

Office of Government Ethics

87 x 2 -- 02/03/87

Letter to a Designated Agency Ethics Official dated February 3, 1987

This is in response to your letter of January 9, 1987, requesting a formal advisory opinion on Federal employees' participation in the activities of [a professional association] and the site visit trips offered through [the association].¹ I have reviewed your request under the criteria of 5 C.F.R. § 738.303 and have determined that a formal advisory opinion is not appropriate. You suggest that at least a dozen agencies in the Federal Government have employees who participate in the activities of [the association]; however, the issues raised are not unique and have been discussed in several of this Office's informal advisory letters. Although this Office will not render a formal advisory opinion on this matter, we will respond in the form of an informal advisory letter.

According to your letter, [the association] is composed of an equal number of persons who are employees of the Federal Government responsible for planning and arranging Government meetings, conventions, and conferences, and employees of private companies who serve as suppliers of the services associated with conducting such activities, i.e., representatives of hotels and airlines. Among [the association's] activities are visits to potential meeting sites in various cities to inspect facilities for meetings, conferences, and conventions. Under arrangements made by [the association], members of the organization receive substantial reductions in the prices of transportation and accommodations associated with the site visits. You cite the example of a site visit to Baltimore, Maryland. The total cost of the site visit to Baltimore, including bus transportation and two nights at the Omni International Hotel, was \$40.00. Another example included in the enclosures to your letter is a site visit to New Orleans, Louisiana. For \$65.00, the member would receive round-trip air fare, meals, and necessary ground transportation.

You indicate in your letter that you have been asked if the official at your agency who is responsible for planning meetings and who is a member of [the association] may take advantage of these "deep discounts." There are two possible ways in which to

analyze the acceptance of these offers. First, if they are viewed as discounts, they should be analyzed under this Office's advisory letter on the acceptance of commercial discounts. Second, offers that are outside the range of the typical discount must be analyzed under the agency's standards on gifts.

In OGE's Informal Advisory Letter 85 x 13, we analyzed the issues surrounding Government employees' acceptance of special rates and commercial discounts that are offered to individuals in the ordinary course of business. In most cases a Government employee's acceptance of a commercial discount poses no problems, but there are situations when provisions in Executive Order 11222, the implementing regulations, and the criminal conflict of interest statutes indicate that an employee should not accept the special offer. According to OGE's advisory letter, when the offeror of a discount or special offer targets a narrow class of Government employees for its offer, the agency must examine closely the circumstances surrounding the offer. "Any discount offered to less than all Federal employees raises the possibility of an improper motive and creates appearance problems." (Informal Advisory Letter 85 x 13).

The opinion suggests several factors the agency should consider in assessing the propriety of the employee's acceptance of the offer. Under those guidelines, Government employees should not accept the special offers associated with the site visits. First, the offeror is a prohibited source under 5 C.F.R. § 735.202(a), i.e., someone who does business with the agency. Second, the employee's acceptance of the offer would create an appearance of using public office for private gain or giving preferential treatment. Third, it appears that the participating suppliers expect some form of reciprocation through the employee's official duties, since the employees targeted for the special offer are responsible for deciding where the agency's meetings will be held and which suppliers will receive the agency's business. As a result, even if these offers are deemed discounts rather than gifts, the employees should not accept them.

Based upon the examples you have provided, however, most of the special offers would not be considered discounts under the terms of Informal Advisory Letter 85 x 13. To be deemed a discount, the special offer must be within the normal range of discounts available to the public from a particular entity. If the special offer is outside the normal range, it should be analyzed as a gift under the standards on gift acceptance. The

special offers described in the enclosures to your letter provide for reductions in the price of services that exceed the typical discount offered to the public, and it is not clear whether these offers are even available to private sector meeting planners.

The basic standards of conduct provision on gifts, entertainment, and favors is 5 C.F.R. § 735.202. It prohibits a Federal employee from accepting, directly or indirectly, anything of monetary value from someone who: (1) has or is seeking to do business with his agency; (2) is regulated by his agency; or (3) has interests that may be substantially affected by the performance or nonperformance of his official duty. Although [the association] and the suppliers of the services are not regulated by [your agency], they fall within the other two categories. First, they are seeking to do business with the agency by supplying the services, transportation, or accommodations associated with the agency's meetings or conferences. Second, because the Government employee is the individual responsible for selecting the location of the meeting, [the association] and the suppliers have interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Although 5 C.F.R. § 735.202(b) contains several exceptions to the prohibition on accepting gifts, none of those exceptions applies to this situation. From the materials you enclosed with your letter, it appears that some of these special offers also permit the employee to bring a guest at the same reduced rate. An employee's use of this special rate for the employee's spouse or children would also violate this provision.

The employee must also concern himself with 18 U.S.C. § 209, which is a criminal conflict of interest statute. It prohibits an employee from receiving from a private source compensation for his services to the Government or any supplementation to his Government salary for the performance of his official duties. Since the employee would be making these trips in the course of performing his official responsibilities, he should be careful not to accept even a partial payment of his official travel expenses from a private source, unless such acceptance has been cleared by the agency. The agency is also limited in accepting travel expenses from outside sources. An agency may accept travel expenses only if it has gift acceptance authority or if the gift qualifies under 5 U.S.C. § 4111. (See Informal Advisory Letter 84 x 5.) Use of these special offers for the employee's spouse or children could be viewed as a supplementation of salary or as compensation in violation of 18 U.S.C. § 209. (This Office

does not render opinions on 18 U.S.C. § 201, the bribery statute; however, you might wish to look at 18 U.S.C § 201(g) in conjunction with these special offers.)

As you suggest in your letter, the acceptance of these special offers also runs afoul of the appearance standards at 5 C.F.R. § 735.201a. If a Federal employee participates in a special offer and awards a contract to a hotel or transportation company that participated in the offer, this could create the appearance of giving preferential treatment, losing complete independence or impartiality, or it could affect adversely the confidence of the public in the integrity of the Government.

Based upon the materials you provided, it appears that the [agency] employee who is responsible for planning the agency's meetings should not participate in these special offers.

Sincerely,

David H. Martin
Director

1 The same analysis employed in determining the propriety of accepting the site visits offered through [the association] would apply to the acceptance of any other items, including lunches and free hotel rooms, that these employees receive from sources outside the Government in the course of performing their duties as Government meeting planners.