



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

PUBLIC AFFAIRS

July 28, 2011

In reply refer to: DK-7

Dan Seligman, Attorney at Law
Columbia Research Corporation
PO Box 99249
Seattle, WA 98139

FOIA #BPA-2011-1417-F

Dear Mr. Seligman:

This is a final response to your request for records that you made to the Bonneville Power Administration (BPA) under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

You have requested the following:

A copy of BPA documents, including memoranda, which determined that Steve Hickok did not need a waiver from federal ethics laws to participate as an *ex-officio* non-voting board member of the Bonneville Environmental Foundation (BEF).

Response:

BPA has performed a reasonable search and is providing the responsive documents in their entirety.

Pursuant to 10 CFR 1004.8, if you are dissatisfied with this determination, or the adequacy of the search, you may appeal in writing within 30 calendar days of receipt of a final response letter. The appeal should be made to the Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA Appeal is being made.

I appreciate the opportunity to assist you. Please contact Cheri Benson, FOIA/Privacy Act Specialist at (503) 230-7305 with any questions about this letter.

Sincerely,

/S/Christina J. Munro
Christina J. Munro
Freedom of Information Act/Privacy Act Officer

Attachments

United States Government

Department of Energy

Bonneville Power Administration

memorandum

DATE: April 4, 2003

REPLY TO
ATTN OF: LC-7

SUBJECT: Bonneville Environmental Foundation

TO: Steven Hickok, Deputy Administrator, D-7

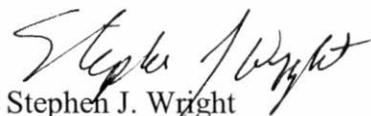
By the by-laws of the Bonneville Environmental Foundation (BEF), a Bonneville Power Administration (BPA) executive serves as an *ex-officio* non-voting member of the BEF board of directors. In your capacity as Deputy Administrator you currently serve as that *ex-officio* board member. Your participation on the BEF is therefore in your official capacity as a DOE/BPA employee, and you do not receive any additional compensation for performance of any duties from the BEF.

The Office of General Counsel has determined that you do not need a conflict-of-interest waiver to participate on the BEF board. Nevertheless, there are two areas of concern in which you need to exercise caution. They are:

1. Fundraising (5 C.F.R. § 2635.808) – You may not participate in any fundraising engaged in by the BEF. This would include instances of signing your name to grant applications or letters sent for solicitation of funds to support a specific local project. (See attached regulations)
2. Representations (18 U.S.C. § 205) – As a government employee, you are prohibited by this criminal statute from making representations to the government on behalf of the BEF. An example of this would be making telephone calls to another federal agency on behalf of the BEF urging them to approve a grant application to provide assistance on a specific project. (See attached statutes)

If at any time while you are serving on the BEF board you have concerns regarding ethics issues and what actions may or may not be appropriate under the applicable federal regulations, please contact Jeri Krier at extension 5747 or Mary Wooldridge at 5097.

Thank you for your service to the BEF in addition to your other duties at BPA.



Stephen J. Wright
Administrator

Attachments

cc:

M. Wooldridge, LC-7

(1) An employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking or writing, provided that his title or position is given no more prominence than other significant biographical details;

(2) An employee may use, or permit the use of, his title or position in connection with an article published in a scientific or professional journal, provided that the title or position is accompanied by a reasonably prominent disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States; and

(3) An employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank in connection with his teaching, speaking or writing.

NOTE: Some agencies may have policies requiring advance agency review, clearance, or approval of certain speeches, books, articles or similar products to determine whether the product contains an appropriate disclaimer, discloses nonpublic information, or otherwise complies with this section.

Example 1: A meteorologist employed with the National Oceanic and Atmospheric Administration is asked by a local university to teach a graduate course on hurricanes. The university may include the meteorologist's Government title and position together with other information about his education and previous employment in course materials setting forth biographical data on all teachers involved in the graduate program. However, his title or position may not be used to promote the course, for example, by featuring the meteorologist's Government title, Senior Meteorologist, NOAA, in bold type under his name. In contrast, his title may be used in this manner when the meteorologist is authorized by NOAA to speak in his official capacity.

