

Office of Government Ethics

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Letter to a Designated Agency Ethics Official dated January 9, 1991

This is in response to your December 5, 1990, letter requesting an opinion from this office on the propriety of two employees of [your agency] participating in certain activities of [a bar association subcommittee].

The participation in question involves the subcommittee's work in preparing presentations -- first, on the interaction of [an act your agency administers and your authorizing legislation] and second, on pending legislation. I understand that the report on pending legislation will deal with three aspects of the [proposed] legislation: 1) the legislative history, 2) policy considerations, and 3) technical aspects of two bills under consideration. I further understand that [your agency] has a long-standing policy of not commenting on pending legislation related to the [agency].

Ultimately, the decision in this matter rests with the [agency head], based on advice from the [agency's] ethics advisers. Before engaging in an outside activity, an employee must carefully consider the executive branch standards of ethical conduct, as well as the criminal conflict of interest statutes which are applicable.

I will assume for the purpose of this memorandum that neither employee would receive any honoraria for writing, appearing or speaking on behalf of the subcommittee. Receipt of such honoraria is prohibited pursuant to Title VI of the Ethics Reform Act of 1989. This prohibition became effective on January 1, 1991.

The model standards of conduct at 5 C.F.R. Part 735 enjoin all executive branch employees to avoid any action which might, for example, result in or create even the appearance of using public office for the private gain of anyone, giving preferential treatment to anyone, losing complete independence and impartiality, making Government decisions outside official channels, or adversely affecting the confidence of the public in Government integrity. These regulations also restrict outside

activity that is not compatible with the full and proper discharge of Government duties, or that involves the use of Government property, time, assets, title or information.

Employees are generally encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive order, or agency regulations. However, employees are not to engage in teaching, lecturing, or writing that depends on information obtained as a result of Government employment, except when the information has been made available to the general public, or when the agency head gives written authorization for use of non-public information on the basis that the use is in the public interest.

The criminal conflict of interest statute at 18 U.S.C. § 208 prohibits an employee from participating personally and substantially in any Government matter in which an organization for which he serves as an officer has a financial interest. It was not clear from your letter whether the employees held positions with the bar association. Another criminal statute, 18 U.S.C. § 205, prohibits an employee from representing the interests of others before the Government. These and possibly other statutory restrictions must be considered in the [agency's] decision on whether to permit participation on the bar association's subcommittee.

I hope that this information is helpful. The final decision must rest with officials at [your agency].

Sincerely,

Stephen D. Potts
Director