

## **Office of Government Ethics**

**93 x 16 -- 07/22/93**

### **Letter to a Designated Agency Ethics Official dated July 22, 1993**

This is in reply to your letter dated June 18, 1993, in which you asked five questions about the meaning of the phrase "or otherwise as determined by the agency" in section 2635.808(b) of the "Standards of Ethical Conduct for Employees of the Executive Branch."<sup>1</sup> Your questions, and our answers to them, are as follows.

1. Does a determination by the agency to allow fundraising on official time have to [be] based on statutory authority?

No, a statute would not be the only authority on which such a determination could be based. Section 2635.808(b) recognizes that an official may be authorized to engage in fundraising as part of his official duties by statute, Executive order, or regulation, or by some other authority available to the employee's agency. An employee carrying out his official duties may, of course, use official time to do so.

2. Is it sufficient to allow fundraising while on official time based solely on a direct relationship to the Agency's mission without statutory or regulatory authority?

No. As noted in the preamble in the Federal Register notice for the Standards, at 57 Fed. Reg. 35040 (Aug. 7, 1992), a recommendation that section 2635.808(b) be changed "to allow official fundraising that is consistent with the agency's mission or otherwise furthers agency programs" was not adopted in the final rule per se. Rather, the phrase "otherwise as determined by the agency" was added to section 2635.808(b) to recognize that agencies may have authority to permit official fundraising notwithstanding that such authority is not expressly set forth in a statute, Executive order, or regulation. For example, we do not discount the possibility suggested by several agencies who commented on the proposed Standards of Ethical Conduct that such authority may be found in statutes more general in character than those specifically providing for agency personnel to engage in fundraising. An agency would have to have some authority for official fundraising to be

permissible under section 2635.808(b); it would not be enough for the fundraising simply to be consistent with an agency's mission.

3. Must the determination [that an employee is authorized to engage in a fundraising activity as part of his official duties] be issued by the head of the agency?

Not necessarily. It would depend on the extent that an agency head has delegated management responsibilities for the agency. Typically, an employee's work is assigned by the employee's supervisor, based on the needs of the organization in which the employee is serving. Where an activity such as fundraising would not be a duty regularly performed by an employee and there is not any clear authority for the employee to engage in the fundraising, we expect that those responsible for directing the employee's work will obtain advice from appropriate officials at the agency before assigning that task to the employee or permitting the task to be performed on official time.

4. Is a Secretarial Order sufficient to allow an Agency to raise funds, collect food items or clothing, etc., on behalf of a nonprofit organization or on behalf of the community in which the agency resides? Or, is it only on an agencywide or national basis that the agency may determine that official fundraising is appropriate for its employees?

A Secretarial Order would not be sufficient without some specific underlying authority for the agency's employees to engage in a fundraising activity as part of their official duties. The underlying authority would be dispositive of the questions of where and for whom the fundraising may be carried out.

The "Standards of Ethical Conduct for Employees of the Executive Branch" address fundraising activities by individual employees. Fundraising drives, undertaken institutionally by an agency at the Federal workplace, would be subject to the conditions of Executive Order 12353, "Charitable fund-raising," as amended, and the Combined Federal Campaign (CFC) rules issued thereunder, at 5 C.F.R. part 950. As discussed in the answer to the next question, the Executive order and the CFC rules provide that only the Director of the Office of Personnel Management (OPM) may authorize a non-CFC fundraising activity at the Federal workplace.

5. Does this clause [or otherwise as determined by the

agency] eliminate the need to request a waiver from the Office of Personnel Management for fundraising which is not in conjunction with the Combined Federal Campaign?

No. The introductory language in section 808 of the Standards provides that "[a]n employee may engage in fundraising only in accordance with the restrictions in part 950 of this title on the conduct of charitable fundraising in the Federal workplace . . ." to make it clear that employees' fundraising activities are to comply with the rules of the CFC. The preamble in the Federal Register notice for the standards explains, at 57 Fed. Reg. 35040 (Aug. 7, 1992), that because the CFC rules "are controlling as to charitable fundraising drives in the Federal workplace, we did not adopt the recommendation by one organization to give agencies discretion to approve fundraising in the workplace for local charities."

Section 4 of Executive Order 12353, upon which the CFC rules are based, provides that there shall be "only one annual solicitation except in cases of emergency or disaster appeals for which specific provision shall be made by the Director [of OPM]." Consistent with this, the CFC rules provide that:

The CFC is the only authorized charitable fundraising drive in the Federal workplace . . . . No other fundraising drive may be conducted in the Federal workplace without the express written permission of the Director [of OPM].

5 C.F.R. § 950.102(a).

Thank you for seeking our advice with respect to this matter. We trust that the foregoing response will be of assistance to you.

Sincerely,

Stephen D. Potts  
Director

-----  
**1** The full text of this section of the standards is:

Fundraising in an official capacity. An employee may participate in fundraising in an official capacity if, in accordance with a statute, Executive order, regulation

or otherwise as determined by the agency, he is authorized to engage in the fundraising activity as part of his official duties. When authorized to participate in an official capacity, an employee may use his official title, position and authority.