

Office of Government Ethics

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Letter to an Agency Ethics Official dated September 9, 1987

By letter dated August 19, 1987, you requested an opinion from this Office concerning the propriety of permitting an educational institution to establish a fund in honor of a recently appointed member of [a Commission in your agency]. The following is our analysis of the issue under the applicable standards of conduct regulations and conflict of interest laws.

You have advised us that the individual to be honored was the president of a private university immediately prior to his appointment to the Commission. In addition, he served on the Board of Directors of [a corporation] up to the time of his appointment. In recognition of the individual's service to the [corporation], the [corporation] would like to make a one-time cash gift to the university in conjunction with his retirement from the Board to establish a "President's Discretionary Fund" in the individual's honor. The university has advised you that it would not use the donation as the basis for any general solicitation from other corporations. According to your letter, the university holds several licenses [issued by the agency], but the [Commission member] is precluded from participating in any particular matter affecting the university for two years. Given the scope of the agency's responsibilities, you do not anticipate that matters involving the [corporation] will come before the Commission.

Your agency's [version of 5 C.F.R. § 735.202(a)] prohibit[s] an employee from accepting, directly or indirectly, anything of monetary value from an entity that does business with the agency, is regulated by the agency, or has interests that may be substantially affected by the employee's performance or nonperformance of his official duties. That aspect of this regulation does not apply in the present situation, since the [corporation] is not regulated by the [agency], and it does not do business with it.

Another potential concern is 18 U.S.C. § 209, which prohibits an employee from accepting a contribution to or supplementation of his Federal salary for performing his Government duties. The Department of Justice has interpreted this statute to apply only to payments made or received with the intent to compensate for

Government services. Even if money for the establishment of this honorary fund were to be viewed as compensation to the employee, it would not run afoul of this provision because, based upon your representations, it is in recognition of the employee's past services on the [corporation's] Board of Directors and is not related to his recent appointment to the Commission.

The [agency's version of 5 C.F.R. § 735.203(e)(3)] permit[s] an employee to accept an award from a "charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service, or civic organization." The donor of the money for the gift, [the corporation], does not fit any of these descriptions, and it is unclear whether the honorary gift would be considered an award. Looking separately at the university's establishment of a fund in the individual's honor, this could potentially fall within the exception as an award from a nonprofit educational organization. However, since the university has a business relationship with the [agency], the employee should be aware of the agency's general standards of conduct, [its version of 5 C.F.R. § 735.201a], [requires a] Government employee [to] avoid any action which might result in, or create the appearance of, losing complete independence or impartiality. Being honored by the university in this way could create an adverse appearance, even though the employee is currently disqualified from taking action in matters affecting the university.

The remaining concern is that the university might use the employee's name in conjunction with the fund to solicit contributions. Although your understanding is that the university does not intend to use the donation as a basis for a general solicitation from corporations, we wish to state explicitly the potential problems. First, the agency's standards of conduct [similar to 5 C.F.R. § 735.201a] state that an employee shall avoid any action which might result in or create the appearance of, among other things, using public office for private gain. As a result, the use of the individual's name, his Government title, or his Government position, directly or indirectly, in the solicitation of funds for the university or for this particular fund would be improper. It could create the appearance that the individual is using his Government position for private gain, which in this case would be the private gain of the university.

Second, in conjunction with the solicitation of funds, we

would like to point out [the agency's version of 5 C.F.R. § 735.202(a)], which prohibits employees from soliciting anything of monetary value, directly or indirectly, from someone doing business with or regulated by the agency, or someone whose interests could be affected by the employee's performance of his duties. Solicitations of such entities for contributions to a fund honoring this employee would be inappropriate. In addition, 5 U.S.C. § 7351 prohibits an employee from soliciting a contribution from another employee for a gift to an official superior and from accepting a gift from an employee receiving less pay than himself. Solicitations by employees for contributions to this fund could potentially violate this provision.

In light of these provisions, it would appear that in this case a contribution by the [corporation] to the university to establish a President's Discretionary Fund in the employee's honor in recognition of the employee's past services for the [corporation] would not, in and of itself, be prohibited. However, the university should be advised that it should not trade on the employee's Government title or position in seeking additional contributions for the university.

Sincerely,

Donald E. Campbell
Acting Director