

Office of Government Ethics
86 x 19 -- 12/15/86

Letter to an Agency Ethics Official
dated December 15, 1986

This is in response to your letter of November 18, 1986, requesting OGE's views on the distinction under 18 U.S.C. § 208(a) between "mere membership" and serving as an officer or director of the organization.

As you suggest, this distinction is based on the language of 18 U.S.C. § 208(a). That provision prohibits an officer or employee of the executive branch from participating as a Government employee in a particular matter in which "he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee . . . has a financial interest." While section 208(a) refers specifically to serving as an officer or director, it does not refer to mere membership in an organization. Accordingly, section 208 would require an employee to disqualify himself from consideration of grants to organizations with which the employee is affiliated as officer, director, employee, or trustee, but not from consideration of grants to organizations with which he is affiliated solely as a member.

The analysis of whether recusal is required does not end with a determination that the type of affiliation is not covered under section 208(a). Executive Order 11222 of May 8, 1985, and the standards of conduct regulations at 5 C.F.R. § 735.201a prohibit Government employees from taking any action which might result in or create the appearance of impropriety, such as using public office for private gain or giving preferential treatment to anyone. As a result, there may be situations in which 18 U.S.C. § 208(a) would not bar the employee from taking action, but the standards of conduct would. For example, in OGE's Informal Advisory Letter 85 x 14, a copy of which is enclosed, we responded to an agency's request for guidance as to whether an employee should be ordered to recuse himself from participating in a matter in which his brother's law firm was representing a company with a substantial stake in the outcome of the matter. Although interests of siblings are not covered under 18 U.S.C. § 208(a), we explained that the agency must consider the standards of conduct and that the final decision on whether to

require recusal rests with the agency.

When [an employee of your agency] who is involved in the grant-making process is a member of an organization that is seeking a grant from [your agency], that employee's participation in the matter for [the agency] could create an appearance of giving preferential treatment, losing independence or impartiality, or using public office for private gain. These standards of conduct considerations suggest that an agency should generally require the employee to recuse himself from taking official action on that particular grant application.

I hope you find this information helpful.

Sincerely,

David H. Martin
Director