Example 2: A doctor just employed by the Centers for Disease Control has written a paper based on his earlier independent research into cell structures. Incident to the paper's publication in the Journal of the American Medical Association, the doctor may be given credit for the paper, as Dr. M. Wellbeing, Associate Director, Centers for Disease Control, provided that the article also contains a disclaimer, concurred in by

the CDC, indicating that the paper is the result of the doctor's independent research and does not represent the findings of the CDC.

Example 3: An employee of the Federal Deposit Insurance Corporation has been asked to give a speech in his private capacity, without compensation, to the annual meeting of a committee of the American Bankers Association on the need for banking reform. The employee may be described in his introduction at the meeting as an employee of the Federal Deposit Insurance Corporation provided that other pertinent biographical details are mentioned as well.

[57 FR 35042, Aug. 7, 1992; 57 FR 48557, Oct. 27, 1992, as amended at 62 FR 48748, Sept. 17, 1997; 65 FR 53652, Sept. 5, 2000; 66 FR 59674, Nov. 30, 2001]

§ 2635.808 Fundraising activities.

An 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 and in accordance with paragraphs (b) and (c) of this section.

(a) *Definitions.* For purposes of this section: (1) *Fundraising* means the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e), through:

(i) Solicitation of funds or sale of items; or

(ii) Participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring that cost.

(2) *Participation in the conduct of an event* means active and visible participation in the promotion, production, or presentation of the event and includes serving as honorary chairperson, sitting at a head table during the event, and standing in a reception line. The term does not include mere attendance at an event provided that, to the employee's knowledge, his attendance is not used by the nonprofit organization to promote the event. While the term generally includes any public speaking during the event, it does not include the delivery of an official speech as defined in paragraph (a)(3) of this section or any seating or other participation appropriate to the delivery of such a speech. Waiver of a fee for attendance

at an event by a participant in the conduct of that event does not constitute a gift for purposes of subpart B of this part.

NOTE: This section does not prohibit fundraising for a political party, candidate for partisan political office, or partisan political group. However, there are statutory restrictions that apply to political fundraising. For example, under the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323(a), employees may not knowingly solicit, accept, or receive a political contribution from any person, except under limited circumstances. In addition, employees are prohibited by 18 U.S.C. 607 from soliciting or receiving political contributions in Federal offices, and, except as permitted by the Hatch Act Reform Amendments, are prohibited by 18 U.S.C. 602 from knowingly soliciting political contributions from other employees.

Example 1: The Secretary of Transportation has been asked to serve as master of ceremonies for an All-Star Gala. Tickets to the event cost \$150 and are tax deductible as a charitable donation, with proceeds to be donated to a local hospital. By serving as master of ceremonies, the Secretary would be participating in fundraising.

(3) *Official speech* means a speech given by an employee in his official capacity on a subject matter that relates to his official duties, provided that the employee's agency has determined that the event at which the speech is to be given provides an appropriate forum for the dissemination of the information to be presented and provided that the employee does not request donations or other support for the nonprofit organization. Subject matter relates to an employee's official duties if it focuses specifically on the employee's official duties, on the responsibilities, programs, or operations of the employee's agency as described in § 2635.807(a)(2)(i)(E), or on matters of Administration policy on which the employee has been authorized to speak.

Example 1: The Secretary of Labor is invited to speak at a banquet honoring a distinguished labor leader, the proceeds of which will benefit a nonprofit organization that assists homeless families. She devotes a major portion of her speech to the Administration's Points of Light initiative, an effort to encourage citizens to volunteer their time to help solve serious social problems. Because she is authorized to speak on Administration policy, her remarks at the banquet are an official speech. However, the Secretary would be engaged in fundraising if she

were to conclude her official speech with a request for donations to the nonprofit organization.

Example 2: A charitable organization is sponsoring a two-day tennis tournament at a country club in the Washington, DC area to raise funds for recreational programs for learning disabled children. The organization has invited the Secretary of Education to give a speech on federally funded special education programs at the awards dinner to be held at the conclusion of the tournament and a determination has been made that the dinner is an appropriate forum for the particular speech. The Secretary may speak at the dinner and, under § 2635.204(g)(1), he may partake of the meal provided to him at the dinner.

