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B-225264 November 24, 1987

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DIGEST

Mr. Robert P. Passero Director Budget and Finance Division Equal Employment Opportunity Commission

Dear Mr. Passero:

We refer further to your letter dated November 5, 1986, with enclosures, requesting our review of the recommendation made by the Office of Government Ethics that your agency issue payment in the amount of $699 to the Tri-County Affirmative Action Association, Portland, Oregon, as a refund of the payment made by the Association in 1984 for the traveling expenses of Mr. David L. Slate. In the particular circumstances described, we do not object to this proposed payment to the Association.

The Tri-County Affirmative Action Association paid a portion of the travel expenses of Mr. Slate for an official trip he took in April 1984, when he was the General Counsel of the Equal Employment Opportunity Commission. The expenses paid by the Association related to the cost of his airline travel to present a speech before the Association in Portland. You say that the Office of Government Ethics has determined that the Association's payment of Mr. Slate's expenses in April 1984 was impermissible because at that time it did not have the status of an exempt organization under subsection 501(c)(3) of the Internal Revenue Code. You note, however, that the Secretary of the Treasury accorded subsection 501(c)(3) status to the Association several months later on December 31, 1984. You question whether this action may be construed as being effective retroactive to the beginning of the tax year, to obviate the problem posed by Mr. Slate's acceptance of the Association's payment in April of that year.

Determinations on matters relating to ethics and conflicts of interest such as the one brought into question here are reserved by law and regulation primarily to the Office of Government Ethics. See 5 U.S.C. App. Secs. 401-405 and 5 C.F.R. Secs. 738.101-738.313. we have no basis for questioning the correctness of the determination made by the Office of Government Ethics in this case, that a federal employee may not properly accept a contribution of travel expenses from a non-exempt organization based on speculation that the Secretary of the Treasury might accord it exempt status under subsection 501(c)(3) at some later date. Hence, we are unable to conclude that Mr. Slate properly accepted the payment tendered by the Association in April 1984.

The Office of Government Ethics recommended that your agency refund the payment

directly to the Tri-County Affirmative Action Association. In general, travel reimbursements from outside sources which have been improperly received by an employee are to be returned by the employee to the donor. Upon returning the amount of the improper reimbursement, the employee should file an amended travel voucher to obtain appropriate travel expense reimbursement from the employing agency's appropriation. In this case, however, it appears that Mr. Slate is no longer employed by the government, and we recognize that it may be unreasonably burdensome to require him and the agency to observe this procedure to reach a result which can be achieved simply by the agency reimbursing the donor. In this particular case, therefore, we will not object to your Payment of $699 to the Tri-County Affirmative Action Association.

We trust this will serve the purpose of your inquiry.

Sincerely yours,

Henry R. Wray Associate General Counsel