

Office of Government Ethics

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Letter to the President of an Association dated January 24, 1990

This is in reply to your letter of December 27, 1989, in which you requested guidance relating to any ethical concerns arising from the unpaid participation of Federal employees as speakers, instructors, or panelists at luncheons and symposia sponsored by an association for which you serve as President. According to your letter, [the Association] is a "non-profit association of individuals from Government and the private sector with a common interest in [a certain area of government regulation]." You indicate that [the Association] sponsors luncheons and symposia for the purpose of advancing knowledge and understanding of [a topic]. [The Association] charges registrants a fee in order to cover the association's administrative costs. You wish to confirm your view that Federal ethics laws and regulations do not preclude Federal employees from serving as uncompensated speakers, instructors, and panelists at programs sponsored by [the Association] notwithstanding the fact that a registration fee may be charged.

There is nothing in the conflict of interest statutes or in the standards of conduct that prohibits an employee from serving in his personal capacity as a member of a nonprofit organization such as [the Association]. There are, however, appearance concerns that can arise under agency standards of conduct regulations implementing 5 C.F.R. § 735.201 when an active member of an organization participates in his official Government capacity in matters affecting the financial interests of that organization. These appearance concerns may dictate that an active member disqualify himself from participating in official Government matters affecting the organization. Such a concern could arise, for example, where the organization has submitted comments on a proposed regulation that is being revised by the employee. [T]he basic conflict of interest statute, 18 U.S.C. § 208, treats the financial interests of an organization as the personal financial interests of its officers and directors [but does not do so for mere members]. Officers and directors of an organization are consequently prohibited by law from taking official Government action that would affect the organization's financial interests.

A Federal employee is free to participate in nonprofit organization programs as an uncompensated speaker, instructor, or panelist in his personal capacity, whether or not the organization is charging a fee for attendance. He must first comply with any agency-specific requirements for advance approval of outside teaching, lecturing, or writing. An employee may not use Government time, resources, or equipment to prepare his presentation in violation of 5 C.F.R. § 735.205 and may not release nonpublic information to further the interests of the organization in violation of section 735.206. Employees who participate must be careful that they do not use or permit the use of their official title, position, or authority to further the interests of the outside organization (or themselves). Thus, for example, the speaker, instructor, or panel participant at an [Association] function must make it clear that he is presenting his own views and that he is not representing his agency.

A Federal employee may also participate as an uncompensated speaker, instructor, or panelist at a luncheon or symposium when authorized to do so as a part of official duties, even though a registration fee is charged. The employee should not, however, be authorized to participate as a speaker where registration fees charged Government attendees are not in line with the actual costs of the program to the sponsor. In addition, the agency must find that it is in the interest of the agency for the employee to participate and that the event is an appropriate forum for the exchange of information relevant to the programs, operations, and responsibilities of the agency.¹ Thus, for example, an agency could reasonably find that it is in its best interests to authorize its expert on the Freedom of Information Act (FOIA) to appear before [the Association] for the purpose of explaining the agency's implementation of the Act to a group of individuals who routinely deal in FOIA matters. Neither the participating employee nor the authorizing official will be deemed to have extended preferred treatment to the sponsoring organization so long as the agency had a reasonable basis for choosing the one forum over another.

We trust this information will be of assistance to you. Should you have additional questions in the future, please feel free to contact this Office.

Sincerely,

Donald E. Campbell

Acting Director

1 (Ed. note: Subsequent advice from OGE to the Association clarified that this sentence sets forth the relevant standard and, further, that in determining whether an event is an "appropriate forum" within the meaning of the standard, an agency decision maker may consider all relevant factors, including whether the registration fees charged Government attendees are in line with the actual costs of the program to the sponsor.)