

Office of Government Ethics

81 x 31 -- 10/02/81

Letter to an Agency Assistant General Counsel dated October 2, 1981

This is in response to your request for an opinion as to whether the staff of the [agency] in [a city in] Florida may receive a bequest under terms of the will of a deceased former [agency] patron. You specifically request that our opinion address the supplementation of income issue raised under the provisions of 18 U.S.C. § 209.1

You have informed us that the Regional Counsel for the Southern Region of the [agency] received correspondence from a law firm [in] Salisbury, England, concerning the estate of [deceased], a former resident of [city], Florida. The law firm advised that under the terms of [deceased's] will, a one-eighth residue of her estate has been left to the staff of the [agency] in [the city]. It is estimated that the one-eighth share could amount to between \$10,000 and \$20,000. There are presently four employees in the [agency in the city]. It is the understanding of the Regional Counsel that the deceased moved with her sister from the [city] area to England seven or eight years ago, but continued to correspond with a friend who sent her commemorative stamps and transmitted greetings from persons she had known in the [agency there]. Her will gives no indication as to whether the bequest is meant for persons currently employed at the [agency there] or whether it is intended for those persons at the [agency] with whom the deceased had dealt directly.

For the reasons that follow, we conclude that receipt of a bequest by employees of the [agency] under the circumstances of this case would not be a prohibited supplementation of income under 18 U.S.C. § 209(a). Nor would acceptance of such a bequest violate any other provision contained in subchapter 11 of title 18, United States Code, Executive Order 11222 or any regulations issued in implementation of the Executive Order.

18 U.S.C. § 209(a), which is similar to its predecessor statute, 18 U.S.C. § 1914, seeks to prohibit discretionary transfers of things of value to a public official from a private source. The key language of 18 U.S.C. § 209(a) bars the receipt from any source other than the Government of "any salary, or any

contribution to or supplementation of salary, as compensation for his services as an officer or employee" Commentators have observed that there are no statutory prohibitions against the receipt of gifts in this language.² But there is, however, a sweeping prohibition against the Government employee being paid by anyone except the Government for doing his Government job. This prohibition is aimed at preventing the Government employee from becoming beholden to anyone in the private sector who might affect the independence or judgment of that employee.³

It is always an issue under the facts of the particular case whether a transfer of an item of value to a Government employee is a permitted gift or a disguised prohibited supplementation of the employee's salary as consideration for his services. But to make out an offense under section 209, it is essential to establish the linkage between the transfer of the thing of value and the services rendered.⁴ Under the circumstances outlined in your letter, we are unable to establish such a linkage. The correspondence from the Regional Counsel which accompanied your inquiry pointed out that from time to time a friend of the deceased would purchase commemorative stamps at the [agency] and on those occasions, would exchange greetings on behalf of [deceased] with the [agency] staff. There is nothing in such activities which would indicate an expectation on the part of the [agency] employees beyond fulfilling their official responsibilities in a salutatory manner. The apparent lack of the requisite intent on the part of either the bequestor or the potential recipient [agency] employees to influence services rendered distinguishes this case from a long line of Office of Legal Counsel, Department of Justice, opinions which have used a much broader interpretation of section 209 to prohibit the receipt of tuition fees, professional payments and various honoraria by Government employees.⁵

Having determined that under all of the circumstances present here the bequest is not a supplementation of income for purposes of 18 U.S.C. § 209(a), we take no position as to the method of distribution between current, past or future employees of the [agency]. We believe that such determinations are best left to the Courts in the jurisdictions where the proceeds of the estate are to be administered.

Sincerely,

J. Jackson Walter

Director

1 Section 209 of Pub. L. No. 87-849, effective date January 21, 1963. More specifically, 18 U.S.C. § 209(a) states that:

Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of the State, county, or municipality....shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

2 B. Manning, Federal Conflict of Interest Law 163, Harvard University Press (1964).

3 See Perkins, Federal Conflict of Interest Law 76, Harvard L. Rev. 1113, 1137 (1963).

4 B. Manning, *supra*, at 163.

5 It is interesting to note that section 209(3)(A) of Title II of the Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1849 (1978), defines "gifts" as not including bequests and other forms of inheritance. But since there is little discussion in the legislative history concerning this section of the Ethics Act, it is difficult to draw any definitive conclusions of what Congress might have intended by that definition for the issue presented here.