

To: Mr. Ryan ✓  
Mr. Turner  
Mr. Aschom  
Dr. Musolf  
Mr. Murphy  
Mr. Woodruff  
Miss Heyman

August 22, 1959

From: Administrative Services *239*

Subject: Conflict of Interests and Private Business  
Activities of ICA Employees

The Chief of Party has requested that the attached material be circulated within the Group. Since we were furnished only seven copies, we would appreciate your reading the material and passing it on to someone not listed in the heading of this memorandum.

It should be remembered that under the terms and conditions of our current contract, we are clearly governed by the content of the attached material. You will note that the material comes from ICA Manual Order.

INTERNATIONAL COOPERATION ADMINISTRATION

MANUAL ORDER TRANSMITTAL LETTER

NO.  
General-752

DATE  
July 15, 1956

MATERIAL TRANSMITTED:

M.O. 452.1 - Conflicts of Interests and Private Business  
Activities of ICA Employees

This manual order has been revised for the purpose of strengthening the Agency policy on conflict of interests and private business activities of ICA personnel.

Changes are shown in italics. Each Mission Director and Office Head should ascertain that this manual order is read by each person employed by or assigned to ICA.

SUPERSEDES: M.O. 452.1 (formerly 460.3) dated  
February 29, 1956

|   |   |                                 |
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| INTERNATIONAL COOPERATION ADMINISTRATION MANUAL   | ORDER NO.<br>452.1                              | PAGE<br>1                       |
| SUBJECT<br><br>Conflicts of Interests and Private<br>Business Activities of ICA Employees | TRANS. LETTER NO.<br>General-752                | EFFECTIVE DATE<br>July 15, 1956 |
|   | SUPERSEDES<br>M.O. 452.1 dated<br>Feb. 29, 1956 |                                 |

## I. Policy of the Agency

- A. It is the policy of the Agency that all ICA employees in Washington and in the USOMs shall conduct themselves, both at work and in their private activities, with the highest standards of good faith and responsibility to the public and to the Agency in order to avoid both the substance and the appearance of any conflict of interest between their public and their private activities and of any unethical capitalization of their official positions. The following extract from an opinion of the Attorney General expresses government-wide policy on this point:

*"Apart from statutes, there are certain principles of fair dealing which have the force of law and which are applicable to all officers of the Government. A public office is a public trust. No public officer can lawfully engage in business activities which are incompatible with the duties of his office. He cannot in his private or official character enter into engagements in which he has, or can have, conflicting personal interest. He cannot allow his public duties to be neglected by reason of attention to his private affairs. See U.S. v. Carter 217 US 286, 306. Such conflicts of interest are not tolerated in the case of any private fiduciary, and they are doubly proscribed for a public trustee." (40 Op. Atty. Gen. 187, 190.)*

- B. In order to carry out this policy, the rules set forth in Section II of this order are established for the conduct of ICA employees, under the authority of Section 521(a) of the Mutual Security Act of 1954, as amended. While some of the activities prohibited by these rules would be violations of the statutes set forth in Section III of this order, the statutory restrictions have been broadened in some of these rules in order to carry out more fully the policy of the Agency. For example, 18 United States Code § 202 prohibits any employee from accepting a gift or gratuity with intent to have his decision or action on any official matter influenced thereby. While it may be argued that such gifts and gratuities may be accepted with no intention of having decisions influenced, nevertheless it is not considered good practice for employees of the Agency to accept gifts or gratuities, even of small value, from persons with whom they may have official relations. It is recognized generally that the object of such gratuities often is to influence favorable action by those who receive them and that this object is, to a greater or lesser degree, forthcoming in some cases. For this reason additional provisions concerning gifts have been included in Section II.

Despite the statutory exemption from certain conflict of interest laws contained in Section 112 and Section 207(a) of the Federal Ethics Act of 1958, as amended, experts and consultants appointed under the authority of Section 530(a) of the Mutual Security Act of 1954, as amended, are subject to the rules set forth in Section III of this order.

The activities prohibited by Section II of this order and by the statutes set forth in Section III of this order are those most likely to lead to conflicts of interest and improper use of official position. It is recognized, however, that the primary reliance, for the protection of the public, the Agency and the individual from any unethical or improper conduct, must be on the good judgment and discretion of the individual employee.

#### S. Limited Exemption for Foreign National Employees

The principles expressed in this manual order apply to the extent practicable to ICA's foreign national employees. However, USOM Directors (or principal ICA representatives) may approve engagement in limited private business activities by their foreign national employees provided such private business activities do not interfere with the foreign national employee's regular duties, or reflect discredit upon ICA's activities. Such approvals of exemption should be documented in the USOM personnel records for the employee.

