

MEMORANDUM

August 21, 1996

To: T. Jeremy Gunn
General Counsel
cc: David G. Marwell
Executive Director

From: Brian E. Rosen

Subject: Ethics Issues Regarding Proposed Anna K. Nelson Article

Following are the ethics regulations relevant to Anna K. Nelson's stated intent to write an essay describing the Review Board and its work for a book to be published by University of Kansas Press. I have proceeded on the assumption that she will be receiving no compensation of any kind for her efforts. I have also included a list of outstanding issues related to this question.

I. Ethics Regulations

- 5 C.F.R. § 2635.702 -- Use of Public Office for Private Gain

An employee shall not use his public office for his own private gain . . . or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. . . . (b) Appearance of governmental sanction. . . . [A]n employee shall not use or permit the use of 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. When speaking, teaching, or writing in a personal capacity, he may refer to his official title or position only as permitted by § 2635.807(b) [(see below)] (d) Performance of official duties affecting a private interest. To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of § 2635.502 [(regulation covering personal and business relationships where a financial

interest exists and where a reasonable person would find the appearance of impartiality)].

- 5 C.F.R. § 2635.703 -- Use of Nonpublic Information

(a) Prohibition. An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure. (b) [N]onpublic information is information that the employee gains by reason of public employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know . . . (3) Has not actually been disseminated to the general public and is not authorized to be made available to the public upon request.

- 5 C.F.R. § 2635.807 -- Teaching, Speaking and Writing

(b) Reference to official position. An employee who is engaged in teaching, speaking or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking or writing activity or to promote any book, seminar, course, program or similar undertaking, except that: (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

II. Outstanding Issues

- Are we sure that Anna Nelson will not be compensated in any way for her work? Should we

review the contract she intends to sign with University of Kansas Press? (Other restrictions apply to teaching, speaking and writing that relates to an employee's official duties when the employee is compensated. *See* 5 C.F.R. § 2635.807.)

- Will any friends, relatives, or persons or nonprofit organizations with whom Anna Nelson is affiliated in a nongovernmental capacity receive a private benefit from her proposed article?
- Does Anna Nelson have or seek any employment or business relations with University of Kansas Press or any other person or entity with an interest in the proposed book?
- Does Anna Nelson intend to use any nonpublic information in her proposed article? (“[T]he essay will *largely* include information in the public domain” *See* Fax from Anna K. Nelson to Jeremy Gunn, August 20, 1996 (emphasis added)).
- How does Anna Nelson intend to identify herself and reference her government position and title in the proposed article?
- Could the proposed publication be construed as a scientific or professional journal? (A disclaimer would be required if such was the case.)