

Office of Government Ethics
84 x 10 -- 06/14/84

Letter to an Ethics Counselor dated June 14, 1984

This is in response to your letter of April 29, 1984 in which you requested a formal opinion regarding the acceptance of two round-trip airline tickets to Paris by an employee of the Commission. It is our understanding that you did not intend to request a formal opinion under the procedures outlined in Subpart C, Part 738, Title 5, Code of Federal Regulations, but rather to request this letter response to your question.

In your letter you stated that a commodity analyst with the Commission specializing in the aerospace industry was recently the guest of [the] Vice President of [a consulting company] at an informational luncheon. The speaker at the luncheon was [the director of another country's civilian aeronautics program] and the topic was the plans for the [a particular aircraft]. Because the Commission encourages its analysts to remain informed about their assigned product on a continuing basis, you believe that this analyst's attendance at this luncheon was appropriate.

You further state that at the luncheon, the luncheon tickets of all attendees were entered into a drawing for a prize. Normally at such informational luncheons the prize is a bottle of wine or a basket of fruit. On this occasion, however, one of the prizes was the airline tickets mentioned above and the sponsor for that prize was Air France. The analyst's luncheon ticket was selected at the drawing and it is these airline tickets she wishes to know whether she can keep.

The section of the model regulations promulgated pursuant to Executive Order 11222 which governs the acceptance of gifts is 5 C.F.R. § 735.202(a). That section in general prohibits an employee from:

accept[ing], directly or indirectly, any gift,
gratuity, favor, entertainment, loan, or any other
thing of monetary value, from a person who:

- (1) Has or is seeking to obtain, contractual or other business or financial relations with his agency;

(2) Conducts operations or activities that are regulated by his agency; or

(3) Has interests that may be substantially affected by the performance or non- performance of his official duty.

Because of the manner in which these tickets were awarded, it is important to discuss two issues, first the acceptance of the luncheon and then the acceptance of the tickets. (We are, of course, assuming that the drawing itself was conducted fairly and that any industry members present at the luncheon were equally eligible to win the airline tickets.)

While many individuals do not recognize that free lunches and dinners fall within these gift restrictions, they are in fact gifts which may be prohibited depending upon the host. If the host fits within one of the categories of prohibited sources of gifts to employees of your agency, then free lunches and dinners from that person are unacceptable absent those very limited instances covered by section 735.202(b)(2).1

In this instance, you stated that the host and his company, a Washington based firm which represents the interests of [another] government's equivalent of the FAA and the CAB, do not do business before the Commission, nor are they regulated by it. Therefore, your employee was not prohibited from being [the company vice president's] guest at the luncheon. Further, if one were to view the airline tickets as an indirect gift of the person who purchased the luncheon ticket for your employee, since [the vice president] and his company do not fall within the categories of persons prohibited from giving gifts to Commission employees, the acceptance of the airline tickets through him is not prohibited.

Additionally, if one were to view the donor of the airline tickets as Air France, acceptance by your employee would not be prohibited since you have also stated that the company is not, and would not under any normal circumstances, be a party in any Commission matter.

As a comment, there may have been many Government employees attending this luncheon who would not have been allowed to accept the airline tickets should they have won them. This would have been so because of a direct business relationship between their

agencies and the donors involved. Since that business relationship does not exist between the Commission and Air France or [the company], we believe that your employee may accept the airline tickets.

We appreciate the Commission's and the employee's sensitivity to the questions involved and we hope that she enjoys the trip.

Sincerely,

David H. Martin
Director

1 The luncheon or dinner meeting referred to in that section does not include the situation where an employee is taken to lunch or dinner in a restaurant during which some business may be discussed. It does include those instances where a working session continues through lunch and sandwiches are brought in to all attendees or a luncheon or dinner meeting where the employee is asked to speak and is offered the same meal as all other persons attending.