

Office of Government Ethics

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Letter to a Member of the United States Congress dated March 10, 1993

This is in response to your letter of February 18, 1993, regarding the concerns of your constituent, [who is] President of [a] Society. [Your constituent] has been informed by officials [of an executive branch Department] that, based on the Standards of Ethical Conduct for Employees of the Executive Branch, (5 C.F.R. § 2635, 57 Fed. Reg. 35006-35067 (Aug. 7, 1992)), (Standards of Conduct), he may not use [Department] resources to facilitate a meeting of the Society.

The Standards of Conduct apply to employees of the executive branch. While the Office of Government Ethics (OGE) issued the Standards of Conduct regulation, generally, ethics decisions involving individual cases are made by ethics officials at the individual's agency. The officials at the agency have a hands-on knowledge of the affairs of the agency and are in the best position to make judgments involving their employees.

As the [Department] has stated, the Standards of Conduct prohibit an executive branch employee from personally using public office for private gain. Moreover, employees are required to protect and conserve Federal property and may not use it for other than authorized activities. The idea that a Government employee may not use Government resources, including the employee's official time, to work on private matters--meaning business other than agency business--is a basic tenet of Government ethics repeated in Executive Orders 11222 and 12674 and the general principles which underlie the Standards of Conduct. Since [your constituent] has requested the use of a Government vehicle, we also note the statutory prohibition against misuse of a Government vehicle found at 31 U.S.C. § 1344.

One caveat to the rule against using public office for private gain is that if an employee is authorized by his or her agency pursuant to statute or regulation to use public property or time for an outside activity, the restriction on the use of public office for private gain is not applicable. Under certain circumstances, for example, an employee may receive authorization in accordance with Chapter 252 of the Federal Personnel Manual

(which is issued by the Office of Personnel Management) to use Government property in connection with a professional association. Furthermore, under subchapter 11 of Chapter 630 of the Federal Personnel Manual, employees may be authorized to take excused absences (otherwise known as administrative leave) to work on certain outside matters. See also Federal Personnel Manual, Chapter 410, Subchapter 8 on Attendance at Meetings. These provisions of the Federal Personnel Manual usually will not apply unless a determination is made by the employee's agency that the outside activity for which Government resources (such as the employee's time) will be used is related to the agency mission and is in the agency's interest. These decisions are within the agency's discretion, except as such discretion is limited by an agency's statutory authorization, including appropriations authority, and other applicable statutes and regulations.

I hope this general explanation will be of some help to your constituent.

Sincerely,

Stephen D. Potts
Director