

## Office of Government Ethics

89 x 18 -- 10/20/89

### Letter to a Designated Agency Ethics Official dated October 20, 1989

This is in response to your letter of October 6, 1989, requesting our advice on the meaning of language in the model standards of conduct regulation at 5 C.F.R. § 735.202(a), which proscribes soliciting or accepting, directly or indirectly, any gift or thing of monetary value from certain "prohibited" sources.<sup>1</sup> Specifically, you have asked whether [an] employee [of your agency] might be considered to have indirectly accepted such a gift if a private organization which he serves as an officer receives cash from someone who is a prohibited source for his agency.

We understand that your [agency's] implementing regulation incorporates the language of the model regulation cited above. The employee about whom you are inquiring serves [in] your agency's [administrative division], and he participates in his private capacity as [a vice president of a foundation]. You have indicated that this Foundation, a tax-exempt organization under 26 U.S.C. § 501(c)(3), plans to establish [an educational center]; that the Foundation has received seed money for that purpose in the form of a cash grant from [an organization], a prohibited source of gifts for [agency] employees because it participates in [a program] which [the agency] manages; that motivation for contributing to the Foundation apparently stems from the fact that its board chairman is the spouse of the Foundation's president, rather than the efforts or status of [the] employee; and that [the] employee's official responsibilities do not impact on the participants in [the program] other than general supervision of [the agency's] administrative support services.

This Office has opined previously that Government employees who are members of a private organization cannot solicit donations for the organization from entities which are prohibited sources of gifts for their Government agency. See the enclosed OGE informal advisory letter 85 x 16 of September 30, 1985. Likewise, an officer of a private organization would be restricted from soliciting funds for the organization from prohibited sources.

Since the regulation at 5 C.F.R. § 735.202(a) also proscribes employee acceptance of prohibited gifts, even absent involvement in solicitation, the question which you have posed is whether a private organization's acceptance of such a gift should be imputed to the Government employee. If your employee were a member but not an officer of the Foundation, that organization's acceptance would probably not be imputed to him, in our opinion, since a nonofficer member typically plays no role in the decision to accept gifts, nor are the organization's financial interests generally attributed to its members. Such a result is implicit in the OGE informal opinion referenced above.

On the other hand, an officer of a private organization occupies a special status. For example, the financial interests of a private organization are attributed to the organization's officers under conflict of interest statutes to which Government employees are subject. See 18 U.S.C. § 208. Additionally, an organization officer may be held legally responsible for certain organizational acts, by imputation. Nonetheless, our opinion is that, so long as the Foundation's Government employee officer does not participate in the decision to accept the grant in question, he should not be viewed as having accepted, directly or indirectly, a prohibited gift. However, our opinion is limited to the facts presented, which make it clear that the gift is being offered to and accepted by the Foundation in its own right as an organizational entity, separate and apart from this officer. If, instead, a prohibited source gift were being offered or accepted based on the Government employment status of an organization officer, then that Government employee would likely be viewed as having indirectly accepted it, in violation of the standards of conduct.

This distinction is similar to what applies in the case of prohibited gifts to spouses of Government employees. Where a gift is offered to and received by the spouse in the spouse's own right, it would not normally be imputed to the Government employee; however, the Government employee would be deemed to have indirectly accepted such a gift to the spouse when it is based on the employee's Government status.

Sincerely,

Donald E. Campbell  
Acting Director

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**1** A prohibited source is defined in 5 C.F.R. § 735.202(a) as one who either has, or is seeking to obtain, contractual or other business or financial relations with an employee's agency; or has interests that may be substantially affected by the performance or nonperformance of his official duties.