#### II. Prohibited Private Activities of ICA Employees

Under Section 1003 of the Foreign Service Act of 1946, as amended, as applied to ICA, a Mission employee of ICA shall not, without permission of the Director of ICA, transact or be interested in any business or engage in any profession whether or not for profit in the country or countries to which he is assigned, either in his own name or in the name, or through the agency of, another person.

In addition, the following agency rules are effective upon all ICA employees, and their spouses, unless a waiver is obtained for activities of the spouse where exceptional circumstances would eliminate risk of conflict of interest or impropriety.

- A. No ICA employee shall engage, directly or indirectly, in any private business transaction or private arrangement for personal profit (including investment) which accrues from or is based upon his official position or authority or upon confidential information which he gains by reason of his position or authority.

No ICA employee shall engage, directly or indirectly, in any private business activity, or private arrangement for a personal profit, which would place him in a position, by reason of a possible conflict of interest, where he could not exercise his best judgment on behalf of the Agency.

1. ICA employee shall engage, directly or indirectly, in any business activity, or private arrangement for personal gain, which might reflect discredit on the Agency, by reason of the nature of the activity or by reason of the relation of the activity to the Agency or to his position in the Agency.

2. ICA employee shall accept, directly or indirectly, any honorarium, gift, or substantial benefit, or any other advantage, which may be directly or indirectly derived from any source which is affected by the performance of his official duties.

3. ICA employee shall discuss future employment of the Agency with any person outside the Government with whom he is authorized to transact business on behalf of the Agency or who is affected by the performance of his official duties. As applied to the Agency, this rule proscribes any discussions of immediate or future employment between the ICA employee and the outside person or firm from the start of negotiations for the ICA financial contract or the receipt by the person or firm of an invitation to submit a proposal leading up to such a contract, whichever occurs first, and thereafter through the entire period the contract is in effect. New ICA financed contractors and in some cases existing contractors are being required to warrant that they have not been a party to such discussions of employment with ICA employees, and with prior written approval of the Deputy Director of ICA or the Deputy Director for Management. Further, contractors are being required to report to ICA any employment discussions with ICA employees if they will result in the annulment of the contract and department contracts with ICA financing.

4. No ICA employee shall divulge confidentially, or otherwise disseminate to any unauthorized person, or take use of any confidential information for private purposes.

5. No ICA employee shall become unduly involved, through frequent or expensive social engagement, with any person outside the Government with whom he transacts business on behalf of the Agency or who is affected by the performance of his official duties.

6. No ICA employee shall, on behalf of ICA, participate in the negotiation of contracts, the making of loans, or other financial transactions between ICA and any person or organization by whom he was employed within the two years immediately before the date of such transaction of business.

7. No ICA employee, for two years after termination of his employment with ICA, shall represent any non-governmental interest in any matter whatsoever involving any subject matter directly connected with which he was so employed or performed duty, in which the United States



interested, directly or indirectly, whether as a party, an enforcement agency, or otherwise. No ICA employee shall transact business with a former ICA employee when he knows to be violating this order.

- J. Notwithstanding the exemption provided by Section 532(a) of the Mutual Security Act of 1954, as amended, for experts and consultants appointed under Section 530(a) of that Act, no expert or consultant employed by ICA shall consult, or otherwise participate, in the negotiation or execution of any contract, or the transaction of any other business, between ICA and his private employer, or between ICA and any corporation or other entity in which he has any direct or indirect financial interest; nor shall an expert or consultant, during his employment by ICA or for two years thereafter, represent any non-governmental interest in any matter whatsoever involving any subject matter directly connected with which he is or was so employed or performed duty, in which the United States is interested, directly or indirectly, whether as a party, an enforcement agency, or otherwise. (Employees not covered by Section 532(a) of the Mutual Security Act of 1954, as amended, are prohibited from engaging in such activities by the statutes listed in Section III, and the regulations in Section II of this order).

- K. This order contains no rule prohibiting speculation in stocks, bonds, or other commodities, because of the difficulty of distinguishing sharply between speculation and investment. However, ICA employees are expected to follow the policy laid down by the President in his letter to the Civil Service Commission dated April 22, 1937, which read in part as follows:

"I believe it to be a sound policy of the Government that no officer or employee shall participate, directly or indirectly, in any transaction concerning the purchase or sale of corporate stocks or bonds or commodities for speculative purposes, as distinguished from bona fide investment purposes." (Federal Personnel Manual C2-26; see also Section III.F. of this order.)

### III. Private Business Activities Prohibited by Statute

A number of criminal statutes, which impose fines and imprisonment on conviction for violations, apply to all ICA employees at ICA/W and overseas with respect to certain business activities. Paraphrasing of various criminal statutes given herein is only for general informational purposes. Reference should be made to statutes for complete text. For example, Section 532 of the Mutual Security Act of 1954, as amended, not only prohibits the giving or receiving of payments, etc., but also prohibits to give or receive payments.

