

Office of Government Ethics

83 x 20 -- 12/30/83

Letter to an Agency Attorney dated December 30, 1983

This is in response to your request dated December 12, 1983, for our opinion on the applicability of 18 U.S.C. § 208(a) in relation to an employee of your agency in the field of data processing, and his wife.

It appears from the information you supplied with your request that the [employee's wife] is, to use [the employee's] term, a "self-employed consultant" to [a] firm which has two contracts with your agency -- one to provide services in support of an ADP/software project known as [Project 1], and a second to provide services in a project known as [Project 2]. [The employee's] characterization of his wife's relationship with [the firm], is substantiated by the terms of the Consultant Agreement she and [the firm] executed [in July, 1983].

The information you furnished also discloses that [the firm] has assigned [the wife] to provide "a data entry component" for [Project 1]; that [the employee, in his Government capacity,] has a significant role as an adviser to [Project 1]; and that he is also involved, although to a lesser extent, in [Project 2]. However, it is not apparent whether [the employee's wife] is providing services to [Project 2].

Section 208(a), insofar as pertinent here, bans an employee of the Federal Government from participating personally and substantially in a "particular matter in which, to his knowledge, he, his spouse [or any of certain other persons] . . . has a financial interest." (Emphasis added.) Presumably your agency's contracts with [the firm], regarding [Projects 1 and 2] are separate undertakings and therefore are two "particular matters" for the purposes of section 208(a).

[The employee's wife's] role in [Project 1] is essentially that of a subcontractor of [the firm], as distinguished from an employee of the latter. Accordingly, like [the firm], she has a financial interest in the [Project 1] matter. We are therefore of the opinion that if [the wife] were to continue her work on [Project 1, the employee] would be in violation of section 208(a) and thus required to recuse himself from that matter. Under

18 U.S.C. § 208(b) the agency may grant [the employee] a waiver of the criminal restrictions if it determines that such a waiver is appropriate. Notwithstanding such a waiver, however, we are of the opinion that [the employee's] continued work on the [Project 1] matter under these circumstances raises a clear appearance of impropriety which cannot be overcome by simply using the waiver powers granted to the agency.

[The employee] may carry out his responsibilities relative to [Project 2] without contravening section 208(a) as long as [his wife] does not perform services for that project. That state of affairs would not be altered were he to recuse himself from [Project 1].

I trust that the foregoing discussion will be of guidance to you in resolving this matter.

Sincerely,

David H. Martin
Director