

## Office of Government Ethics

92 x 7 -- 02/26/92

### Letter to an Individual dated February 26, 1992

I am writing in response to your letter of February 1, 1992, which requests advice regarding your (unnamed) university's practice of giving awards to certain executive branch employees. According to your letter, your university presents two awards to alumni -- the Regents' Distinguished Alumnus Award and the Alumni Achievement Award. Each award consists of a certificate only, with no associated monetary stipend.

The giving of awards to Federal employees is currently governed by 5 C.F.R. § 735.202 of the model Federal Standards of Conduct, as supplemented by specific Federal agency regulations. Section 735.202(a) prohibits Federal employees from accepting any gift or "any other thing of monetary value" from a "person" who:

- (1) Has or is seeking to obtain, contractual or other business or financial relations with his agency;
- (2) Conducts operations or activities that are regulated by his agency; or
- (3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

"Person" is defined in 5 C.F.R. § 735.102(d) to include organizations and institutions such as universities. Accordingly, if your university has no contractual or other interests that could be affected by the Federal agency by which the person you propose to give an award is employed, as enumerated in (1) through (3) above, then the award would not present a problem under section 735.202(a). If, on the other hand, your university does have contractual or other interests that could be affected, then the award may be prohibited, if it is deemed a gift or "other thing of monetary value."

You have indicated that at this time awards given by your university consist of a certificate only. Arguably, then, they are not of "monetary value" and, as such, would not be regulated by section 735.202(a). How such awards are characterized, however, is a matter left to the discretion of each individual agency. As

indicated, the Standards of Conduct are model regulations only and agencies are free to depart from them to some extent. You will need to consult with the Designated Agency Ethics Official ("DAEO") of each Federal agency employing an individual to whom your university would like to present an award. The general counsel's office of each agency should be able to provide you with the name of its DAEO.

Even if the certificate award is considered to be a gift or "other thing of monetary value," it might still be allowed if it falls within the exclusion in section 735.202(b). That section provides that agency regulations may provide for exceptions to section 735.202(a) and in section 735.202(b)(4) indicates that it would be appropriate for an agency to permit acceptance of "items of nominal intrinsic value." Again, you will need to check with the DAEO of each involved agency to determine whether the agency's regulations make an exception for items such as certificates.

For your information, the current model Standards of Conduct codified in part 735 of 5 C.F.R. will soon be replaced by new uniform Standards of Conduct to be codified at 5 C.F.R. part 2635. These proposed Standards have been published in the Federal Register, giving interested parties an opportunity to comment on them. The Standards are now being revised in response to these comments and, in the next few months, we expect that they will be published in final form and become legally binding. Once this occurs, you will not need to go to each involved Federal agency to find out how it treats certificate awards. Under the new Standards one uniform rule will be applicable to all Federal agencies.

Barring unanticipated changes to the proposed Standards, if your university continues its practice of giving a certificate only, with no other associated stipend or gift, then under the new Standards, the awards will be permissible even if given to Federal employees who work at agencies with respect to which your university has contractual or other interests that could be affected. This result follows from the specific exclusion of certificates from the definition of "gift" in proposed 5 C.F.R. § 2635.203(b)(4) [§ 2635.203(b)(2) in the final rule]. On the other hand, if your university alters its current practice and gives something of value in connection with its awards, or if the certificate evidences an honorary degree, then it will need to meet the requirements in sections 2635.202 and 2635.204(d), as ultimately adopted.

In addition to raising questions under the Standards of Conduct, awards that have monetary value also may present issues under 18 U.S.C. § 209. Section 209 is a Federal criminal statute that prohibits both the giving and acceptance of any supplementation of the salary of Federal employees. It has consistently been held, however, that the statute "applies only to payments made or received with the intent to compensate for Government services and that the requisite intent cannot be inferred from the bestowal upon a Government official of a bona fide award for public service or other meritorious achievement." OGE Informal Advisory Letter 83 X 3. Thus, even if your university began giving awards with monetary value, section 209 would be inapplicable, provided the awards were bona fide.

If this Office can be of further assistance, please do not hesitate to contact us.

Sincerely,

Stephen D. Potts  
Director