

Legal Opinion: GMP-0023

Index: 6.600, 6.635
Subject: Leave--Request for Assistance

November 15, 1991

MEMORANDUM FOR: Barbara Malebranche, Chief Employee Relations
Branch, APR

FROM: Carole W. Wilson, Associate General Counsel for Equal
Opportunity and Administrative Law, GM

SUBJECT: Request for Assistance

This is in response to your recent inquiry regarding the use of Government resources to solicit donations of leave under the voluntary leave transfer program. Specifically, you asked whether a HUD employee may, consistent with the Department's Standards of Conduct regulation, use the Department's electronic mail to solicit approximately fifty (50) Department employees. Based on the information provided, it is my opinion that this method of solicitation is not consistent with the Standards of Conduct.

Public Law 100-566 (5 U.S.C. 6331) established a five year voluntary leave transfer program to permit Federal employees to donate annual leave to other employees experiencing medical or family medical emergencies. The statute did not specifically address the solicitation of leave. Rather, it simply authorized one employee to transfer leave to the account of another employee experiencing a medical emergency. The statute did, however, authorize the Office of Personnel Management (OPM) to issue regulations to administer the program.

On January 31, 1989, OPM issued regulations under this authority. The regulation did not address the solicitation of leave but specifically delegated to each Federal agency authority to issue regulations to further define the program. Consequently, on June 29, 1991, the Department issued Handbook 600.3. Paragraph 7a of the Handbook provides that:

a pproved leave recipients may solicit donations of leave from eligible Federal employees or receive help in making such solicitations.

The analysis of your question does not end here. This part of the Handbook can not be read in isolation; rather, other Departmental regulations must be reviewed consistent with the Handbook. Specifically, your inquiry raises two concerns under the Department's Standards of Conduct regulations.

First, under 0.735-205 employees are prohibited from using Government resources for other than officially approved business. While one might argue that approval as a leave recipient under

the procedures outlined in that Handbook makes the use of the Department's electronic mail official, the argument neglects the fact that the Handbook does not specifically authorize the use of the electronic mail to solicit leave. Consequently, it is our opinion that leave recipients are prohibited from using this resource to solicit leave. We have been informed that the Department issues a staff bulletin quarterly which lists approved leave recipients.

Moreover, 0.735-202(c) prohibits employees from soliciting gifts from other employees who receive less pay than themselves. The rule excepts solicitations of donations of "modest value" made because of special circumstances such as illness. However, this rule was only intended to allow for the purchase of items of limited value, such as flowers or cards. The value of a day of leave would exceed this limitation. It appears that the message in question may have been directed to individuals receiving less pay than the individual who originated the message, and consequently would not comport with 0.735.202 of the Standards of conduct.

Because this a close question, I recommend that the individual originating the message in question not be adversely affected by this opinion. Future leave recipients, however, should be counseled on the limitations on solicitation of leave.

Please contact me or Aaron Santa Anna if you have further questions regarding this matter.