

Office of Government Ethics

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Letter to an Individual dated September 30, 1992

This is in response to your letter dated September 10, 1992, in which you requested replies to three questions. Before answering your questions, I would like to point out that the current regulations on ethics, which appear in Title 5 of the Code of Federal Regulations, Part 735 will be superseded as of February 3, 1993. The Office of Government Ethics (OGE) has promulgated new "Standards of Ethical Conduct for Employees of the Executive Branch" which will take effect on that date. I have enclosed a copy of the new standards which were published in the August 7, 1992, edition of the Federal Register. Even though they are not yet in effect we answered your questions in light of the new standards of conduct. The analysis would be very similar under the current standards, but in addition to 5 C.F.R. § 735.202 you would need to check specific agency regulations for a more definite answer. As explained in the preamble to the new standards, agency regulations will remain in effect until they are superseded by the new standards.

The first question is whether it is legal and ethical for a Federal employee, who is also an officer in a private, professional organization, to solicit funds or services from representatives of companies doing business with the Federal Government and then utilize those funds or services for purposes of the private organization. In answering this question we are assuming that the employee is soliciting from representatives of companies that are doing business with that employee's Federal agency. Based on this assumption and without knowing any particulars of the situation, the answer would probably be no, regardless of whether the private, professional organization is a nonprofit or a for-profit organization.

Many professional organizations are nonprofit organizations within the meaning of 26 U.S.C. § 501(c). Assuming this is true of the organization with which you are concerned, the Federal employee would be engaging in fund-raising in a personal capacity within the meaning of section 2635.808(c) of the new regulations. Section 2635.808(c)(1)(i) specifically prohibits soliciting funds or other support from prohibited sources. Prohibited sources as defined in section 2635.203(d) include persons who do business with the employee's agency.

If the organization is for-profit, the individual would still be prohibited from soliciting funds/services under the provisions in the regulations relating to gifts. Section 2635.202(a)(1) states that "an employee shall not, directly or indirectly, solicit or accept a gift from a prohibited source" An indirect solicitation, defined in section 2635.203(f)(2), includes gifts "given to any other person . . . on the basis of designation, recommendation, or other specification by the employee." The definition of gift includes both monetary items as well as services. Thus, the Federal employee is prohibited from soliciting funds or services from the companies doing business with his agency, even though they are for a professional organization where he serves as an officer.

The second question is whether it is illegal for the individual to receive funds from these representatives, even though the checks are payable to the private organization. Under the gift provisions, section 2635.202(a), the employee is prohibited from "accepting" as well as from soliciting indirect gifts. Thus, if the soliciting of the funds is prohibited as discussed in the above paragraph, then it would also be improper to accept the checks.

The third question is whether the same individual may authorize a subordinate to type the minutes of the private organization during working hours. I refer you to section 2535.705(b) in the new regulations. Generally a subordinate may not use "official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation." Therefore, the answer to your question would depend upon whether typing the minutes is considered an official duty of the subordinate.

In conclusion, I hope this information has been helpful in answering your questions. If I can be of further assistance, please let me know.

Sincerely,

Stephen D. Potts
Director