

Office of Government Ethics

86 x 10 -- 08/08/86

Letter to Employee dated August 8, 1986

This is in response to your letter of July 3, 1986, requesting guidance on the scope of [your agency's] statutory gift acceptance authority. Specifically, you are inquiring as to whether the [agency] may accept payment or reimbursement for travel expenses related to the [agency's] official duties from sources outside the Federal Government.

The [agency's] major role is to advise the President, Congress, and Federal agencies on [certain] matters and to encourage [certain activities]. Federal agencies are required to take into account the effects of their undertakings on [specific sites] and to afford the [agency] a reasonable opportunity to comment on such undertakings. The [agency] usually comments by means of Memoranda of Agreement, negotiated among the [agency] staff, the Federal agency, and [a state government official]. Although not all cases demand an on-site inspection and public information meeting, they are important components of the [agency's] commenting process. According to your letter, many cases are so complex or controversial that an inspection or meeting is vital for the parties to reach an intelligent agreement or for the [agency] to issue appropriate comments.

Because of cutbacks in the [agency's] budget, travel by members of the [agency] has been severely restricted. Recently, the [agency] has encountered several situations in which sources outside the Government have offered to pay the [agency's] travel expenses. [A specific section of your agency's organic act] gives the [agency] gift acceptance authority, which reads, in part, as follows:

To the extent of available appropriations, the [agency] may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act.

Because the language of the [agency's] gift acceptance authority is broad, the [agency] could probably choose to permit the acceptance of travel expenses associated with on-site inspections and public meetings, even when the entity defraying the expenses has interests that could be affected by the [agency's] activities. However, as you stated in your letter, acceptance of travel expenses under certain circumstances, such as those described above, may create actual or apparent conflicts of interest.

To avoid adverse appearances, we think you should consider imposing limitations on the use of the [agency's] gift acceptance authority. Under gift acceptance authority, the agency, rather than the employee, accepts the payment. As a result, the adverse appearances that are present when the employee accepts such a payment are not necessarily present when the agency itself is accepting the funds. Even so, we generally suggest that agencies avoid accepting reimbursements from organizations that do business with or are regulated by the agency. However, you may determine that there are circumstances under which such acceptance would not create an appearance of a conflict of interest of a degree that would preclude acceptance. For example, if the entity offering to pay the [agency's] expenses is a non-profit entity, you might determine that the appearance problem is not substantial since the entity is not in a position to profit as a result of the [agency's] activities. On the other hand, where the offeror is a profit-making enterprise that stands to benefit financially depending upon the [agency's] comments, you might perceive the appearance as sufficient to preclude acceptance of travel expenses. If so, you might determine that acceptance of expenses in those cases in which the entity's interests were compatible with those of the Government would pose less of an appearance problem than would acceptance from an entity whose interests were adverse to the Government's.

Another factor you might consider in determining whether to permit acceptance is the nature of the activity associated with the travel, and whether it is a statutory responsibility of the agency. The [agency] has a statutory responsibility to carry out on-site inspections and public meetings as necessary. By relying on nongovernmental entities to pay the expenses associated with these governmental responsibilities, the [agency] may be limiting access to its expertise to those who can afford to pay. Some agencies have more narrowly drafted gift acceptance statutes than the [agency's], which they use for the limited

purpose of sending their employees to conferences, meetings, and seminars, attendance at which is not statutorily mandated. Even in those instances, agencies tend to avoid accepting payments of expenses from entities with whom the agency does business because of the possibility of an appearance of impropriety. (See Securities and Exchange Commission regulations at 17 C.F.R. § 200.735-4(b)(6)(ii)(A); Department of Health and Human Services regulations at 45 C.F.R. § 73.375-507(b)).

Although this Office can offer suggestions in this area, it is up to the individual agency to interpret its statutory gift acceptance authority and to establish procedures governing the acceptance of travel expenses. For guidance regarding the acceptance of travel expenses, you should review the enclosed copy of this Office's Informal Advisory Letter 84 x 5, which discusses in detail the acceptance of travel expenses, explaining the pertinent standards of conduct considerations and Comptroller General's decisions. In addition, the memorandum contains a list of procedures that we suggest agencies incorporate into their own guidelines on the acceptance of travel expenses. This memorandum should answer many of the questions you raised in your letter. Regarding the actual scope of your agency's statutory authority, we suggest that you review any Comptroller General's decisions on the subject and check with other agencies that have such authority to determine how they have used it.

We hope you find these comments and the enclosed memorandum on the acceptance of travel expenses helpful as you draft guidelines on the scope of the [agency's] statutory gift acceptance authority.

Please do not hesitate to contact this Office if you need additional assistance in this matter.

Sincerely,

David H. Martin
Director