

Office of Government Ethics

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Letter to an Employee dated April 4, 1990

President Bush asked this Office to respond to your letter of February 2, 1990, in which you expressed concern that the Ethics Reform Act of 1989 would have a chilling effect on the volunteerism of Federal employees. You indicated that you are an employee of [a] Department, that you work as an adjunct professor at [a university] and that you volunteer for [a community organization]. You would like to pursue Federal grant money on behalf of [this community organization] but have been instructed by a [Department] attorney that as a Federal employee you are prohibited from representing a third party to the Government. You are also frustrated that you must apply for a waiver for every semester that you wish to teach at the University.

The two conflict of interest statutes that restrict your activities are 18 U.S.C. §§ 205 and 208. These statutes are not new to the Ethics Reform Act of 1989. They were signed into law on October 23, 1962, and became effective on January 21, 1963. In fact, sections 205 and 208 have their origin in statutes enacted in the Civil War era. The Ethics Reform Act amended the two sections but not in such a way as to prejudice your situation as you described it in your letter.

Section 205(a)(2) prohibits you, because of your status as a Federal employee, from acting as agent or attorney for [the Community organization] before any department or agency in connection with any matter in which the United States is a party or has a direct and substantial interest. This means you cannot represent [the community organization] in a grant application to any Federal department or agency. This does not prohibit you from the in-house preparation of a grant application or assisting another [community organization] volunteer or employee in the in-house preparation of a grant application or from representing it to a state or local agency. Thus, your expertise is not necessarily lost to [the community organization]. The statute is intended to prohibit Federal employees from representing the interests of third parties in seeking money from their own employer or in matters against their own employer's interest. Your employer is the United States Government, not just [the Department].

Section 208(a) prohibits a Federal employee from participating personally and substantially as a Government officer or employee in a matter that will affect an organization by which he or she is employed outside the Government. Because you are an adjunct professor at [a] University, it is your employer for purposes of this statute and you may not take acts affecting the University without a waiver. If you would normally take actions in your job that would affect the University, you will need to have a waiver [under Section 208(b)(1)] in order to continue to act in your official capacity. The test is that your employment interest with the University is not so substantial as to be deemed likely to affect the services you will provide to [the Department] that will in turn affect the University. The reason you may have been told the waiver must be requested each semester is that your contract with the University may have to be renewed each semester.

If you take no acts affecting the University in your job at [the Department], no waiver will be necessary. If you believe this to be the case, you should discuss the matter further with your ethics counselor.

In closing, both the President and this Office are aware that the conflict of interest statutes may somewhat limit the outside activities of some Federal employees, but only in those instances where Federal processes are involved. We commend you for your volunteerism and hope that the restrictions discussed here will not diminish your enthusiasm for helping others in your community.

Sincerely,

Donald E. Campbell
Acting Director