

Office of Government Ethics

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Letter to a DAEO dated February 4, 1983

As you are undoubtedly aware, the President has nominated [an advice and consent appointee] in your Department [to a new advice and consent position]. Pursuant to the requirements of the Ethics in Government Act, [he] submitted a completed SF 278 for confirmation purposes. On Schedule C of that form, [he] indicated that while serving [in his present position] he accepted reimbursements for nine trips, four of which included the expenses for his spouse.

[Your] Department reviewed these reimbursements at the request of the White House and set forth its conclusions in a memorandum to the Office of the Counsel to the President. An analysis of applicable statutes and regulations was not included.

In our function as the final reviewing authority, we have questioned certain of these reimbursements and/or the manner in which they were accepted. As a result of our review, we have arrived at some conclusions which are not consistent with those found in the [above-mentioned] memorandum of the Department.

In reviewing reimbursements, the basic restrictions which we believe are involved are 18 U.S.C. § 209, the agency gift acceptance regulations based on those in 5 C.F.R. § 735.202, and the Comptroller General's Decision B-128527. Briefly, it is our interpretation that these authorities should apply in the following manner.

With regard to 18 U.S.C. § 209, an officer or employee may not be personally reimbursed for or may not personally receive gifts of services in kind for a trip on which he or she is on official business. If the official's employing agency has gift acceptance authority, the agency may accept on the official's behalf if it so chooses. (An agency should not accept an offered reimbursement without first determining whether the donor is one from whom it should accept such a gift.) Further, the spouse of an official may not receive a free trip in order to accompany the official on official business if the trip was offered to the spouse by the donor/host as disguised compensation for the official's appearance. This would, of course, depend on the

individual circumstances surrounding the spouse's invitation. For example, if the spouse was invited in his or her own right as a participant in a conference, there would be no such disguised compensation to the official. On the other hand, a free trip to the spouse merely because of the marital relationship may be a kind of supplementation of the official's salary for doing his or her official duty, if the trip was specifically offered in conjunction with the official duty. Again, if the agency has gift acceptance authority and if the agency feels the spouse's presence will further the agency's mission, then the agency could accept the trip for the spouse as well. (This assumes that the standards in the agency's gift acceptance authority would allow for the acceptance of a gift of this nature.)

With regard to the gift standards, an official or the official's spouse (simply because of spousal capacity) may not personally accept a free trip (reimbursement for a trip) from anyone who does or is seeking to do business with the official's agency, is regulated by the agency, or has interests which may be substantially affected by the official's performance or nonperformance of his or her official duties. This applies regardless of whether the official travels in his official capacity. Therefore, an official and or spouse may violate the gifts standards by accepting a free trip or reimbursement for a trip regardless of whether the official is on official duty or is in a non-duty status.

Finally, the Comptroller General issued Decision B-128527 (copy attached) regarding the acceptance of reimbursement by agencies as well as individual employees. An agency may accept reimbursement only when it has gift acceptance authority. Further, if it can accept and chooses to do so, the official actually taking the trip may not be personally reimbursed for any expenses by the private donor. The official may accept gifts and services in kind (lodging, meals, airline tickets) but the official may not pay for any of these items and receive direct reimbursement from the donor. A request for reimbursement for out-of-pocket expenses must be submitted to the agency which will then reimburse the official according to its standards. The donor may give the agency that amount of money if it chooses.

Given these guidelines, we have reviewed the reimbursements listed by [the employee] on Schedule C of his SF 278, and make the following recommendations. For simplicity's sake, we have numbered the reimbursements beginning with that from [a specific

organization].

1) It is our understanding that, in seven of the nine instances, [the employee] received direct reimbursement from the donor for expenses incurred (chiefly airline tickets). For those trips where [he] was on official business, he should submit to your office an exact accounting of the expenses incurred and reimbursements received. If any reimbursement exceeded the actual expense or if you believe that the expense represented an "excessive personal living expense"¹ he should return the improper amount to the donor.

2) The Department should review the circumstances surrounding the first and fifth listed reimbursements to determine if [the employee] should have been considered on official business but travel orders were not issued through an administrative oversight. If the Department determines that he was actually on official business and is willing to accept those reimbursements through its authority, we believe that the only action that is required is for [the employee] to include the reimbursements for trips in his accounting of direct reimbursements. If the Department is unwilling or unable to accept these reimbursements in this manner, [the employee] should be required to return the reimbursements to the donors.

3) It is our understanding that the trip involved in the seventh reimbursement was offered to [the employee's spouse] simply because she was [the employee's] spouse. (This is unlike the trip in the fourth reimbursement where she was invited in her own right as a panelist at the conference.) Therefore, because [the employee] was on official duty, the Department should review the trip to determine if it should be accepted by it under its gift acceptance authority. It is our understanding, however, that this acceptance would not follow the normal policy of the [Department's] public affairs office with regard to a Department official's attendance at domestic conferences where the spouse is also invited. Should that be the case, we recommend that [the employee] return that portion of the reimbursement that is attributable to [her] expenses.

In making these recommendations we understand that neither [the employee] nor the Department officials [within his office] who assisted him fully understood all of the travel reimbursement restrictions and speaking engagement policies of the Department. We do, however, believe our recommendations fairly take this fact

into consideration.

We would appreciate receiving written confirmation of [the employee's] intentions with regard to these recommendations as well as a report on the actions the Department intends to take regarding reimbursements 1, 5 and 7. This report should include any actions required after the Department's review of [the employee's] accounting on the direct reimbursements.

Sincerely,

David R. Scott
Acting Director

1 See the attached Comptroller General's Decision.