

Office of Government Ethics

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**Letter to a Federal Employee
dated April 6, 1999**

This is in response to your letter dated February 27, 1999, which the Office of Government Ethics (OGE) received on March 9, 1999. In your letter you asked "[i]n terms of ethical principles¹ established for Federal employees in the Executive Branch," if it is appropriate for a Federal employee who occupies a Computer Specialist position at [an agency] to (1) own and operate a private computer business that would design, build, sell and service IBM compatible personal computers as well as provide field training to individuals; and/or (2) work in the private sector as a computer system designer and consultant.

As a preliminary matter, we note that OGE's regulations do not contemplate direct consultation on ethics issues between OGE and employees of other agencies. Rather, our regulations provide that employees should seek advice from their own agency ethics officials and that those ethics officials may consult with this Office if warranted. See 5 C.F.R. §§ 2635.107(b), 2638.201-2638.204. One reason for this arrangement is that agency ethics officials generally are in a better position than this Office to know or develop the facts of a case and to understand their implications for agency programs. Therefore, we cannot say whether a particular individual employee may engage in any particular outside activity. Nevertheless, we will provide for you the following general information about restrictions on executive branch employees' outside activities.

Generally the executive branchwide Standards of Conduct and the conflict of interest statutes do not pose a bar to any particular type of outside activity. There are, however, a number of restrictions in the Standards of Conduct and the conflict of interest statutes that affect the outside activities of Government employees. An employee's outside activity may require the employee to disqualify himself from working on certain Government work assignments. Under one of the conflict of interest statutes (18 U.S.C. § 208), and subpart D of the Standards of Conduct, for example, an employee may have to disqualify himself from working on

¹ We are presuming that you used the term "ethical principles" to mean the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), 5 C.F.R. part 2635, and the conflict of interest statutes in chapter 11 of title 18, United States Code.

an assignment that will affect his own financial interests or the financial interests of a corporation in which he is serving as an officer, director, or employee. This might occur, for example, when a Government employee's outside employer has business with the employee's agency. In other cases, that same statute as well as subpart F of the Standards of Conduct could require an employee to disqualify himself from working on certain matters affecting someone with whom he is seeking employment outside the Government.

At 5 C.F.R. § 2635.802, the Standards of Conduct provide that an employee may not engage in outside employment or an outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties if it is prohibited by statute or by an agency regulation supplementing the Standards of Conduct;² or if the activity would require the employee's disqualification from matters so central and critical to the performance of the employee's official duties that the employee's ability to perform the duties of his position would be materially impaired. Whether or not a proposed activity would "conflict" with an employee's official duties, within the meaning of 5 C.F.R. § 2635.802, is a determination to be made by an individual's employing agency. The Standards of Conduct also contain restrictions on service as an expert witness, as well as restrictions for employees who engage in outside teaching, speaking, and writing that is related to their official duties. See 5 C.F.R. §§ 2635.805 and 2635.807.³

The Standards of Conduct provide, at 5 C.F.R. § 2635.801(c), that an employee who is engaged in an outside activity must comply with all applicable provisions set forth in other subparts of the Standards of Conduct.⁴ For example, subpart G of the Standards of Conduct prohibits employees from using public office for private gain, either their own or the gain of others. Under this subpart, employees are prohibited from using their office for the endorsement of any product, service, or enterprise. Additionally, employees may not use or allow the use of nonpublic information to

² The [agency] is a component of [a] Department. The Department does not now have a supplemental regulation.

³ Except as it applies to certain senior noncareer employees, OGE has advised agencies to no longer enforce the prohibition in section 2635.807(a) on acceptance of travel expenses in connection with teaching, speaking or writing that is related to the employee's duties. Section 2635.807(a) will be amended accordingly.

⁴ This includes the general principle that an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical provisions in the Standards of Conduct.

further their own private interests or the private interests of others, and may not use or allow the use of Government property or official time for other than authorized purposes. See 5 C.F.R. §§ 2635.702, 2635.703, 2635.704, and 2635.705.

Additionally, there are two laws (18 U.S.C. §§ 203 and 205) that prohibit employees from representing others before departments, agencies, and courts if the United States has a direct and substantial interest or is a party in the matters involved. For example, these laws might prohibit an employee from seeking official action from an agency on behalf of a private company. These criminal statutes are specifically described in the outside activities provisions of subpart H of the Standards of Conduct.

Beyond the Standards of Conduct and the conflict of interest laws, the Federal Acquisition Regulation prohibits contracts between the Federal Government and Government employees, or organizations owned or substantially owned by one or more Government employees. However, this prohibition does have a "compelling reason" exception for limited situations, such as when the Government's needs cannot otherwise be reasonably supplied. See 48 C.F.R. §§ 3.601 & 3.602. Employees should contact appropriate contracting officials within their agencies for more information about applicable restrictions under Federal contracting regulations.

As the summary above indicates, there are a number of statutes and regulations that could impact the question of whether a particular employee may engage in a particular outside activity. Of course, in many cases, none of these restrictions may apply to an outside activity being contemplated by an employee. Therefore, as noted above, we strongly encourage employees to consult their agency ethics official when they have any questions regarding the application of ethics rules to an outside activity.

Sincerely,

Stephen D. Potts
Director