

Office of Government Ethics

88 x 10 -- 06/16/88

Letter to an Agency Inspector General dated June 16, 1988

This is in response to your letter of May 20, 1988, expressing the need for guidance on Government employees' acceptance of invitations to speak officially at certain conferences, conventions, and symposiums sponsored by private, profit-making organizations.

You cite as an example [a conference]. [A corporation], a private, profit-making organization, sponsored this two-day conference, using speakers primarily from the Federal Government. You were advised that most of the attendees would be Federal or state Government employees. While the basic fee for this course was [amount], Government employees were eligible for a special rate of [amount]. The sponsor's expenses consisted primarily of the costs of the advertising brochure, conference materials, and hotel space. In light of the conference's Government audience, Government speakers, and the limited expenses of the sponsor, you view this price as excessive and question whether the Government's participation therein properly accomplishes the Government's goals.

On October 25, 1985, this Office issued a memorandum entitled "Participating in Privately-Sponsored Seminars or Conferences for Compensation" [85 x 18], a copy of which is enclosed. Although the focus of that memorandum is the employee's receipt of compensation for speaking on matters related to his Government job, it also refers briefly to the standards of conduct regulations and conflict of interest statutes applicable to an employee's speaking before an outside organization in an official capacity.

When an employee is asked to participate officially in a conference sponsored by a private, profit-making entity, the employee should seek guidance from the agency. Before approving an employee's participation in such an activity, the agency should consider two issues. First, the agency must determine whether the employee's participation will serve the agency's interests, such as increasing public awareness of the agency's programs or obtaining public input regarding agency programs. This is the threshold determination when an employee will be

appearing officially as a representative of the agency. If the agency concludes its interests would not be served by the employee's participation in the event, the agency should not approve the activity. If, however, the agency concludes affirmatively, it should next consider the standards of conduct, balancing its interest in having the employee participate against any adverse appearances associated with the employee's involvement in the event. In this regard, while it is recognized that a public official has a responsibility to increase public understanding of the programs for which he is responsible, we caution that "an official should be wary of participating in a conference if his or her presence is desired primarily because it will contribute to the conference's financial success." (OGE Informal Advisory Letter 85 x 18, p.1)

These words of caution are based on 5 C.F.R. § 735.201a and the applicable provision in the agency's standards of conduct regulations. Under these provisions, an employee is prohibited from taking any action which might result in, or create the appearance of, among other things, using public office for private gain or giving preferential treatment to anyone. This Office has interpreted the use of public office for private gain to include situations in which the gain is recognized by someone other than the employee, including a private organization. The concern with giving preferential treatment arises when invitations to speak come from a variety of organizations and a choice must be made as to which to accept. As a result, the agency should consider the circumstances surrounding the event, such as the fees charged, the nature and the role of the sponsor, the composition of the audience, and the way in which the employee's position in the agency will be used in marketing the program to determine whether these standards of conduct concerns outweigh the agency's interest in having the employee participate in the event. Accordingly, if the fees paid to the sponsor are disproportionate to the services the sponsor provides or the official's presence is sought primarily to enhance the conference's success, the agency may conclude that the employee should not attend, determining that the appearance of using public office for private gain outweighs the agency's interest in having its employee participate.

Although the principles of subsection 735.201a govern the employee's participation in such an event, the agency may wish to consider, as a matter of policy, its own role in such events. An agency may be asked to participate jointly with a private

organization in a conference on issues related to the agency function. Such participation may be used by the organization to convey agency support of the private organization or to enhance the conference's financial success. Before associating itself with such an event, the agency may wish to consider the circumstances surrounding the event, such as the sponsor, audience, and fees. In addition, it may wish to know how the organization intends to refer to the agency's participation in its advertising or reporting of the event. With that information, the agency can decide how to proceed in a way that minimizes adverse appearances, while validly serving the Government's interest.

The second issue is whether the proscriptions of 18 U.S.C. § 209 apply. Under section 209, a Government employee, with limited exceptions, may not accept an honorarium or other supplementation of salary from a private source for a speech given in the course of the employee's official duties. In this context, compensation may include the payment of travel expenses unless they are accepted through an agency's gift acceptance authority or under the Employee Training Act (5 U.S.C. § 4111). In the example you provided, section 209 would not be at issue, since the employees were not compensated in any way by the event's sponsor for their speeches.

Our earlier memorandum addresses this issue sufficiently to provide agencies a sound basis for permitting acceptance or rejection of employees' invitations to speak at conferences sponsored by private, profit-making organizations. The decision is largely a matter of agency discretion to be exercised consistent with the unique nature of its responsibilities. Your interest in this matter reflects a healthy and responsible approach to the need for sensitivity to standards of conduct matters.

Sincerely,

Frank Q. Nebeker
Director

Enclosure