of individual securities held under the blind trust are permissible.

Unfortunately, that is not the case. By placing your holdings within a blind trust arrangement under section 102(f) of the Ethics in Government Act, you became bound by the mandatory scheme of the Act with respect to communications. The communications restrictions of the mandatory scheme are very restrictive, but they reflect the policy decision that, in order to be recognized as a blind trust for Federal Government purposes, a blind trust arrangement is required to conform to the rules delineated. It is not possible for me to agree to substitute the individual judgments of parties to a blind trust arrangement as to what is appropriate in their situation for the clear dictates of the statute. Indeed, the statute was adopted as a legislative action aimed at stopping individualized rationalizations of blind trust practices being implemented in particular cases, as was permitted prior to its passage.

There are particular provisions of the statute that are relevant to the issues you raise. First, paragraph (3)(C)(I) of section 102(f) directs that "the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party." The import of this provision, which by extension applies to the investment manager of your trust as well, is that there cannot be a discussion or exchange of views about market conditions and strategy between you and the fiduciaries. Once the fiduciaries are selected, they are to function without "consultation" with you.

A specific and quite limited exception to the general rule is contained in paragraph (3)(C)(vi)(I) of section 102(f) which permits written communications relating "to the general financial interests and needs of

the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain)."

Accordingly, in conformity to the statute (as well as the implementing regulations) and the specific terms of the trust instrument you executed, I must ask your cooperation in adhering strictly to the provisions of law governing your blind trust arrangement. If, in the future, you wish to modify the general instructions you have given to the fiduciaries, please do so in a pre-approved written communication consistent with paragraph (3)(C)(vi)(I). As always, you have the alternative of dissolving your blind trust and conducting your investment program through the use of diversified mutual funds or any other appropriate vehicles.

Sincerely,

Stephen D. Potts
Director