June 18, 2018

Dear Members of Congress:

This responds to your letter dated May 29, 2018, which raises issues involving the Constitution’s Emoluments Clause and conflict of interest concerns with respect to recent dealings between President Donald J. Trump, the Trump Organization and the Chinese government. Specifically, your letter asks OGE to investigate several matters, including whether the Emoluments Clause applies to a $500 million loan by the Chinese government used to finance an Indonesian theme park project with several projected Trump-branded properties, whether President Trump sought and obtained the consent of Congress before the Chinese government made the $500 million loan benefiting Trump properties, and whether any federal statute regarding conflicts of interest or ethics may apply to President Trump or a member of the Trump administration who participated in the decision to ease restrictions on ZTE.

At the outset, I agree that the information cited in your letter raises serious concerns. It is essential to the success of our republic that citizens can trust that the decisions made by government leaders are motivated by the public good and not by personal interests. Public officials, including those at the top levels of government such as the President, must be held to high standards. For this reason, OGE has consistently held that a President should conduct himself “as if” he or she was bound by the same conflict of interest laws and standards of conduct applicable to executive branch employees.¹ These restrictions include the primary financial conflict of interest statute which prohibits an executive branch employee (not the President and Vice President) from participating personally and substantially in a particular government matter directly and predictably affecting the employee’s own financial interests, as well as the financial interests of certain individuals whose interests are imputed to them by the law.

¹ See OGE Advisory 83 x 16 (Oct. 20, 1983); see also Memorandum from Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, Re: Applicability of 3 C.F.R. Part 100 to the President and Vice President (Dec. 16, 1974).
Additionally, all government officials are charged with avoiding actions which would cause reasonable persons to question their impartiality. Specifically, a government employee is prohibited from participating in particular matters where someone with whom he or she has a non-routine consumer financial relationship is a party. However, with respect to the conflict of interest issues you raise regarding President Trump, Congress has left no doubt that the primary conflict of interest statute is inapplicable to the President. Similarly, the impartiality provisions of the Standards of Conduct are not applicable to the President or Vice President. Under the Constitution, the primary authority to oversee the President’s ethics rests with Congress and ultimately, with the American people.

With regard to your request for investigations into matters related to the Emoluments Clause, OGE has no authority to opine on Emoluments Clause issues, which are under the sole purview of the Department of Justice and are presently under judicial review. Similarly, Congress or the Department of Justice is in a better position to know whether the President has sought or received the required congressional approval referred to in the Clause.

Finally, your letter requests OGE to look into whether any federal statute regarding conflicts of interest may apply to those involved in the ZTE decision. The primary financial conflict of interest statute would prohibit members of the Trump administration (not the President and Vice President) from participating personally and substantially in a particular government matter directly and predictably affecting the employee’s own financial interests, or the financial interests of certain individuals whose interest are attributed to them. Similarly, the Standards of Conduct regulations applicable to executive branch employees also apply to such members of the Trump administration. However, your letter does not identify any other member of the Trump administration who may have participated in the decision to ease restrictions on ZTE who have such interests and OGE does not independently have such information.

I hope this response addresses the issues your letter raises. If members of your staff have questions, OGE’s Chief of Staff, Shelley K. Finlayson, is available to assist them. She can be reached at 202-482-9314.

Sincerely,

[Signature]

David J. Apol
Acting Director and General Counsel

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2 § C.F.R. part 2635. (A $500 million loan would not be considered a “routine commercial transaction.”)
4 5 C.F.R. § 2635.102(h).
7 5 C.F.R. part 2635.