

## **Office of Government Ethics**

**91 x 5 -- 01/22/91**

### **Letter to a Federal Employee dated January 22, 1991**

We have received your December 10, 1990, letter requesting an opinion on whether or not the standards of conduct regulations have been properly applied to you. Your letter and the attachments set forth the following:

Prior to September 30, 1990, you were a Technical Assistance Officer for [a Federal agency]. As such, you were responsible for providing technical and financial assistance and materials to state and local governments and public and private voluntary organizations and groups including [an association]. During this same period you were a member of the [association] and were elected to the position of Vice President of Constituent Affairs. Additionally, you were listed as an [agency] participant in the [association's] 1990 [conference]. Because you notified [the association] that your participation in the conference was not as a representative of [the agency], we will not address this issue.

The Designated Agency Ethics Official (DAEO) determined that because your official responsibilities as Technical Assistance Officer included providing assistance to [specific types of] organizations and groups including the [association], your position as the [association's] Vice President of Constituent Affairs created the appearance of a conflict of interest and the potential for an actual conflict. In a September 5, 1990, memorandum, the DAEO stated that, "if you became an officer of [the association] . . . your objectivity and judgment in the performance of your official agency duties, particularly as to the interests of [the association], would be subject to question . . . ." In order to avoid the appearance of a conflict of interest and the potential for an actual conflict between your official responsibilities at [the agency] and your position with [the association], the DAEO requested that you resign as [the association's] Vice President.

The appearance of a conflict of interest cannot be measured in precise terms. It involves a question of judgment which, unless exercised in an arbitrary and capricious manner, will not be overturned by this office. Under 5 C.F.R. § 735.107 the

agency head is responsible for taking action to end conflicts or the appearance of conflicts of interest. Furthermore, 5 C.F.R. § 2638.203 (b)(9) provides that the DAEO is responsible for ensuring that effective action is taken to remedy, among other things, violations of the agency standards of conduct. In this case the applicable [agency] standard of conduct states:

. . . no employee may engage in outside employment or associations if they might result in a conflict or an appearance of conflict between the private interests of the employee and his or her official responsibility.

For your information, the DAEO coordinated his actions throughout your case with members of my staff. We concurred with his analysis and application of the standards of conduct as well as the remedial action taken by the Director.

Sincerely,

Stephen D. Potts  
Director