

Office of Government Ethics

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Letter to a Private Organization's Attorney dated September 30, 1985

We have reviewed your letter of August 27 regarding the proposal of your private organization to sponsor a banquet honoring the recipients of [a Government] Award. You had hoped to have the President make the official

presentations at this banquet, but if not, to have him and other senior officials attend the banquet. The [organization] would pay for the banquet from its own funds and from funds solicited from corporations for this purpose. You had hoped to recognize these corporate contributions at the banquet but would not if that created some difficulty.

At the outset, we believe it is important that you understand that the official presentation ceremony may not be organized and directed by the [organization] through the vehicle of this banquet. Your organization, like any other private organization, may not fund or contribute to the funding of any official Government activity unless the agency responsible for the activity has statutory authority to accept gifts in order to carry out the function and then chooses to accept the funds for that purpose. In the case of these awards, we do not believe that the two agencies responsible for coordinating the awards and the ceremony have the statutory authority to accept your offer to sponsor the official presentation or that the Government should expect or allow private organizations to pay for ceremonies in which the Government recognizes the contributions and achievements of its own employees.

This does not mean, however, that you may not host a banquet honoring the recipients of the awards. While the individuals have been given the awards for the manner in which they have carried out their governmental duties, Congress has recognized that awards and honors for such activities may come from certain types of private organizations without fear of any potential violations of 18 U.S.C. § 209. This recognition is contained in 5 U.S.C. § 4111 and exempts the employee and the donor from coverage of section 209 if the donor has a tax-exempt status under 26 U.S.C. § 501(c)(3). [Your organization] is such an organization and therefore that prohibition is not at issue. What will still be at issue in each individual recipient's case is whether the employee's acceptance of the honor from that specific donor will create, in general terms, either an actual or apparent conflict. The regulations implementing 5 U.S.C. §

4111, found at 5 C.F.R. §§ 410.701-410.706, require that before the employee may accept, the agency must make certain determinations using basic conflicts and ethics standards. Further, in making this determination, the regulations direct the agency to review all the donors providing the honor, if there is more than one, and such review may bring your corporate contributors into consideration. See 5 C.F.R. § 410.705.

If you do not publicly recognize your corporate contributors at the banquet ceremonies or in the programs, we believe that most agencies will have no difficulty with their recipient employees attending the banquet. The same would be true for those high level officials of the recipients' agencies you choose to invite. The important thing to remember, however, is that in each individual's case, be it recipient or agency official, it will be the employing agency's determination of whether he or she may attend.

We have become aware that the [organization] wished to use the State Department reception facilities for this banquet. Since this banquet will not be an official Government function, you may use those facilities only if the State Department allows their use for privately sponsored functions. If they do, you must follow the guidelines they have established for allowing the public to use the facilities and you may not represent that it is an official function to the State Department.

Finally, your letter raised a question about the activities of the members of the [organization] still employed by the executive branch which may pose problems for them under their agencies' standards of conduct. Seeking donations on behalf of the [organization] will not insulate a member from the restrictions on soliciting anything of value from an organization which does or is seeking to do business with the employee's agency, which is regulated by the employee's agency or which may be substantially affected by the performance or nonperformance of the employee's official duties. It makes no difference on whose behalf the solicitation is made. Therefore, it is very important that the [organization] makes sure that members who are engaged in fundraising activities understand these limitations so that they do not inadvertently violate their agency standards of conduct and harm themselves or the programs of the [organization].

Sincerely,

David H. Martin
Director