

Office of Government Ethics

85 x 17 -- 10/23/85

Letter to an Employee dated October 23, 1985

This Office has reviewed the record pursuant to your request and believes that [your] Department correctly concluded that your husband's [interests in a program managed by the agency within the Department which employs you] created the appearance of a conflict of interest in light of your positions with [that agency].

In your letter of June 17, 1985, to President Reagan, you stated that you and your husband were found guilty of an appearance of a conflict of interest. However, the appearance issue did not result in the voiding of your husband's [interests]. His [interests] were voided under a [specific] statute that prohibits employees [of your agency] from holding, directly or indirectly, [interests] such as those held by your husband. The [Departmental Board responsible for reviewing such matters] upheld the decision to void your husband's [interests]. [Case name and citation are omitted.]

Although this Office does not have authority over the statute under which your husband's [interests] were declared void, we do have authority to render advice regarding standards of conduct regulations. Because your husband's [interests] are no longer valid, you do not currently have a conflict of interest concern in this area. However, if your husband's [interests] had not been declared void, an appearance of a conflict of interest would have been present in your case. This apparent conflict of interest would have existed because your positions with the [agency] involved activities [tangential to these interests] and could reasonably be perceived as providing your husband with an advantage in [acquiring these interests].

During the period of time that your husband was acquiring [these interests], you held two different positions with the [agency]. While you were [in the first position] you had the responsibility for writing and reviewing all study area reports for [a specific] district. Although you did not have access to any information that would not be available upon request to the general public, your position at [the agency] gave you easy access to it, a more intimate knowledge of it, and an earlier opportunity to use it. All of this information could have operated to the advantage of your husband, if you had brought it to his attention.

In your [second position] you reviewed all environmental analyses pertaining to plans of operations submitted by companies [who might use the interests held by your husband]. That position had the potential for providing you with information regarding [sites of activity] and the industry's interest in [those activities]. In your planning duties, you would have had advance knowledge of information pertaining to areas [of such activity on] public land with which the general public would not be familiar.

The Department's regulations define apparent conflict as "a situation where a member of the public would have reasonable cause to believe that an employee may be in conflict, even though he or she might not be." For an apparent conflict to exist, it is not necessary for the employee to have actually taken an official action related to a private financial interest.

[A specific section] of the Department's regulations prohibits employees from having direct or indirect financial interests that conflict substantially or appear to conflict substantially with their Government duties. According to [a specific section] an indirect interest includes "substantial holdings of a spouse or dependent child." The [Department] regulations define "substantial" in terms of the dollar value of the financial interest and the employee's duties or position within the Department.

If your husband had retained [these specific interests] you would have had an indirect financial interest [in them]. You have indicated to the [agency] that [a substantial percentage of the interests] formerly held by your husband were being [held] for 3 years for \$45,000. After that 3 year term, the [interests were] renewable annually for \$50,000 per year for a total of 50 years. Under the regulations, that is a "substantial holding" of your spouse. In light of your duties and the fact that [the agency] is responsible for the management of [these interests], the public could reasonably perceive that your husband might have had an unfair advantage in [gaining specifically located interests]. It could appear that you were using your public office for the private gain of your spouse, in violation of the Department's standards of conduct.

In your letter, you indicate that many other [agency] employees have interests administered by [the agency] but that they have not had their property taken or their jobs threatened. That is possible since waivers of the restriction may be obtained to cover interests and rights obtained prior to service in the [agency] in situations in which there is little or no relationship between the holdings and the employee's official duties. In your case, your husband [obtained his interests] after you became [an

agency] employee. There is no provision in [the governing statute] for a waiver covering interests acquired while the employee or his or her spouse is employed by [the agency].

[A Department ethics official] has explained that he has no evidence indicating that the prohibitions that apply in your case are being applied unfairly. The [agency] statute applies to all [agency] employees and their spouses.

I hope this explanation assists you in understanding the Department's view that, in light of your duties with the [agency, these specific interests of] your husband's would have created the appearance of a conflict of interest.

Sincerely,

David H. Martin
Director