(4) *Personally solicit* means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by permitting its use by others. It does not include the solicitation of funds through the media or through either oral remarks, or the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources within the meaning of § 2635.203(d). It does not include behind-the-scenes assistance in the solicitation of funds, such as drafting correspondence, stuffing envelopes, or accounting for contributions.

Example 1: An employee of the Department of Energy who signs a letter soliciting funds for a local private school does not "personally solicit" funds when 500 copies of the letter, which makes no mention of his DOE position and title, are mailed to members of the local community, even though some individuals who are employed by Department of Energy contractors may receive the letter.

(b) *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.

§ 2635.809

Example 1: Because participation in his official capacity is authorized under part 950 of this title, the Secretary of the Army may sign a memorandum to all Army personnel encouraging them to donate to the Combined Federal Campaign.

(c) *Fundraising in a personal capacity.* An employee may engage in fundraising in his personal capacity provided that he does not:

(1) Personally solicit funds or other support from a subordinate or from any person:

(i) Known to the employee, if the employee is other than a special Government employee, to be a prohibited source within the meaning of § 2635.203(d); or

(ii) Known to the employee, if the employee is a special Government employee, to be a prohibited source within the meaning of § 2635.203(d)(4) that is a person whose interests may be substantially affected by performance or non-performance of his official duties;

(2) Use or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort, except that an employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank for such purposes; or

(3) Engage in any action that would otherwise violate this part.

Example 1: A nonprofit organization is sponsoring a golf tournament to raise funds for underprivileged children. The Secretary of the Navy may not enter the tournament with the understanding that the organization intends to attract participants by offering other entrants the opportunity, in exchange for a donation in the form of an entry fee, to spend the day playing 18 holes of golf in a foursome with the Secretary of the Navy.

Example 2: An employee of the Merit Systems Protection Board may not use the agency's photocopier to reproduce fundraising literature for her son's private school. Such use of the photocopier would violate the standards at § 2635.704 regarding use of Government property.

Example 3: An Assistant Attorney General may not sign a letter soliciting funds for a homeless shelter as "John Doe, Assistant Attorney General." He also may not sign a letter with just his signature, "John Doe," soliciting funds from a prohibited source, un-

5 CFR Ch. XVI (1-1-03 Edition)

less the letter is one of many identical, mass-produced letters addressed to a large group where the solicitation is not known to him to be targeted at persons who are either prohibited sources or subordinates.

[57 FR 35041, Aug. 7, 1992; 57 FR 48557, Oct. 27, 1992; 61 FR 50691, Sept. 27, 1996]

§ 2635.809 Just financial obligations.

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law. For purposes of this section, a just financial obligation includes any financial obligation acknowledged by the employee or reduced to judgment by a court. In good faith means an honest intention to fulfill any just financial obligation in a timely manner. In the event of a dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt or to collect a debt on the alleged creditor's behalf.

Subpart I—Related Statutory Authorities

§ 2635.901 General.

In addition to the standards of ethical conduct set forth in subparts A through H of this part, there are a number of statutes that establish standards to which an employee's conduct must conform. The list set forth in § 2635.902 references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability. While it includes references to several of the basic conflict of interest statutes whose standards are explained in more detail throughout this part, it does not include references to statutes of more limited applicability, such as statutes that apply only to officers and employees of the Department of Defense.

§ 2635.902 Related statutes.

(a) The prohibition against solicitation or receipt of bribes (18 U.S.C. 201(b)).

(b) The prohibition against solicitation or receipt of illegal gratuities (18 U.S.C. 201(c)).

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TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 205. Activities of officers and employees in claims against
 and other matters affecting the Government

(a) Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, other than in the proper discharge of his official duties--

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim; or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

(b) Whoever, being an officer or employee of the District of Columbia or an officer or employee of the Office of the United States Attorney for the District of Columbia, otherwise than in the proper discharge of official duties--

(1) acts as agent or attorney for prosecuting any claim against the District of Columbia, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim; or

(2) acts as agent or attorney for anyone before any department, agency, court, officer, or commission in connection with any covered matter in which the District of Columbia is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a covered matter involving a specific party or parties--

(1) in which he has at any time participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(2) which is pending in the department or agency of the Government in which he is serving.

Paragraph (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-

five consecutive days.

