

Office of Government Ethics

90 x 21 -- 11/05/90

Letter to an Acting Designated Agency Ethics Official dated November 5, 1990

This is in response to your letter of October 24, 1990, concerning [a board member of your agency's] proposed participation next summer as group leader for a trip to Europe.

BACKGROUND

We understand that [the board member] would like to serve as delegation leader for a two-week visit by 30 to 50 lawyers to Brussels, Prague and Belgrade in 1991, sponsored by the Citizen Ambassador Program (CAP), to study [certain types of] laws in those geographic areas. The CAP administers professional exchanges involving medicine, building science, law, agriculture, energy, finance, industrial technology and basic sciences. It exists as an affiliate program under the general auspices of People-to-People International, a non-profit entity. Neither organization is an official government entity or program, although all Presidents beginning with Eisenhower have endorsed People-to-People's goals.

Despite this affiliation of the CAP with People-to-People, we understand that People-to-People is not involved in daily operations, management or ownership of the CAP, and performs solely in an advisory capacity on the development of individual projects. The CAP actually functions and carries out its programs as a division of International Ambassador Programs, Inc., a private, for-profit corporation, which uses the People-to-People name for marketing purposes and arranges travel and itineraries for program trips.

As trip leader, [the board member] anticipates receiving no compensation, but the CAP would pay for his travel, accommodations, meals, and incidentals. It might also pay for travel and related expenses for a trip leader assistant, and [the board member] observes that he could select his wife.

PRIVATE PARTICIPATION

[The board member] proposes to serve as delegation leader in

a private capacity and indicates he would avoid any use of Government assets, including Government time, stationery letterhead, and phones. However, it appears that his Government position and that of others is already being misused by the CAP. For example, we note that their memorandum, which your letter to us enclosed, was addressed to [the board member] in his official capacity at the [agency] offices and delivered through its facsimile machine. Further, that memorandum attempts to reassure him that his participation would not be inappropriate by using the name, Government title, and office telephone number of [another Government official] to illustrate participation as exchange leader by a Government official. One can readily anticipate that to entice other officials and private citizens, the CAP might provide the name, title, and Government phone number of [the board member]. This could place him in violation of the standards of conduct prohibition on use of position for private gain (in this instance, of International Ambassador Programs, Inc., the CAP's parent), if he knows or has reason to know of and permits such use.¹

Moreover, [the board member's] proposed private participation is so closely related to the subject matter of his official responsibilities that he would be precluded by the regulatory standards of conduct from accepting any outside reimbursement for travel and related expenses. Such reimbursement would constitute a misuse of public office for his own private gain. Specifically, as a full-time member of a board appointed by the President, he is subject to the special limitations of 5 C.F.R. § 735.203(c) on outside activities, which are mirrored in [the agency's] regulations. These rules enunciate a flat prohibition on receipt of compensation or anything of monetary value for any consultation, lecture, discussion, writing or appearance, the subject matter of which is devoted substantially to the responsibilities, programs or operations of his agency. This very broadly encompasses even the general subject matter or sector of the economy or society with which the agency is concerned.² The closeness of the tie between [agency] programs and the CAP trip is detailed in part III, below.

Therefore, we are of the opinion that if [the board member] were to participate as group leader in his private capacity, he must not accept any outside compensation, reimbursement or anything else of monetary value. Furthermore, it would be necessary to avoid scrupulously any use of Government assets and to insure that his Government position is not used by him or

others for anyone's private gain, such as under circumstances suggesting official endorsement of this private entity's for-profit undertaking.

OFFICIAL PARTICIPATION

On close examination, the connection between [the board member's] proposed activity and his [agency] responsibility is so fundamental that characterizing it as private would seem to be impossible. A stated purpose in participating as delegation leader is his desire to consider, in light of the European Community's opening, what changes the United States should make in its laws and the procedures by which it applies [an] Act (administered by [his agency]) and other [such] laws. According to [the board member], the delegation would be meeting with [private individuals] and government officials in the European Community and other countries, and we understand that he would be sharing experiences of the United States' successes in resolving [the types of issues that arise before his agency] and protecting the rights of those involved. The CAP literature characterizes the intent of its program exchanges as the one-on-one sharing of information, ideas and experiences, taking the form of organized meetings, briefings, roundtable discussions, seminars, symposia for presentation of papers, inspection visits, and informal gatherings with counterpart professionals. [The board member] also notes that the trip presents an opportunity for a Government official to interact with business, labor and [members of the general public], so as to develop a better rapport with segments of the [communities with which his agency deals]. In light of all these factors, status as a member of the [agency's board] seems inseparable from the proposed activity as leader of this exchange group.

Based on this strong connection, [the board member's] proposed activity might more properly be characterized as official; however, that can occur only if it is specifically determined by the [agency] to be appropriate for involvement in an official capacity, as a matter in furtherance of agency mission. Of course, the [agency] would then be obligated to pay all expenses in connection with such official travel, unless reimbursement were determined to be permissible under relevant gift-acceptance statutes. We are not aware of whether the [agency] has such a statute; if it does, then care must be exercised to insure that acceptance would be appropriate, under the circumstances, from this for-profit entity.³

We note that a provision of the Ethics Reform Act of 1989, codified at 31 U.S.C. § 1353, authorized the General Services Administration to prescribe regulations whereby all executive branch agencies may accept payment from non-Federal sources for travel and related expenses with respect to attendance of the employee or spouse at meetings relating to official duties. The General Services Administration has consulted with this Office but has not yet promulgated those uniform regulations on travel reimbursement. If they are issued prior to [the expected dates of the trip], then a determination on acceptance of outside reimbursement for official travel would have to be made in terms of the guidance and strictures in those regulations.

Even if it is determined that [the board member] could participate in this activity in an official capacity, the standards of conduct regulations would still preclude use of Government position by him or others for anyone's private gain, such as under circumstances suggesting official endorsement of this private entity's for-profit undertaking.⁴

Sincerely,

Stephen D. Potts
Director

1 See model regulations at 5 C.F.R. § 735.201a and Section 101(g) of Executive Order 12674. This prohibition on use of public office for private gain includes the private gain of anyone, not just the public official. See 2 Op. Off. Legal Counsel 361, 365 (1977), and section V of OGE informal letter 88 x 13.

2 See 2 Op. Off. Legal Counsel 361, 363 (1977), and OGE informal letter 85 x 18.

3 See OGE informal letters 84 x 5 and 86 x 10, concerning avoidance of adverse appearance.

4 See OGE informal letter 85 x 18 (second paragraph) and OGE informal letter 88 x 5 (second paragraph).