

Office of Government Ethics

93 x 40 -- 12/22/93

Letter to an Employee dated December 22, 1993

[A United States Senator] has asked this Agency to reply to your letter to him dated August 25, 1993. We are pleased to provide the following information to you.

In your letter, you state that you are an employee of [an agency within a] Department. You express concern about your having been ordered by an official at the [agency] to give him a detailed list and specific information concerning the outside uncompensated activities and volunteer work which you perform during your nonduty time. You state that the official said that all such personal activities are considered employment requiring agency approval, that failure to disclose any such activity to agency management is subject to disciplinary action, and that he was not likely to authorize any outside volunteer activity because of additional work for which his employees are getting premium pay.

This agency has issued a regulation that sets forth "Standards of Ethical Conduct" for all employees of the executive branch. 5 C.F.R. part 2635. Subpart H of the regulation contains specific provisions relating to outside activities. Several of the provisions, including the provision at 5 C.F.R. § 2635.803 regarding prior approval, apply to uncompensated as well as compensated outside activities. In addition to these executive branch-wide rules, an agency may issue supplemental standards of ethical conduct that would apply to its employees. Violation of the Standards of Ethical Conduct, or of agency regulations supplementing the Standards of Ethical Conduct, may be cause for appropriate disciplinary action to be taken under applicable Governmentwide regulations or agency procedures.

Section 2635.803 of the executive branch-wide Standards of Ethical Conduct provides that, when required to do so by agency supplemental regulation, an employee shall obtain prior approval before engaging in an outside activity. That section provides further that agencies may, if they decide to do so, require prior approval only for specific types of outside activities. Also, that section provides that whatever requirements for prior approval of outside activities were in effect at an agency when the Standards went into effect on February 3, 1993, remain in effect for one year

unless a supplemental regulation is issued before that date.

[Your] Department has published a proposed regulation which includes supplemental standards of ethical conduct regarding outside employment.¹ However, those supplemental standards have not yet been issued as a final rule. Therefore, the requirements for prior approval of outside activities that were in effect at the Department before February 3, 1993, are still in effect. Those requirements were issued as instructions by each of the department's bureaus.

The [agency] instructions include sections on applying for permission to engage in outside activities; activities which do not require prior approval; and appeals of disapproval decisions. Further information regarding the application of these instructions would have to be obtained from an ethics official at the [agency]. In this regard, we note that the [agency] has a telephone "Ethics Hotline" through which it offers ethics advice to its employees.

We trust that this response will be of assistance to you. A copy of this response is being provided to the Designated Agency Ethics Official at the [agency], so that he is aware of the guidance we are providing regarding his agency. Your name and address are being deleted from the copy, in order to comply with your request that your identity not be revealed to the [agency].

Sincerely,

Stephen D. Potts
Director

¹ As proposed, the Department's supplemental standards would provide that "[a]ll Department employees shall obtain prior written approval before engaging in any outside employment or business activities, with or without compensation, except to the extent that the employing bureau issues an instruction or manual inssuance... exempting an activity or class of activities form this requirement." [Cite omitted.] Additional rules form [agency] employees would list certain types of outside employment that are prohibited. [Cite omitted.]