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Letter to an Agency Ethics Official
dated August 26, 2005

This is in response to your letter seeking our views as to whether an employee of [your agency] may keep a prize he won while attending a conference in his official capacity.

According to your letter, approximately 12 officials from the [agency] attended the 2005 conference [of an Association]. The [Association] is a national association of [certain] officials and is not a prohibited source for the [agency]. The cost of registration for the conference was \$195 for members and \$275 for non-members. During the conference, attendees could voluntarily place a business card in a container for a random drawing. There was no separate fee for entering the drawing. The only condition for winning a prize was that the attendee had to be present in the conference hall when his or her name was drawn. The initial prize was \$500, but the amount increased in increments of \$500 if the person whose name was selected was not in the hall. The prize money came directly from [the Association] and not one of the conference vendors. Eventually, the business card of an [agency] employee was drawn and he received \$2,500.

Under subpart B of 5 C.F.R. part 2635, executive branch employees may accept an item of monetary value that otherwise might not be permitted, if the item falls within an exclusion from the definition of a gift or is covered by an exception to the gift prohibition. As you know, there is a gift exclusion at 5 C.F.R. § 2635.203(b)(5) that encompasses prizes given to competitors in contests open to the public, if other conditions are met. Under this exclusion, a contest is open to the public if anyone without qualification or fee may gain entry. "If, however, a fee is charged to attend the conference or trade show, or other factors effectively limit who can attend . . . then that event cannot be characterized as truly open to the public." OGE Informal Advisory Memorandum 99 x 7.

Because all attendees at the [Association] conference were required to pay an entrance fee, the random drawing that was held at the conference was not "open to the public" as that term is used in the gift exclusion at section 203(b)(5). There likewise being no exception in subpart B that would apply in this case, we conclude that the employee is prohibited from keeping the prize.

Thank you for your request for our views.

Sincerely,

Stuart D. Rick
Deputy General Counsel