A. Government Contracts Generally, Including MEAF Contracts

1. 18 United States Code § 216 prohibits any individual in the United States from receiving any consideration for entering into any contract with the United States.
2. 18 United States Code § 434 prohibits anyone who is an officer, member or agent of any private concern or is interested in its profits or contracts from acting on behalf of the United States in transacting business with the concern.
3. 18 United States Code § 281 prohibits any officer or employee of the United States from receiving any compensation for any services rendered by himself or another "in relation to any...contract in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military or naval commission."
4. Section 512 of the Mutual Security Act of 1952, as amended, prohibits giving or receiving any commission, payment or gift in connection with the procurement of equipment, materials or services under the Act, to or by a person who is or during the preceding two years has been an employee or officer of the United States, and in connection with which such procurement said officer or employee, former officer or former employee is or was employed or performed duty or took any action during such employment.

B. Representation of Opposing Interest in Matters in which the Government has an Interest

1. 18 United States Code § 281 prohibits any officer or employee from receiving or agreeing to receive any compensation for any services rendered by himself or another in relation to any proceeding, claim, controversy, charge, or other matter in which the United States is directly or indirectly interested.
2. 18 United States Code § 283 prohibits any officer or employee from acting as agent or attorney, or assisting, in the prosecution of any claim against the United States.
3. 18 United States Code § 284 prohibits former employees, within two years after their employment ceases, from prosecuting, or acting as counsel, attorney, or agent for prosecuting, any claims against the United States involving any subject matter directly connected with which such person was employed or performed duty. The Attorney General, in his memorandum to all United States Attorneys, No. 40 of August 27, 1953, has interpreted this statute as follows:

"...the statute prohibits any former employee...from representing any non-governmental interest in any matter whatsoever, 'involving any subject matter

directly connected with which such person was so employed or performed duty', in which the United States is interested, directly or indirectly, whether as a party, as an enforcement agent, or otherwise."

In addition, the Attorney General stated in this Memorandum No. 40, that:

"Manifestly it is improper, and not in the interest of good Government, for a public employee who has handled a matter for the Government to leave public service and subsequently represent the other side, just as it is improper for an attorney in private practice to accept employment in matters adversely affecting any interest of a former client with respect to which confidence has been reposed. This principal is self-evident as to all matters in which the Government has an interest, and about which the former employee acquired knowledge or took action in connection with his official duties.<sup>1/</sup> There is no distinction in this respect between monetary claims and non-monetary claims, or between claims by moving parties and defensive ones. Such conduct should be considered illegal as well as unethical in all cases."

<sup>1/</sup> Such practice is clearly condemned by the Canons of Professional Ethics of the American Bar Association. Canon 36 provides in part:

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"A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ."

U. Salaries from Other Sources

18 United States Code § 1914 prohibits any Government official or employee from receiving any salary for the services performed by him for the Government of the United States from any source other than the Government of the United States, except as may be contributed out of the treasury of any state, county, or municipality, and provides that no person, association, or corporation shall make any contribution to, or in anyway supplement the salary of, any Government official or employee for the services performed by him for the Government of the United States. The statute expressly includes in this prohibition a salary received from a private person or source if it is paid or received as compensation or part compensation for the services rendered to the Government. It also has been held to







B. Procedure

Any requests for waivers shall be routed through the following offices in the order given: (1) Office of Personnel Security and Integrity, (2) Office of Personnel, (3) to any office of direct interest, (4) Office of the General Counsel, and (5) Office of the Deputy Director for Management.

1. Upon any indication that an employee is engaged in private business activities not compatible with his public employment, the employee's supervisor or other appropriate official shall require him to explain in writing the nature of such activities, in sufficient detail to permit a reasonable appraisal of their relationship or possible relationship to the employee's public employment. Refusal to submit such a statement will be considered prima facie evidence of the incompatibility of the private activities with the employee's Government work.

An employee engaged in private activities which he believes may be subject to question should initiate a review of the circumstances by explaining the facts in a letter addressed to his supervisor, who will take steps to obtain a decision with respect thereto.

2. Heads of offices and divisions are responsible for initially determining whether the private business activities of employees are compatible with their public employment, since they are in the best practical position to appraise any possible conflict of interest. The head of the appropriate office, or division will therefore review each case arising under this order, and will forward his report and recommendation to the Deputy Director for Management, through the offices indicated above, for his decision. The employee *shall* be given a full opportunity to present his side of the case. If the employee requests, or if the Deputy Director for Management considers it advisable, an informal hearing will be held, before not less than 3 ICA employees designated by the Deputy Director for Management, who shall report their findings in writing to the Deputy Director for Management *for decision or his recommendation to the Deputy Director of ICA.*

C. Violations

Violations of this order shall be grounds for disciplinary actions, including separation, in addition to such action as may be appropriate with respect to violations of criminal statutes.