

MEMORANDUM

April 24, 2017

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

From: Dennis J. Quinn, Designated Agency Ethics Officer

Subject: Ethics Opinion Concerning Dr. William Joyce's Participation in Review Board Issues Involving Princeton University

I. Background

At your request, I have reviewed the applicable ethical provisions concerning the degree to which Dr. William Joyce may participate in ARRB matters dealing with the Library at Princeton University; as well as other libraries. As I understand it, the Review Board may be making decisions regarding "assassination records," as defined by 44 U.S.C. § 2107 and 36 C.F.R. § 1400, that are on deposit with various libraries, including the Library at Princeton University. If it is determined that these papers contain assassination records, the Review Board may be obligated to obtain the records for inclusion in the JFK Assassination Records Collection. The Princeton Library, on the other hand, may have legal and or policy reasons that prevent it from releasing these papers. As both a current employee of Princeton University and a member of the Review Board, Dr. Joyce will be faced with a conflict of interest.

This circumstances of this situation are such that a reasonable person with knowledge of the relevant facts could question Dr. Joyce's impartiality in this matter. For these reasons, it is appropriate to determine what constraints, if any, might apply to Dr. Joyce's participation in Board decisions related to assassination records held by libraries.

II. Discussion

While, there is no statute or regulation that specifically addresses this issue, there are two laws which provide enough guidance to allow us to answer the questions presented. Section 208(a) of the Ethics in Government Act prohibits a Federal employee from participating in any matter in which he has a financial interest, if the particular matter will have a direct and predictable effect on that interest. 18 U.S.C. § 208(c). The Standards of Ethical Conduct require that Federal employees be impartial in performing their official duties. 5 C.F.R. § 2635.501-502. Subsection 502(a) of the regulation,

which was promulgated to interpret section 208(c) of the criminal statute, states that an employee may not knowingly participate in a “particular matter” involving a “specific party” to which he has a “covered relationship” or which is likely to have a “direct and predictable effect” on the financial interest of a member of his household. The standard is whether the circumstances would cause a reasonable person with knowledge of the relevant facts to question the employee’s impartiality in the matter. 5 C.F.R. § 2635.502(a).

The definition of “covered relationship” includes “any person for whom the employee has, within the last year, served as officer, director, trustee . . . or employee. 5 C.F.R. § 2635.502(b)(1)(iv). The regulation does not define “member of household” but I assume that the employee is included within the scope of that term.

There are no relevant cases on point.

A. Princeton University

Applying the facts to the regulation, I conclude that Dr. Joyce, as a current employee of Princeton University, has a covered relationship with that institution. I further conclude that, by virtue of his salary, he also has a financial interest with the University. The issue of the Review Board making a determination regarding potential assassination records at Princeton University Library is a “particular matter” involving “specific parties” as defined by the regulation. 5 C.F.R. § 2637.102(a)(7). While it may be unlikely that this “particular matter” involving these “specific parties” will have a direct and predictable effect on that financial interest (i.e., he might be terminated or have his salary reduced), the circumstances are such that a reasonable person could question Dr. Joyce’s impartiality if he were to participate in this matter. As such, Dr. Joyce must recuse himself from all ARRB discussions and votes dealing with any records or papers located at the Princeton University Library.

In addition, while we cannot tell Dr. Joyce what to do in his capacity as an employee of Princeton University, I strongly recommend that he recuse himself from any similar discussions that may take place at the University. In other words, he should build a wall around himself that keeps him totally removed from any discussion on this topic.

B. Other Libraries

Whether Dr. Joyce should recuse himself from participation in similar situations concerning other libraries is a very different matter. One could argue that, based on his years as a librarian, he is

inherently biased toward all libraries. As such, if an issue arose regarding whether the Board should seek the originals of certain documents from a library, he would naturally vote in favor of the library.

Or, perhaps a more plausible concern might be that Dr. Joyce himself could perceive a precedent being set by decisions on other libraries that would lead him to vote differently than might a person without an interest in Princeton.

But both these arguments present factual situations that are beyond the scope of the ethical statutes and regulations.

People leave private industries to work for the Federal Government in a full-time or part-time capacity every day. They frequently are appointed because of an expertise acquired in the private world and are expected to use that expertise in the performance of their official duties. This is particularly true of Special Government Employees appointed to part-time boards and commissions. While there are ethical laws that place limitations on these individuals, the laws do not broadly prohibit them from regulating the industry or field from which they recently departed. There must be some sort of specific relationship or financial interest at stake before a conflict can be identified. For example, while an FCC Commissioner may be prohibited from participating in a matter involving a television station she used to manage, she is not prohibited from involvement in matters involving *all* television stations.

Dr. Joyce cannot be prohibited from participating in matters involving all other libraries. The regulation specifies that the situation must be a *particular matter* involving a *specific party* which will have a direct and predictable effect on a *financial interest* of the employee or a member of his household. Other than Princeton, there is no particular matter or specific party to discuss. In the event that the Review Board locates documents or papers in another library, I will review the specific circumstances of that situation as they arise. However, if Dr. Joyce does not have a financial interest or a covered relationship with that library, he will be allowed to participate in all related discussions and voting.