

## **Office of Government Ethics**

**88 x 12 -- 07/27/88**

### **Letter to a Designated Agency Ethics Official dated July 27, 1988**

This is in response to your letter of July 6, 1988, requesting an informal advisory opinion as to whether an employee's acceptance of a research scholarship from [a college] would violate 18 U.S.C. § 209.

From your letter, as well as informal contact with [the office of general counsel for a departmental institute], we understand that the applicant is a staff fellow at [an institute], where he serves as a full-time Government employee in [a branch], and that his current duties include research financed through appropriated funds. We further understand that if this employee were to receive [the college's] scholarship, his research under the scholarship would be concurrent with that which he conducts as a Government employee, as it would virtually all occur at [the institute] on Government time and as part of his official duties; he would receive a stipend worth \$15,000 per year for up to two years for his personal use which, by the terms of the program, would not diminish or replace his compensation as a Government employee; and he would be required to follow a research plan acceptable to [the college], including a progress report and study protocol submitted between the first and second years.

Your letter postulates that the employee's receipt of this scholarship would not violate 18 U.S.C. § 209 because there would be no intent on the part of [the college] to make a payment as compensation for Government services or to supplement Government salary. As you point out, the scholarship's announced intent is to encourage surgical residents to pursue careers in academic surgery, and it is not offered on the basis of status as a Government employee.

Intent to compensate for performance of Government duties is highly probative in reviewing for a potential violation of 18 U.S.C. § 209. Totality of the circumstances must be examined to determine whether such an intent may be inferred. Thus, in the matter of severance and moving expenses incident to commencement of Government service, as in the Boeing case which you cited, this intent was apparent because Boeing employees departing for

Government service were given special treatment.

In the instant case, a scholarship from [the college] would be made specifically as a supplement to regular income, according to the language of [the college's] announcement that it is "not to diminish or replace the usual or expected compensation." Implicit in this language is the understanding that scholarship research and the employee's normal research would be at least partially coextensive, and that the scholarship would constitute additional compensation. The fact that [the college] treats Government recipients in the same manner as nongovernment recipients will not serve to negate an intent to supplement a Government awardee's salary, under these circumstances.

Therefore, if the employee were to receive this scholarship stipend for research which overlaps with his Government research, he would receive "compensation for his services as an . . . employee . . . from [a] source other than the Government of the United States . . ." in violation of 18 U.S.C. § 209. See also 5 C.F.R. § 735.203(b).

Even absent a criminal violation, the administrative standards of conduct for Government employees must be considered. Since the employee's scholarship research would constitute part of his official duties, there is, at least an appearance of using public office for private gain, in violation of the model standard at 5 C.F.R. § 735.201a. The employee would be drawing a full Government salary, while at the same time receiving compensation from an outside source for some of the identical work. Thus, I would not recommend acceptance of [the college's] scholarship under the conditions described, even if no criminal violation were evident.

In reaching the conclusion expressed herein, I have not consulted the Department of Justice, because of the time constraints which your letter notes.

Sincerely,

Frank Q. Nebeker  
Director