

Office of Government Ethics

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Letter to an Assistant Inspector General dated September 17, 1996

This is in response to your request that the Office of Government Ethics (OGE) review the Report of Investigation of facts and circumstances pertaining to certain employees' participation in a golf tournament. You have requested that this Office make a determination as to whether the activities of the employees violated the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) or other Federal codes of official conduct and what the propriety is of associating activity such as a golf tournament with the conduct of official Government business.

We understand that your inquiry has been directed to this Office because you may notify other executive branch agencies of the involvement of their employees in the golf tournament. You anticipate that our input will be helpful to other agencies to which you may make referrals. As the responsibility for administering [your agency's] ethics program rests with the [Head] of [the agency] and his delegatee, the Designated Agency Ethics Official (DAEO), we will provide only general advice and request that any questions that you may have in individual cases be addressed in consultation with the [agency] DAEO.

Factual Background

The golf tournament at issue was held simultaneously with, but not as an official part of, a contractually obligated annual meeting of Federal Government users of [a service]. For this meeting, [a corporation] was the service provider under contract to [the agency]. Six hundred and four Federal employees from various departments and agencies attended the meeting. Of that number, 93 were [agency] employees. A total of 59 [corporation] and Federal employees played in the golf tournament: nineteen employees from other agencies and eight from [the agency].

The conference began on a Monday, with registration and various rather informal conference sessions held that day. In the morning, the conference agenda provided only for a "Video Users' Group Meeting" and "Agency Meeting Time" in the period 8:00 a.m. to noon. The golf tournament was held on the Monday morning. The relevant [agency] employees did not take annual leave to participate in the golf tournament, and all arrived at the

conference site on either the Saturday or Sunday immediately preceding the conference; the employees travelled at agency expense and charged their hotel and per diem expenses to the agency. The cost of participation in the tournament was \$80.00 per person, and this cost coincided with the cost of running the tournament on a per person basis, with the exception of trophy costs (approximately \$7.50 per trophy) and an additional unanticipated tax expense of \$5.00 per person. The trophy and additional expense were covered by [the corporation], which organized the tournament. [The corporation] also obtained a \$10.00 discount off the usual greens fees as, in effect, a group rate. The employees paid to participate in the tournament with their own funds.

There are multiple issues raised by your inquiry, some of which are readily analyzed pursuant to the Standards of Conduct, and others which, while related to the Standards of Conduct, are issues that can only be resolved after analysis of whether employees were authorized to engage in the conduct in question.

Gift Issues

We do not view, based upon the above facts, that there were Standards of Conduct violations with respect to the receipt of gifts in connection with the golf tournament.¹ Accepting a gift from a prohibited source is generally prohibited by the Standards of Conduct. See 5 C.F.R. § 2635.202(a). However, while the payment of \$5.00 per person of unanticipated tax expense associated with the tournament was a gift from a prohibited source (at least as to the [agency] employees), the gift was not prohibited by the gift rules in the Standards of Conduct by virtue of an exception in the rules for gifts worth no more than \$20. See 5 C.F.R. § 2635.204(a). While the exception does not allow for gifts of cash, the payment of the unanticipated expense by [the corporation] was not a gift of cash as employees did not receive cash. As for the trophies awarded in connection with the tournament, they would not be considered to be gifts under the Standards of Conduct as the definition of gift excludes "items with little intrinsic value, such as . . . trophies . . . which are intended solely for presentation." See 5 C.F.R. § 2635.203(b)(2). The trophies presented in connection with this golf tournament would meet this exclusion.

Another benefit that participants in the golf tournament received was the \$10.00 discount or group rate that was extended by the golf course to [the corporation] and passed on to participants. Even if this \$10.00 discount were viewed as a gift that was given by [the corporation] (rather than by the golf course) to the participants, as the discount would have a value of less than \$20.00, even when combined with the \$5.00 per person

unanticipated cost paid by the tournament organizer, it would not have been a prohibited gift under the Standards of Conduct.

Government Time and Per Diem Issues

The employees are alleged to have misused Government property (in the form of hotel and daily per diem) by arriving at the conference earlier than necessary in order to play in the golf tournament and of misusing Government time by playing golf during normal duty hours.

Subpart G of the Standards of Conduct addresses "Misuse of Position" including the use of Government property and time. With respect to Government property, the Standards of Conduct provide at 5 C.F.R. § 2635.704:

An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

With respect to Government time, the Standards of Conduct at section 2635.705 provide:

Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties.

Whether an employee has fulfilled his obligation to use Government property and time in accordance with the Standards of Conduct depends on what, in the case of Government property, are "authorized purposes" and on what, in the case of time, is "authorized in accordance with law or regulations." Whether certain activity is "authorized" cannot be determined pursuant to the Standards of Conduct.

The Office of Government Ethics is not in a position to render a determination as to whether the Federal employee participants in the golf tournament were authorized to travel to the conference location prior to the first day of the conference or whether the employees were authorized to play in the golf tournament without taking annual leave. Issues of authorization to travel or to take leave are within the jurisdiction of the employing agency in accordance with applicable travel and personnel laws and regulations. If, after consideration of the facts of individual cases, agencies determine that travel or personnel laws or regulations were violated, then, as an ancillary matter, the Standards of Conduct provisions on misuse of Government property and time are likely to have been violated

as well.

**Propriety of Associating Certain Activities with Official Government
Business**

You inquire into the "propriety of associating this kind of activity with the conduct of official government business." This question presumes an active association by the Government of official business with the activity. OGE is not in a position to determine what is "appropriate" in terms of the authorization by agencies of events at a conference. Whether a Government agency can authorize a golf tournament or participation in a golf tournament is a function of the authorizing agency's statutory authorization and appropriations. If an agency can make the necessary justifications in terms of its mission and programs, then the employee's participation with the agency's knowledge and approval would be appropriate. Of course, agencies may have difficulty articulating their justification for allowing agency resources such as the employee's duty time to be used to participate in a golf tournament.

There is nothing inappropriate with an event such as a golf tournament being organized without official authorization or participation, as long as any employees involved do not misuse their Government position in connection with participation in the event. Without official authorization or officially authorized participation, there is no association of such an event with the conduct of official Government business.

I am hopeful that this analysis has been helpful to you. Should you have any questions, please contact this Office. In accordance with the instructions on the face of the Report of Investigation, we are returning to you the copy of the Report that you provided to us.

Sincerely,

Stephen D. Potts
Director

1 Procurement integrity rules pertaining to gratuities, found at 48 C.F.R. § 3.104, are additional to and separate from the Standards of Conduct gift rules. In terms of employees, these rules apply only to procurement officials and only during the conduct of a Federal agency procurement. The Federal Acquisition Reform Act of 1996, which will take

effect on January 1, 1997, or on an earlier date specified in final implementing regulations, will eliminate procurement integrity restrictions on gratuities.