

Office of Government Ethics

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Letter to a Designated Agency Ethics Official dated August 7, 1981

You have requested an opinion of this Office as to whether there would exist a conflict of interest if [your agency] were to lease office space in a building which is owned by [a credit union] whose membership and management are composed solely of current and retired agency employees.

As the facts have been presented to us, the credit union is constructing an office building in a technological park, which is located immediately in front of a second building soon to be leased by the agency. Due to an increase in staffing, the agency required additional office space of its component assigned to the building that it planned to lease. The credit union building has space for rent which, because of its proximity to the agency building, would provide significant administrative, financial and security benefits to the agency.

Some of these benefits are detailed in a July 14, 1980, letter from the agency to this Office, citing an internal agency memorandum:

A separate location for these components would require establishment of a new Communications Center. The cost, depending on the location, could be as much as \$1 million. In addition, adequate manning of the Communications Center would require up to 11 new Office of Communications positions. The secure communications grid necessary for a secure telephone system could add additional cost or may not be feasible.

Further, the agency states that

additional savings would result from the elimination of additional mileage on the agency shuttle bus route; the reduced administrative and personnel support functions resulting from the ability to serve both facilities from a central location rather than separate offices; and decreased direct security cost as a result of a combined security guard force.

Despite these significant advantages to the agency resulting from the rental of office space in the nearby credit union building, certain questions are raised as to the propriety of the agency leasing a building from an organization of its own employees. These are not merely theoretical questions. It appears that the credit union decided to purchase its building containing substantial excess office space only after the agency entered into a long-term lease for the adjacent building. Indeed, the agency openly encouraged the relationship between the credit union and the owners of the property. Further, the agency states that it provided some technical assistance to the credit union in the purchase of its building.

We do not and cannot reach questions of agency compliance with applicable procurement law or policy, which appear very specialized in this instance, and in any case are not in our jurisdiction.

Executive Order 11222, issued by President Johnson on May 11, 1965, and implementing regulations at 5 C.F.R. § 735.201(a) prescribe standards of ethical conduct for Government officers and employees. Government employees are prohibited from taking any action which might result in, or create the appearance of:

1. using public office for private gain;
2. giving preferential treatment to any organization or person;
3. impeding Government efficiency or economy;
4. losing complete independence or impartiality of action;
5. making a Government decision outside official channels;
or
6. affecting adversely the confidence of the public in the integrity of the Government.

In addition, 18 U.S.C § 208, a criminal statute, generally prohibits Federal employees from taking action on behalf of the Government that may redound to their personal benefit.

The actions proposed by the agency raise serious questions of

potential conflict of interest, or the appearance of conflict of interest, and possible violation of the criminal law, from several perspectives as illustrated in the following examples. From the point of view of the agency, there is the spectre of giving preferential treatment to its employee-owned credit union over other organizations with office space for rent. From the perspective of agency employees who may represent both the credit union and the agency in the negotiations for the lease agreement, parallel questions of preferential treatment, and of using public office for private gain, are raised. For its part, a financially healthy credit union, with an agreeable long-term tenant (the agency) in place, would be able to pass on the resulting benefits to its members, employees of the agency. Any of these questions, by themselves, might well adversely affect the confidence of the public in the integrity of the Government, in violation of the Executive Order and regulations.

In any situation of conflict of interest (potential harm to the Government and its citizens) the entire context of the activity, including the advantages to the Government and the public, if any, must also be considered. The standards contained in the Executive Order exist for the benefit of the Government. *Exchange National Bank of Chicago v. Abramson*, 295 F. Supp. 87 (1969).

From your description of the situation, the activities and proposed activities of the agency and the other parties do not appear to be efforts calculated to promote the evils which the standards of the Executive Order were established to prevent. In this instance, there certainly would be very substantial financial, administrative and security benefits to the Government as a whole, through one of its agencies, as described above.

While the potential for apparent conflict remains, there may be opportunity for the lease arrangement to proceed if the agency is able to develop and implement appropriate procedures adequate to insulate itself (and its employees) from even the appearance of a conflict. At the minimum, this would seem to us to require full disclosure of the relationship of the parties and a mechanism to assure that the lease negotiations, in fact, represent bargaining done in an independent, formal and arm's-length manner.

Assuming the agency is able to assure such independence in the negotiations as indicated above, there is a second step that the

agency may wish to consider. On the facts presented, there is the possibility that some benefits could inure to members of the credit union (employees of the agency) from this transaction. If it can be determined that the likelihood of significant benefits to particular members remote, then the Director of the agency may want to grant waivers of 18 U.S.C. § 208 for those employees involved in these transactions who are members of the credit union.

Sincerely,

James K. Pont
Deputy Director