

Office of Government Ethics

94 x 1 -- 01/10/94

Letter to an Inspector General dated January 10, 1994

This is in response to your letter of November 10, 1993, in which you requested guidance on applicable authority for a Government employee's participation as a speaker in a conference conducted by a non-Governmental entity as well as on the use of an employee's official title in advertisement brochures for the conference. The guidance that should be given with respect to employee participation in speaking engagements organized by non-Governmental entities will of course depend on the facts in each instance.

At the outset, there is nothing that bars Government employees from participating, either in an official or in an unofficial capacity, in conferences or in other programs organized by non-Governmental entities in which fees are charged to program attendees. See OGE's Informal Advisory Letters, 90 x 1 and 88 x 5. There are, however, a number of considerations that should be taken into account when Government employees are engaged in such speaking activities.

Prior to a review of the considerations relevant to speaking at non-Governmental functions, a determination of whether the employee is acting in an official or a private capacity is necessary. If an employee has been directed by his agency to participate in a conference pursuant to appropriate agency authority, then the employee would be authorized to participate in the conference in an official capacity. Whether an agency may assign an employee to participate in a conference held by a private organization is a function of the agency's authority. See OGE Informal Advisory Letter 90 x 1; also see OGE Informal Advisory Letter 88 x 5 on the receipt of compensation from outside sources for official speeches. Cf. 5 C.F.R. § 2635.204(g)(1) pertaining to the acceptance by employees of benefits associated with participation in a speaking engagement in an official capacity.

Where an employee intends to participate in a conference in an unofficial capacity, he must comply with any advance approval requirements of his agency for outside speaking. And regardless of whether the employee is required to seek approval, a critical issue is whether the employee is to receive any consideration for his participation. If the employee is being paid, then receipt of the compensation may violate the

ban on honoraria. See 5 C.F.R. § 2636.201; also see OGE Memorandum to

Designated Agency Ethics Officials dated September 29, 1993, regarding the

status of litigation challenging the honoraria ban. If the speech that the official makes is "related to his official duties," as that term is defined in 5 C.F.R. § 2635.807, and the employee is compensated for that speech, including payment of travel expenses, then the employee will violate the Standards of Ethical Conduct.

If an employee does not receive any compensation for his participation in the conference, the speech will not be prohibited by section 2635.807. In such an instance, the primary consideration the employee should keep in mind is his responsibility not to misuse his position, title, Government property, or nonpublic information. See subpart G of 5 C.F.R. part 2635.

The parameters for use of Government title in nonofficial speaking are outlined in section 2635.807(b). That section states that an employee shall not use or permit the use of his official title or position to identify him in connection with his teaching or speaking except pursuant to certain exceptions. The exception that is relevant to your inquiry, section 2635.807(b)(1), states that an employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking or writing, provided that his title or position is given no more prominence than other significant biographical details.

This exception is applicable where, for example, a biographical sketch of the employee is orally given to introduce the employee or is in a brochure identifying speakers at an event. The key to this exception is that the reference to Government position must be included in what amounts

to a list of information regarding the employee's background. If the teaching, speaking or writing is private, it should be disassociated from the employee's position. In this way, there will be no appearance of Governmental sanction of the speech. Allowing the listing of the employee's current position only as one of several biographical facts permits important information about the speaker to be revealed in a manner that does not suggest Governmental sanction of the speech or the conference.

In your letter to this Office, you enclosed a brochure listing speakers for a conference. This brochure identified several speakers, many of whom are Government employees whose titles are prominently featured in the brochure. Additionally, the brochure lists separately the employers of

the several speakers, including the Government agencies where the employees work.

There is nothing in the brochure which suggests whether the speech engaged in by the employees is undertaken in an official or unofficial capacity. If the speech was being engaged in by the Government officials in private capacities, then those employees that permitted the use of their Government titles (and not as a part of a biographical sketch) in connection with their unofficial speech violated the Standards of Ethical Conduct. Note that one of the Government speakers did not run afoul of the restriction on the use of title, as the brochure references her agency and the division of her agency where she is employed but does not reference her specific title. In this instance, while there is no misuse of title, there remains a concern that there may be an improper appearance of Governmental sanction to the speech.

We will forward a copy of the brochure that you sent us to the Designated Agency Ethics Officials of each of the agencies with Government employees identified in the brochure to determine whether the advertised speech was official, whether the employees involved had received ethics advice and whether the employees permitted the use of their titles or the appearance of Governmental sanction of the conference in violation of the regulation.

Should you have any further questions, please contact this Office.

Sincerely,

Stephen D. Potts
Director