(d)(1) Nothing in subsection (a) or (b) prevents an officer or employee, if not inconsistent with the faithful performance of that officer's or employee's duties, from acting without compensation as agent or attorney for, or otherwise representing--

(A) any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings; or

(B) except as provided in paragraph (2), any cooperative, voluntary, professional, recreational, or similar organization or group not established or operated for profit, if a majority of the organization's or groups' \1\ members are current officers or employees of the United States or of the District of Columbia, or their spouses or dependent children.

 \1\ So in original. Probably should be ``group's''.

(2) Paragraph (1)(B) does not apply with respect to a covered matter that--

(A) is a claim under subsection (a)(1) or (b)(1);

(B) is a judicial or administrative proceeding where the organization or group is a party; or

(C) involves a grant, contract, or other agreement (including a request for any such grant, contract, or agreement) providing for the disbursement of Federal funds to the organization or group.

(e) Nothing in subsection (a) or (b) prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for, or otherwise representing, his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except--

(1) in those matters in which he has participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or

(2) in those matters which are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

(f) Nothing in subsection (a) or (b) prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

(g) Nothing in this section prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(h) For the purpose of this section, the term ``covered matter'' means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.

(i) Nothing in this section prevents an employee from acting pursuant to--

(1) chapter 71 of title 5;

(2) section 1004 or chapter 12 of title 39;

(3) section 3 of the Tennessee Valley Authority Act of 1933 (16

U.S.C. 831b);

(4) chapter 10 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4104 et seq.); or

(5) any provision of any other Federal or District of Columbia law that authorizes labor-management relations between an agency or instrumentality of the United States or the District of Columbia and any labor organization that represents its employees.

(Added Pub. L. 87-849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1122; amended Pub. L. 101-194, title IV, Sec. 404, Nov. 30, 1989, 103 Stat. 1750; Pub. L. 101-280, Sec. 5(c), May 4, 1990, 104 Stat. 159; Pub. L. 104-177, Sec. 2, Aug. 6, 1996, 110 Stat. 1563.)

References in Text

The Foreign Service Act of 1980, referred to in subsec. (i)(4), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071, as amended. Chapter 10 of title I of the Act is classified generally to subchapter X (Sec. 4101 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Prior Provisions

A prior section 205, act June 25, 1948, ch. 645, 62 Stat. 692, related to the acceptance by a Member of Congress of anything of value to influence him, prior to the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 283 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

Amendments

1996--Subsec. (d). Pub. L. 104-177, Sec. 2(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ``Nothing in subsection (a) or (b) prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for, or otherwise representing, any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.''

Subsec. (i). Pub. L. 104-177, Sec. 2(b), added subsec. (i).

1990--Subsec. (a)(2). Pub. L. 101-280, Sec. 5(c)(1), substituted ``civil'' for ``any civil''.

Subsec. (b)(2). Pub. L. 101-280, Sec. 5(c)(2), substituted ``commission'' for ``any commission''.

1989--Pub. L. 101-194 amended section generally, revising and restating as subsecs. (a) to (h) provisions formerly consisting of eight undesignated pars.

Effective Date

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as a note under section 201 of this title.

Delegation of Authority

Authority of President under subsec. (e) of this section to grant exemptions or approvals to individuals delegated to agency heads, see section 401 of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Authority of President under subsec. (e) of this section to grant exemptions or approvals for Presidential appointees to committees, commissions, boards, or similar groups established by the President, and for individuals appointed pursuant to sections 105 and 107(a) of Title 3, The President, delegated to Counsel to President, see section 402 of Ex Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5.

Exemptions

Exemptions from former section 283 of this title deemed to be exemptions from this section, see section 2 of Pub. L. 87-849, set out as a note under section 203 of this title.

Section Referred to in Other Sections

This section is referred to in sections 14, 202, 206, 216 of this title; title 5 sections 568, 3374; title 7 section 2009aa-1; title 10 section 942; title 12 section 2245; title 15 section 4805; title 16 section 459b-7; title 22 sections 3507, 3508, 3613; title 25 section 450i; title 26 section 7802; title 28 section 594; title 30 section 663; title 38 section 5902; title 40 App. section 108; title 41 section 120; title 42 sections 1314, 2297h-3; title 50 section 405; title 50 App. section 463.