

## **Office of Government Ethics**

**86 x 4 -- 04/10/86**

### **Letter to a DAEO dated April 10, 1986**

This is in response to your memorandum of March 19 in which you asked a number of questions regarding the application of the 15 percent outside earned income limitation to your plans for a book contract and a part-time teaching position.

First of all, this 15 percent outside earned income limitation is found in section 210 of the Ethics in Government Act as amended, 5 U.S.C. app. 4 § 210 (1982). The limitation applies only to those persons in positions ranked at GS-16 or above who are appointed by the President and confirmed by the Senate and those employees of the White House Office who are compensated at rates equivalent to level II of the Executive Schedule. This restriction would not apply to you in your present position and, although you did not [provide all of the information about your prior Government position, you provided enough that] we are reasonably certain it did not apply to you then. There was an oral policy established by your former agency's counsel that all appointees within [a position of the agency] would abide by that same restriction, but we are unsure of whether and how that would apply to you now. Under the terms of the statute you need not concern yourself with the limitation.

Since you have expressed an interest in the application of this section to writing books, this is a quick summary. Generally, advances and book contract payments are earned income. Royalties on a published book, on the other hand, are analogous to investment, not earned income, because a royalty is a return on a property right. The 15 percent limitation applies to the income received for services rendered during the time the individual is covered by the restriction. For instance, an individual who enters a position covered by this restriction on July 1 and makes \$70,000 a year can perform approved outside services from July 1 to December 31 for compensation amounting to no more than 15 percent of \$35,000 or \$5,250. For your additional reference, we have enclosed a copy of informal OGE memo, 82 x 18, which addresses book advances and royalties.

From your memo it appears that some, if not all, of the manuscript was written while you were [serving in another

agency]. While you described how you properly did not use Government time, equipment and facilities to create the manuscript, you did not mention the subject matter. [The provision in that agency's equivalent of 5 C.F.R. § 735.203(c)] does encourage writing, but it does prohibit the use of information not generally available to the public. That same restriction is found in [your present agency's regulations]. If there is any question about the information used in your book, you should discuss this with [your former agency], assuming the information was from your service [in your position there], or with this Office, if you prefer.

Finally, in promoting your book, you should again be sensitive to the use of Government time for such activities and your or the publisher's use of your official title. While the biography or notes on the author portion of the book can show your Government experience, this book was not written by you as [present Government position], nor should it be promoted by you [trading on your present Government position]. You and the publisher should avoid the use of your title as a title.

With regard to your teaching, if the University is a grantee of your agency, we would strongly suggest you get written permission from the [head of the agency] to teach next fall. We do this because normally accepting outside employment with an agency grantee would be questionable under [your agency's regulatory equivalent of 5 C.F.R. § 735.203]. As the designated agency ethics official, it is best for you to have had the head of the agency approve this activity. You will, of course, be required to recuse yourself on any matter involving the University, should you accept the position.

The question of whether you can accept travel reimbursement separately from your teaching compensation depends on whether the University or the school [within the University at which you will teach], whichever pays your travel expenses, is a grantee or is seeking to be a grantee of [your agency]. If that entity is, you may not accept travel reimbursement from it unless (1) the entity is classified by the IRS as tax exempt under 26 U.S.C. § 501(c)(3) or (2) the travel reimbursement is part of a bona fide employee benefit plan for which you are eligible. If you wish to accept the expenses because of the former, you must follow the regulations in 5 C.F.R. §§ 410.701-410.706. In either case, you will need to disclose the travel reimbursements on Schedule B of your SF 278. We have enclosed a memorandum on the

acceptance of travel reimbursements for your reference.

Finally, it is our assumption that you wish to teach a class for a semester rather than to give two or three individual speeches. We note this only because if it is the latter, you should review the restrictions of 2 U.S.C. § 441i and the implementing regulations to see if they apply to you. You had asked about travel expenses, and to the extent this section applies, you will note that it does speak to travel expenses for purposes of counting them toward your \$2,000 limit.

In addition to the two memoranda mentioned previously, we are also enclosing this Office's public statement and analysis of the ethics issues surrounding [another employee's] book and a memorandum on speeches, lectures, appearances, and articles on subjects substantially related to official responsibilities. Because of your book and your teaching, these might be of some interest to you as well.

Sincerely,

David H. Martin  
Director