

## **Office of Government Ethics**

**90 x 16 -- 10/04/90**

### **Letter to a Designated Agency Ethics Official dated October 4, 1990**

This is in response to your inquiry concerning the use of the photographs and/or signatures of current [agency employees] by [a private company]. According to your letter of September 6, 1990, [the company] proposes to sell trading cards through a network of retail chains, [agency] facilities, and organizations [interested in similar subjects]. These cards will emphasize the importance of [an agency mission] and the benefits associated with [the agency's] programs. Your letter also states your understanding that [the company] will conduct these activities on a nonprofit basis and that revenues from the trading cards will be contributed to [a] nonprofit [memorial foundation].

As you noted in your letter, the approval by current [agency employees] of [the company's] use of their photographs and/or signatures raises serious standard of conduct questions. Under these standards Government employees are prohibited from engaging in any action that might result in or create the appearance of using public office for private gain. 5 C.F.R. § 735.201a(a). Government employees must also avoid any action that might result in or give the appearance of giving preferential treatment to any person, organization or institution. 5 C.F.R. § 735.201a(b). Guidance concerning the handling of requests for official autographs was provided by this Office in Informal Advisory Letter 86 x 17. As stated in that opinion, such requests should be resolved on a case-by-case basis, after careful consideration of the nature of the item on which a signature is to be affixed, the purpose for which the signature is sought, and the position occupied by the employee whose signature is being solicited. It is permissible for an employee to provide a signature clearly requested for historical or commemorative purposes. Where the predominant value of the signed items is commercial, however, a signature should not be given.

After careful consideration of the facts and circumstances of the [company's] proposal, we are of the opinion that it would be inappropriate for current Government employees to reach agreements allowing the use of their photographs and/or signatures on the proposed trading cards. The trading cards are

retail items to be sold and traded at various retail outlets much as other trading cards are. The [employees'] photographs and signatures are being sought solely because of their Government positions. While it may be contended that the cards would be used to commemorate the [agency's] programs in general, there is no reason to suggest that this is the primary reason that the [employees'] photographs and signatures are being sought. We believe that the primary purpose for the request for the photographs and signatures of the [employees] is to enhance the marketability and value of the cards. The fact that the proceeds from the increased value and marketability may be going to a charitable organization [a memorial foundation] does not alter the appearance of the use of public office for private gain.

We do note that [the company] may be able to use photographs that are in the public domain without having to obtain the approval of the Government employees pictured therein. Such use by [the company] would not raise concerns for those individuals under the standards of conduct, as it would occur without any action on their part.

We share your support for the goals of education [about your agency mission] for youth and for the [foundation's purpose]. For the reasons given above, however, we feel that it would be inappropriate for Government employees to approve of the use of their photographs and/or provide their signatures specifically for the enterprise proposed by [the company].

Sincerely,

Stephen D. Potts  
Director