

Office of Government Ethics

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**Letter to a United States Senator
dated July 18, 2000**

Your letter of June 23, 2000, forwarded correspondence from a constituent, inquiring whether Federal executive branch ethics rules were correctly applied by [an executive branch agency] when it barred him from accepting a contest prize given by a private sector corporation.

After reviewing the letter from [the constituent] and the memorandum from his agency's ethics counselor which you provided to us, it appears that Informal Advisory Letter 99 x 7 issued by the Office of Government Ethics (OGE) may have been misconstrued or applied more narrowly than intended. Nonetheless, we applaud the [agency's] ethics official for being especially sensitive to the executive branch ethics principles that employees shall not use public office for private gain and that they cannot ordinarily accept gifts given because of official position or given by certain "prohibited" sources who conduct business or other activities with the employee's agency. See Executive Order 12674, 5 C.F.R. part 2635, and 5 U.S.C. § 7351. It is apparent that [the constituent] was also sensitive to these concerns himself, by recognizing the need to consult his ethics official for advice about having used an official E-mail address as a contact point when entering the contest.

Under the particular circumstances described, we believe that [the constituent's] acceptance of the prize could have been permitted, unless there are additional facts of which we are unaware. Although the opportunity for accepting this prize has passed, we will contact the [agency] to reaffirm the factual basis and to clarify the intent of OGE's Informal Advisory Letter 99 x 7 for future similar situations.

As noted in the materials which you forwarded to us, executive branch employees may accept an item of monetary value that otherwise might not be permitted, if it falls within an exclusion from the definition of a gift. The relevant gift exclusion in this instance encompasses prizes given to competitors in contests open to the public, where the employee's entry into the contest is unrelated to official duties. Examples of qualifying contests are random drawings, events involving skills or knowledge, and lawful games of chance. The trade show that [the constituent] attended while on official assignment was open to the general public,

according to the background information, and therefore a contest held at that event will also be considered open to the public. The contest that he entered involved an initial test of knowledge or skills concerning a computer operating system, in order to choose a pool of finalists from which a winner was selected by random drawing, but that did not alter the overall contest's openness to the public. This test of knowledge or skills did not operate as a constraint on who could participate, as it was a part of the contest itself, in our view.

The only other issue is whether [the constituent's] entry into the contest was related to duty. Even though his presence and opportunity to enter the contest occurred while on official assignment, that status will not preclude acceptance of a prize if he entered the contest in a personal capacity, unrelated to official duty. While [the constituent] apparently provided his Government E-mail address as a point of contact and was subsequently notified at that address by the prize donor, these circumstances do not, in our opinion, establish that entry into the contest was related to duty. Indeed, OGE has recognized that an employee could use a business card to enter a drawing in his personal capacity during official attendance at an event open to the public and accept a resulting prize. Use of a business card, even though it bears a Government duty station postal address, E-mail address, or phone number as a point of contact, is not determinative of whether entry into a contest was personal or related to duty. With no other indicia apparent from the background information that [the constituent's] entry into this contest was related to duty, we believe that he could have accepted the proffered prize.

These issues are often difficult to resolve, especially given the wide variety of factual bases from which they arise. We appreciate your having brought this matter to our attention, so that we can continue to refine our guidance to ethics officials and employees on acceptance of prizes in contests or drawings.

Sincerely,

Stephen D. Potts
Director