

Office of Government Ethics
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Letter to a DAEO dated July 26, 1983

This is in response to your July 18, 1983, request for our opinion as to whether acceptance by certain [Department] employees of [a company's] Public Service Awards would violate 18 U.S.C. § 209(a) or applicable standards of conduct regulations.

From your letter and enclosed materials we understand that the [company's] Public Service Awards were established in 1980 to honor Federal workers for their special achievements and contributions to the public good. The awards are in four categories: alcoholism; fire prevention and safety; physical rehabilitation; and traffic safety and accident prevention. Winners each receive a commemorative plaque and \$2,500 cash. In addition, [the company] provides the cost of transportation to and from Washington for each winner and spouse.

You stated in your letter that most [Department] employees who work in the traffic safety and accident prevention area have a conflict of interest with [the company], because many [Department] actions have a direct and predictable effect on the major business of [the company]. Your specific question was whether an employee who, because of his or her official duties, has such a conflict of interest may accept the \$2,500 cash award. It is our view that he or she may not.

The [Department] standards of conduct provide that an employee may not accept anything of monetary value from anyone who "has interests which may be substantially affected by the performance or non-performance of that employee's official duties." [Citation to Department regulations omitted.] See also 5 C.F.R. § 735.202(a)(3). A cash award of \$2,500 is clearly something of monetary value, and you have stated that [the company] has interests which may be affected by the performance or non-performance of the duties of these employees. None of the exceptions in the [Department's] regulations or in the parallel OPM provisions mentions an award of the sort involved here.¹ Therefore, a [Department] employee whose duties may substantially affect [the company's] interests may not accept [the company's] Public Service Award.

With respect to 18 U.S.C. § 209(a), the Department of Justice has consistently held that the statute applies only to payments made with the intent to compensate for Government services and that the requisite intent may not be inferred from the bestowal upon a public official of a bona fide award for public service or other meritorious achievement.² In view of our conclusion that acceptance of [the company's] Public Service Award is barred by the standards of conduct, we deem it unnecessary to determine whether such an award to a [Department] employee would be bona fide under the circumstances.

Sincerely,

David H. Martin
Director

1 The exceptions in [citations to Department regulations omitted] and 5 C.F.R. § 735.203(e)(3) for meritorious public contribution or achievement from the prohibitions regarding outside employment and other activity and apply only to awards given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization. [The company] does not fall within any of these categories.

2 Letter from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, to Stuart R. Reichart, Acting General Counsel, Department of the Air Force (April 7, 1977); and Letter from Paul A. Sweeney, Acting Assistant Attorney General, Office of Legal Counsel, to Gerald Morgan, Special Counsel to the President (June 26, 1959).