Office of Government Ethics
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Letter to a United States Senator dated October 7, 1993

[A Department] forwarded your inquiry on behalf of your constituent to my Office for reply. [Your constituent] is a financial planner seeking to sell shares in mutual funds to Federal employees. He states that some Federal employees have declined to purchase shares because Federal ethics rules prohibit an employee from having an interest in a mutual fund that holds stock in a company which does business with the employee's agency.

There is no Government-wide statute or regulation that prohibits a Federal employee from purchasing shares in a mutual fund that holds stock in companies doing business with the employee's agency. Individual agencies, however, may have administrative rules that bar employees from purchasing stock in particular companies that do business with those agencies. Although theoretically it is possible that a particular agency also may prohibit employees from purchasing shares in a mutual fund that holds stock in such companies, I am not aware of any such prohibitions except in the case of so-called "sector" funds. A sector fund is a type of mutual fund whose holdings are limited to certain businesses, industries, or geographical regions. For example, the Food and Drug Administration may bar its employees from purchasing shares of mutual funds whose holdings are concentrated in the stock of pharmaceutical companies. Similarly, the Department of Energy may restrict employee investment in mutual funds that limit their holdings to stocks issued by oil and natural gas companies or other energy-related concerns.

In addition to these agency-specific restrictions concerning sector funds, a Federal criminal statute, 18 U.S.C. 208(a), prohibits an employee from acting in Government matters in which he has a financial interest. Thus, an employee must refrain from acting in a matter which would have a direct and predictable effect on a company in which he owns stock. Arguably, the statute would also prohibit an employee from acting in matters affecting a company in which the employee has an indirect interest through ownership of shares in a mutual fund which holds stock in the company.

To mitigate this harsh result, section 208(b)(2) permits the

Government to exempt certain financial interests from the prohibition of section 208(a) if the interests are too remote or inconsequential to affect the integrity of an employee's services. Prior to 1989, individual agencies had the authority to establish these exemptions by regulation for employees of those agencies. Many agencies did in fact utilize this authority to exempt interests arising from ownership of shares in mutual funds from the statutory prohibition. The statute was amended in 1989 to give the authority for establishing regulatory exemptions for the entire executive branch to the Office of Government Ethics (OGE). The regulatory exemptions established by individual agencies prior to 1989 continue in effect until OGE publishes an executive branch-wide exemption regulation. An executive branch-wide regulation is expected to be published shortly, and it will contain an exemption for mutual funds, except for the sector funds described above.

In the meantime, an employee of an agency which has not promulgated an appropriate regulatory exemption may obtain an individual waiver from his agency permitting him to act in matters affecting companies whose stock is held by a mutual fund in which he owns shares. An agency official may issue an individual waiver of the requirements of section 208(a) for interests that are "not so substantial as to be deemed likely to affect the integrity of the [employee's] services...." See 18 U.S.C. 208(b)(1). In practice, agencies that have not established regulatory exemptions routinely grant individual waivers for employees wishing to purchase mutual funds.

I hope this information will assist you in responding to your constituent's request. Please let me know if I can be of additional assistance.

Sincerely,

Stephen D. Potts
Director