

Office of Government Ethics
95 x 13 -- 12/01/95

Letter to a Counsel to the Inspector General
dated December 1, 1995

This is in response to your recent letter, dated November 14, 1995, requesting an advisory opinion from this Office as to whether a certain set of facts indicates a violation of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), 5 C.F.R. part 2635.

While

your request does not meet the criteria for a formal advisory opinion, 5 C.F.R. § 2638.303, we are responding to your request informally to assist you in resolving this issue. 5 C.F.R. § 2638.305. Based upon the facts as you have presented them, we have no reason to believe that a violation of the Standards has occurred in this instance.

According to the information that you have provided to us, the incident in question involves the distribution at [your agency] of a flyer inviting employees to a Halloween party. The party flyer stated that the party was a[n] "[Agency] Party", requesting that those attending the party come in costume. Production of the flyer did not involve the use of any Government property; costs of the party were paid by members of the [agency] Office of General Counsel (OGC), and invitees were not asked to contribute to the party. The party flyer requested that those wishing to attend the party RSVP to an OGC employee, and listed her office telephone number as a contact point. Based upon these facts, you have indicated your concern that the invitation may have violated 5 C.F.R. § 2635.702(b) (appearance of governmental sanction), and sections 2635.101(b) and 2635.704 (misuse of Government resources). For the reasons given below, we do not believe that the party flyer rises to the level of a violation of the Standards.

**Appearance of Governmental
Sanction (§ 2635.702(b))**

In accordance with section 2635.702(b), an executive branch employee is prohibited from using his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. This restriction is based upon section 101(g) of Executive Order 12674 (as modified by Executive Order 12731), restated at section 2635.101(b)(7) of the Standards, which

prohibits the use of public office for private gain. Consistent with this basic restriction, section 2635.702(b) focuses upon the actual or apparent use of an employee's official position or authority for private gain; the section (and the example following it) explicitly discusses the steps an employee must take in writing a letter of recommendation. The section is also cross-referenced to the section on teaching, speaking and writing, section 2635.807, to remind employees engaged in such activities of the proper use of their official title in that context.

In the situation that you have presented to us, we have not discerned any misuse of a Government position or title on the part of the employees mentioned in the flyer or by the [agency] General Counsel. We note that the party flyer does not indicate the title or position of either the host of the party or the individual receiving the RSVPs. While it does indicate the section of the [agency] in which the latter individual works, as well as his office telephone number, there is no indication that this is meant for any purpose other than to provide a means of contacting the individual. While the [agency] General Counsel did indicate in her memorandum, dated October 30, 1995, that she personally approved of the party, this was in response to a direct question from an Inspector General employee during the course of an official inquiry. While indicating her personal approval of the party, the General Counsel was very clear in indicating that she did not endorse/sanction the party in her official capacity. Moreover, as indicated earlier, section 2635.702 is concerned with the use of public office for private gain. The facts as you have presented them do not give rise to a reasonable inference that any actual or apparent gain was intended or resulted from the party flyer.

Misuse of Government Property (§§ 2635.101(b) and 2635.704)

Your letter also states your concern that the listing of the employee's office phone number as the RSVP contact point for a personal party is an improper use of Government resources. You should note that the Standards do not authorize or prohibit the use of Government property. The Standards implement the principle in section 101 of Executive Order 12674 that "[e]mployees shall protect and conserve Federal property and shall not use it for other than authorized activities." Section 2635.704(b)(2) of the Standards explains that use of Federal property would be "authorized" when the use is for those purposes for which Federal property is made available to the public, or those purposes authorized in accordance with law or regulation, such as the Federal Property Management

regulations issued by the General Services Administration (GSA) in title 41 of the Code of Federal Regulations. The Office of Government Ethics (OGE) does not have the authority to promulgate in the Standards any expansion or limitation of authorities regarding the use of Government property contained in GSA or other regulations. If a Federal employee makes use of Government property in accordance with applicable laws and regulations, such use by definition does not violate the Standards. In her October 30, 1995 memorandum, the [agency] General Counsel indicates that the use of the telephones was consistent with the authorized use of the [agency] telephones. OGE lacks the authority to question her analysis.

For the reasons given above, we are unable to state that the facts that you have presented indicate that a violation of the Standards has occurred. If you have any questions concerning this letter, please contact [this Office].

Sincerely,

Stephen D. Potts
Director