

OFFICE OF GOVERNMENT ETHICS

98 x 3

Letter to a Federal Employee  
dated February 19, 1998

This responds to your undated letter to the Office of Government Ethics, which was received on November 12, 1997. Your letter seeks ethics advice on whether you may purchase from your agency, at cost, a script for a diversity training film and whether you may privately raise funds to produce the film as an outside project. Specifically, you ask whether 18 U.S.C. § 208, the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), or any other law or regulation would preclude your undertaking this project.

Your letter explains by way of background that you are the Associate Counsel for Ethics and Personnel for the [regional office of a division of an agency] and that one of the missions assigned to [the regional office] is to produce training films for [the regional office] and [the division headquarters] in Washington, DC. Apparently [the regional office] hired a scriptwriter to write a script for a diversity training film but, after reading the script, [the regional office] decided not to produce it. It is this script which you wish to purchase and produce.

We agree that, depending on the circumstances, your proposed activities may raise a number of ethics-related issues under the criminal conflict of interest statutes, 18 U.S.C. § 202 et seq., and the Standards of Conduct, 5 C.F.R. part 2635. However, before these issues can be addressed, other issues involving the application of copyright, property management, public information, and contracting law must be resolved. As these matters are outside the jurisdiction of this Office, we suggest that the appropriate persons within the [agency] determine whether the script can be sold by [the agency] in any case, consistent with applicable law.

Only if your agency determines that the script can be sold and produced privately would you reach the question of whether any ethics-related laws or regulations would bar you from being the purchaser. Because some of the questions you raise involve interpretations of the applicable rules on permissible outside activities, we think it best if you obtain a definitive ruling from your own Designated Agency Ethics Official (DAEO). As you know, our regulations do not contemplate direct consultation on ethics issues between this Office and employees of other agencies; rather, the regulations provide that employees should seek advice from their own agency ethics officials and that those ethics officials may consult with this Office. See 5 C.F.R. §§ 2635.107(b),

2638.201-204. One reason for this arrangement is that agency ethics officials generally are in a better position than this Office to know or develop the facts of a case and to understand their implications in terms of agency programs. While we appreciate that you have responsibility for ethics matters arising at [the regional office], insofar as this matter concerns you personally, we think it prudent to regard you, for purposes of this matter, like any other employee. Accordingly, we are referring your letter to the Alternate DAEO at the [agency].

Nevertheless, in order to assist you and your DAEO in analyzing your proposal, we offer the following observations. First, we assume, based on your letter, that you intend, and rightly so, not to proceed with purchase of the diversity script until you receive ethics advice. Your letter, however, is silent about whether your official responsibilities are such that you may be called upon, in the interim, to act officially in matters affecting your agency's disposition of the script and whether you intend to avoid officially participating in such matters pending receipt of ethics advice. As 18 U.S.C. § 208 bars an employee from participating in a matter affecting his own financial interest, we advise you not to participate officially in such matters pending resolution of the ethics issues raised with [the Alternate DAEO] or her staff. Of course, if [the agency] decides that you may purchase and produce the script, you would have to continue to be disqualified from participating in any matter affecting the disposition of the script.

Similarly, while your letter raises the possibility of obtaining outside investors, it does not indicate whether you anticipate communicating with the Government in your personal capacity on behalf of any organization or person other than yourself in connection with this matter; neither does it indicate that you intend to avoid even preliminary communications of this nature pending the receipt of ethics advice. As 18 U.S.C. § 205 bars an employee from representing anyone before a Department or agency on a particular matter in which the United States is a party or has a direct and substantial interest, we advise that you not communicate with the Government on behalf of others in connection with matters pertaining to the script at least until [the Alternate DAEO] has had an opportunity to respond to your letter. If [the agency] decides the script may be purchased and produced privately, you would be barred from representing a group of investors before [the agency] on the matter.

In analyzing the relevant conflicts of interest and ethics laws and regulations, [the Alternate DAEO] will undoubtedly need to determine whether your proposal would involve the use of any nonpublic information, or misuse of Government time and resources. Naturally, we will be happy to consult with her on these and any other ethics-related issues as she examines your proposal.

Sincerely,

Stephen D. Potts  
Director