

Office of Government Ethics
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Letter to a Federal Official dated April 19, 1991

Your letter of April 5, 1991, requested our advice concerning the effect of 18 U.S.C. § 208 on an individual who is a stockholder and/or president of a company if it were to be selected as a contractor with the Defense Fuel Supply Center (DFSC) to provide aviation fuel, where he is also an officer in the Army National Guard who might be called upon to sign purchase slips for the Government to obtain fuel from this contractor company.

We understand that [the individual] is a stockholder in [a company] and also is or has been its president. He is attempting to qualify his company with your agency as the low offeror on a contract solicitation to provide "into-plane" refueling service at commercial airports. Military aircraft use such services when mission requirements dictate refueling at non-military locations, and aircraft of other Federal agencies are designated users, as well.

We also understand that [the individual] serves as [an officer] with [a state] National Guard, which is a designated user of refueling services under DFSC's "into-plane" program. Of course, FAR provisions generally restrict contracting with Government employees or companies which they substantially own or control, except in certain specified situations. Should you determine that FAR limitations do not bar the award of a contract to [the individual's] company, your specific question to us is whether he would violate 18 U.S.C. § 208 if as a pilot in the National Guard he were to fly into an airport served by his company and refuel with it. If he did refuel a military aircraft with his company, he would be signing a purchase slip for the National Guard, to verify the sales entries made by an employee of this company with which he is affiliated.

The question of whether [the individual] might violate any criminal or other restrictions under these circumstances is one for his chain of command in the National Guard to examine and resolve, so that if necessary they could take steps to avoid placing him in a conflicting situation. Resolution of that issue, however, would not seem to control whether DFSC could

contract with [the individual's] company, since even if he could not personally sign fuel purchase slips for the National Guard when its aircraft are refueled by his company, there would still be many other pilots of the National Guard or Federal Government agencies who could lawfully obtain fuel from this company by signing purchase slips.

In determining whether [the individual] might violate any ethics restrictions by refueling from this company with which he is affiliated, his chain of command would want to consider 18 U.S.C. § 208, which would cover him during any period of service with the National Guard when he fits the definition of an officer or employee in 18 U.S.C. § 202. If the company had a refueling contract with DFSC, then this criminal statute would require him to avoid participating personally and substantially as a Government employee in any matter where he has a financial interest through the company, whether such interest is proprietary or that of an officer or employee, absent a written waiver granted pursuant to the statute. As either a stockholder or president, he would have a financial interest in a particular Government matter if the outcome could directly and predictably affect [the company]. For example, if as a National Guard pilot, [the individual] had discretion in deciding where to refuel, which contractor to use, or the quantity of fuel to be purchased, or if he was personally involved in any other significant aspect of the process whereby "into-plane" refueling service is utilized, then he could be placing himself in violation of this statute.

Whether the sole act of signing and verifying a fuel purchase slip for the Government constitutes substantial involvement would have to be resolved after ascertaining additional facts to appreciate its significance. However, in any event it would present concerns under the Army's standards of conduct regulations, when applicable, since Government employees are not permitted to maintain financial interests which conflict or even appear to conflict with their official responsibilities.

If you determine that the FAR rules would permit DFSC to contract with [the individual's company] even while [the individual] is a stockholder and/or president, then we recommend that [the individual's] chain of command be advised of the potential for conflict with his official duties, so that they can structure his responsibilities in a manner to eliminate ethics concerns under 18 U.S.C. § 208 and the standards of conduct regulations.

Sincerely,

Stephen D. Potts
Director