

06 x 3

Letter to a Law Firm
dated March 21, 2006

You have requested an advisory opinion from our Office as to whether two letter carriers could accept a bequest of money that was left to them in [an individual's] will. It is my understanding from your memorandum that you are counsel to [a] Local of the National Association of Letter Carriers. By way of facts, you represent that [the individual] was a customer on the route that [the two letter carriers] served as letter carriers. You also provide copies of letters from [the two letter carriers] describing the nature of their relationship with [the individual].

The Office of Government Ethics provides broad policy guidance to agencies for interpretation of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct). Generally, it is the responsibility of agency ethics offices to determine the relevant facts of a particular case and apply the Standards of Conduct to an employee's proposed activities. We note that, in the chapter on Conduct in the January 5, 2006, version of the Employee and Labor Relations Manual of the United States Postal Service (USPS), provision 662.11 directs USPS employees to seek advice from a USPS agency ethics official regarding the application of the ethics rules to their specific conduct. However, because our Office is charged with offering guidance on the Standards of Conduct to the executive branch as a whole, and because your particular question has not been addressed by USPS before, we offer the following guidance to provide criteria that USPS can use in making this determination.

Legal Authority

The Standards of Conduct ban an employee's receipt of gifts given by prohibited sources or because of one's official position. 5 C.F.R. § 2635.202(a). Generally, USPS regards all Postal Service customers as prohibited sources. Gifts clearly motivated by a family relationship or private friendship, however, are excluded from this

prohibition. 5 C.F.R. § 2635.204(b). An employee may not use this exception to solicit or coerce the offering of a gift. Nor may an employee accept gifts so frequently as to appear to be using public office for private gain. Even though acceptance of a gift may be permitted by an exception, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

The Standards of Conduct provide that the determination of whether a gift from a prohibited source is clearly motivated by a family relationship or private friendship includes a consideration of relevant factors such as the history of the relationship and whether the friend personally paid for the gift. 5 C.F.R. § 2634.204(b). Where a personal relationship develops from an on-going work relationship, it can be very difficult to clearly establish that the gift is not being given because of the employee's official position. A gift given out of appreciation for some action the employee took, particularly one that relates to an employee's official responsibilities, is not clearly motivated by a personal relationship. Therefore, an employee bears a considerable burden in establishing that a gift is based on a personal relationship rather than the employee's Government position. This burden may be exacerbated even further by testamentary gifts where gifts to non-family members may be considered suspect.

One must look to the circumstances surrounding the gift when a personal relationship is at issue. Factors indicating a personal relationship include the length of time of the relationship, the intimacy of the relationship including any family interaction, the nature of personal activities outside the work context, and the frequency of outside contacts.

In the case of a bequest, agencies should also consider the timing of the bequest, particularly in relation to the employee's official duty services rendered to the testator. It also may be helpful to know when the employee learned of the bequest, and whether the bequest could have affected the nature of the relationship between the employee and the testator. Also relevant is whether the bequest appeared in prior versions of the testator's will and whether the employee had any role in the drafting or execution of the will. A bequest might be much larger

than a standard gift and could involve factors that go beyond the standard personal relationship. For example, if the testator included the bequest to influence the employee to provide additional Government services, then the gift is not clearly motivated by a personal relationship. Agencies may require an employee to address all of the aforementioned factors in a detailed affidavit in order to determine whether a gift from a prohibited source is clearly motivated by a personal relationship.

In addition to a determination of whether an employee is authorized to accept a gift under the Standards of Conduct, agencies should also consider whether the acceptance of the gift could constitute a payment made to supplement the compensation of a Federal employee. A criminal statute prohibits the receipt of salary or contribution to or supplementation of salary as compensation for services as an employee of the United States from any source other than the United States. 18 U.S.C. § 209(a). In determining whether section 209 would apply, USPS will need to ascertain whether the testator intended to compensate the employees for official services rendered by them.

We hope this information is helpful. Should you need further assistance regarding the bequest to [the two letter carriers], please contact the Designated Agency's Ethics Official at USPS.

Sincerely,

Marilyn L. Glynn
Acting Director