

Office of Government Ethics

91 x 10 -- 03/15/91

Letter to a Designated Agency Ethics Official dated March 15, 1991

This is in response to your letter of February 28, 1991, requesting the opinion of this Office on whether acceptance by [your agency] from another Government agency of reimbursement for certain travel expenses might violate the standards of conduct regulation in 5 C.F.R. Part 735.

The example which you gave to illustrate this question concerns labor relations training performed by employees of the [agency's] Office of the General Counsel at a workshop conducted by [another agency] for [a specific group of] personnel. Travel vouchers were submitted to [your agency] by its employees of the Office of the General Counsel who provided the training, and it subsequently sought reimbursement from the [second agency]. You also noted that the [second agency] regularly appears before [your agency] as a party in adjudicative proceedings, and that [your agency's] General Counsel also appears before [your agency] in [specific kinds of] proceedings.

Your question is whether [your agency's] acceptance of travel reimbursement in these circumstances could constitute a prohibited gift under 5 C.F.R. § 735.202(a), since the [second agency] has matters before [your agency], and whether it might also violate 5 C.F.R. § 735.201a(b) and (f) by creating the appearance of preferential treatment or having an adverse effect on public confidence in the integrity of Government when, for example, the [second agency] and [a group] have opposing interests before [your agency].

The standards of conduct, which are embodied in Executive Order 12674 and the implementing regulation at 5 C.F.R. Part 735, are directed specifically at ethical conduct of individual employees in the executive branch, not at agency activities. Since the example which you have provided involves reimbursement to [your agency] under the Economy Act and not to the individual employees who traveled, employee standards of conduct are not directly applicable. Nor is OGE's informal advisory memorandum 84 x 5, which you have cited, directly on point. In that memorandum, we cautioned that reimbursement made to agency

employees from certain tax-exempt organizations outside the Government should normally not be permitted if such organizations seek agency grants or do business with the employees receiving reimbursement. This cautionary advice related specifically to reimbursement made under authority of 5 U.S.C. § 4111 directly to the employees involved, not to the agency; therefore, employee standards of conduct were applicable.

Furthermore, as you have noted, that opinion dealt only with reimbursement from private sources, while your question pertains to reimbursement from another Government agency. We do not view payment by one agency to another for training services to be a violation of employee standards of conduct. [Your agency] has simply been reimbursed with public monies for its expenses, as permitted by the Economy Act. This is not a prohibited gift in terms of those standards. Nor is the appearance of preferential treatment or adverse impact on public confidence in Government integrity reasonably raised under those standards when a Government agency which purchases training services from [your agency] happens to have unrelated matters pending before [your agency].

The standards of conduct for employees in 5 C.F.R. Part 735 do not, in our opinion, form a basis for rejecting this reimbursement, under the circumstances which your letter outlined.

Sincerely,

Stephen D. Potts
Director