

**Office of Government Ethics**  
**84 x 8 -- 06/07/84**

**Letter to a DAEO dated June 4, 1984**

We have given serious thought to your letter of April 6, 1984 in which you seek to justify [an employee of your agency's] reporting of two trusts created for his dependent children as "excepted" trusts.

In the financial disclosure report [the employee] filed as a nominee in January 1981, he listed the assets of the two trusts and answered "no" to the question on Schedule A of the SF 278 as to whether the trusts were "excepted." On February 2, 1981, [the employee] wrote [an attorney in a] law firm, giving him a power of attorney to convert one of the trusts into a blind trust for the period of his Government service. In fact at the hearings on his nomination, [the employee] told the Senate Committee on Finance that there were no problems on conflicts of interest since "I am going to be setting up a blind trust." [Citation omitted.]

In his annual financial disclosure reports for 1982 and 1983, [the employee] answered "yes" to the question about "excepted" trusts and did not list the assets of the trusts. It was this reversal of his previous response that raised our question about the validity of his claim to an "excepted" trust.

The Ethics in Government Act (the Act) contains specific requirements for the creation of blind trusts, including the necessity of approval by our Office (5 C.F.R. § 734, Subpart D). It appears that it was [the employee's] intention to set up a blind trust when he wrote to [the attorney] in February 1981 and when he testified before the Senate Committee [holding his confirmation hearing]. [The employee], however, never followed this procedure; instead he attempted to create an "excepted" trust.

The "excepted" trust is unique. It is based on "no knowledge" on the part of the reporting individual of what is contained in a trust set up by a person other than an interested party. See section 202(f)(2)(B). The [employee] did have knowledge of the assets of the two trusts when he assumed office. Thereafter he insulated himself from acquiring any knowledge of the assets of

the trusts. You contend that by doing so he has, in effect, caused the trusts created for his children to be "excepted." If we should recognize this, he would be given more power than a person who created a blind trust with our approval. In a qualified blind trust the settlor continues to be subject to the provisions of 18 U.S.C. § 208 as to all assets in the trust until such time as the trustee has informed the settlor that a particular asset has been sold or reduced in value below \$1,000. See section 202(f)(3)(C)(iii). [The employee] by his own action would have obtained immediate blindness if we were to agree with his approach.

We have had a number of situations in which reporting individuals have claimed that trusts under which they or their dependents were beneficiaries fall within the "excepted" category. Since the Act itself and its legislative history afford no guidelines, we sought a clarifying amendment as to what constitutes "no knowledge." The Congress did not incorporate this suggestion on our part in the amendments made to the Act by Pub L. No. 98-150. See Hearing on S. 461 before Subcomm. on Oversight of Government Management of Senate Comm. on Governmental Affairs, 98th Cong., 1st Sess. 45-46, 151 (1983). But even if the Act had been amended, we do not visualize that [the employee's] condition of "no knowledge" after assuming office would have resulted in an acceptable "excepted" trust.

There is a possible solution to [the employee's] matter in the recent amendment to section 202(f)(7) of the Act. A trust, such as his, may be qualified by this Office if the trustee and the interested parties agree to make such modifications as are required to conform the trust to the provisions of the Act and we determine that approval of the trust arrangement as a qualified blind trust is "appropriate to assure compliance with applicable laws and regulations." We would be happy to assist you in such an undertaking.

Sincerely,

David H. Martin  
Director