

Note: Among other changes to the Standards of Conduct effective August 15, 2024, OGE restructured the “compensation” definition in 2635.807(a)(2)(iii). No substantive changes were made, but this restructuring has rendered inaccurate some citations in this document relating to the compensation definition. See 89 FR 43686 and LA-24-06.

Office of Government Ethics

94 x 14 -- 07/15/94

Letter to the Inspector General of a Quasi-Official Federal Entity dated July 15, 1994

This is in response to your letter of May 27, 1994, concerning a two-day conference on [a particular program]. As described in the brochure included with your letter, the conference is sponsored by an apparently private organization. The brochure states that those attending will "[b]enefit from the experiences of 10 government departments that have implemented [a particular program]. Over half of the listed speakers appear to be Federal Government officials and marketing of the program is directed to Government executives. The cost of the two-day program is \$995 for Government officials and \$1,195 for private company executives.

Your letter states that [your entity] is considering establishing a code of conduct at [the entity] and requests information regarding regulations or other directives that relate to such conferences. As we understand the status of [the entity], it is generally not considered a department, agency, or instrumentality of the Federal Government, [citation deleted], and its employees are not, therefore, subject to the conflict of interest statutes or the administrative Standards of Ethical Conduct. Accordingly, as your letter suggests, our discussion below of the effect of the statutes and standards on executive branch employees is not directly relevant to [entity] employees but could serve as guidance or provide a starting point for developing your own code of conduct.

Since all the speakers at the conference appear to be speaking officially, we assume your primary concern relates to restrictions on employees' official participation in such a conference as speakers.¹ Under the conflict of interest statutes and the Standards of Conduct, speaking at a conference in an official capacity may raise conflict of interest issues if the speaker holds a director or officer position in, or is an active participant in, the organization sponsoring the conference. A criminal statute, 18 U.S.C. § 208, prohibits employees from participating personally and substantially in an official capacity in any particular matters in which organizations they serve as officers or directors have a financial interest, unless they obtain a waiver as outlined in subsection 208(b). See also 5 C.F.R. § 2635.401 et seq. The administrative Standards of Conduct provide that, unless specifically authorized to participate, employees should not participate in matters to which organizations in which they are active participants are parties, if a reasonable person with knowledge of the

relevant facts would question their impartiality. 5 C.F.R. § 2635.502.

Acceptance of compensation for the official speech would also present problems under the relevant statutes and standards. 18 U.S.C. § 209 prohibits employees from receiving from non-Government sources compensation for services as employees. Similarly, 5 C.F.R. § 2635.807(a)(2)(i)(A) prohibits acceptance of compensation from non-Government sources for teaching or speaking that "is undertaken as part of the employee's official duties." While "compensation," as defined in 5 C.F.R. § 2635.807(a)(2)(iii), generally includes transportation, lodgings and meals, it does not include "[m]eals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the . . . speaking takes place." 5 C.F.R. § 2635.807(a)(2)(iii)(B). It also does not include items of little value which are intended for presentation purposes, like a plaque, or item under \$20 in value as, for example, a ballpoint pen, food, or inexpensive meals even if not furnished as part of the event. See, e.g., 5 C.F.R. §§ 2635.807(a)(2)(iii)(A); 2635.203(b)(2); 2635.204(a).

Beyond issues related to individual employee conduct regulated by the conflict of interest statutes or the Standards of Conduct, your letter raises the policy question of whether agencies should provide speakers to privately-sponsored conferences, particularly where fees for attendance by Government employees are significant. This issue, beyond the jurisdiction of this office, is not addressed by our Standards of Conduct; nor are we aware of any statutes or regulations currently in effect that directly address the question.² In the process of authorizing an employee to speak officially at a conference, however, an agency necessarily would have to determine that it is in the Government's interest for the employee to participate and that the event is an appropriate forum for the exchange of information relevant to the programs, operations, or responsibilities of the agency. See The Informal Advisory Letters and Memoranda and Formal

Opinions of the United States Office of Government Ethics, 90 x 1. In making this determination, an agency presumably would consider the cost of attendance as well as the extent of Federal participation in presentation of the program. If fees are substantial or out of proportion to costs, an agency might choose not to provide a speaker.³

If this Office can be of further assistance, please do not hesitate to contact us.

Sincerely,

Stephen D. Potts

Director

1The analysis is somewhat different when an employee is asked to speak in his private capacity. In such a case, for example, the employee may not use Government time or Government property in preparing or giving his speech. 5 C.F.R. §§ 2635.704 and 2635.705. He may not use his Government position or title to suggest Government sanction or endorsement of his speech. 5 C.F.R. § 2635.702. As is the case with respect to official speech, the employee could not accept compensation for his speech if it is "related to his duties." 5 C.F.R. § 2635.807. If agency regulations require prior approval for outside activities, then whether the speech were for compensation or not, the speaking engagement would be subject to the prior approval by the agency. 5 C.F.R. § 2635.803.

2In August of 1977 the Director of the Office of Management and Budget (OMB) issued guidelines for Government-sponsored attendance at conferences, which stated: "[s]peaking engagements should not be accepted for meetings where fees for Government employees are not in line with actual costs." Based on information obtained from OMB, we understand that this guideline was revoked in the early 1980s.

3Regarding the question of whether Government employees may attend a conference conducted by a private organization charging substantial attendance fees, we assume, similarly, that, in exercising its discretion to approve or disapprove attendance, an agency would and should properly consider whether the benefit to the agency of having the employee attend is worth the cost of the attendance fee.