



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

November 16, 2009

William E. Reukauf
Associate Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036

Re: OSC File No. DI-08-2778

Dear Mr. Reukauf:

Thank you for your correspondence of August 9, 2009, regarding whistleblower concerns raised by Stanley Brasch, a Computer Specialist with the Department of Transportation (DOT), Federal Aviation Administration (FAA), in Kansas City, Missouri. Mr. Brasch reported that several FAA management employees and their spouses attended a dinner hosted by Dell, Inc., at no cost to the employees or their spouses, in violation of 5 C.F.R. 2635, "Standards of Ethical Conduct for Employees of the Executive Branch."

This matter was delegated to the FAA and investigated by FAA's Office of Security and Hazardous Materials (ASH). The investigations of the 15 involved employees have been completed and reviewed by FAA's Senior Managing Attorney for Ethics. A copy of the FAA's report of investigation is enclosed.

In sum, ASH's investigation found that 12 employees attended the dinner hosted by Dell, Inc. Three employees investigated were found not to have attended the event. Based on the investigations, the Senior Managing Attorney for Ethics concluded that the 12 employees who attended the dinner violated the prohibition in 5 CFR § 2635.202 against accepting gifts from a prohibited source. Dell, Inc., is a prohibited source for gifts in the case of the 12 FAA employees who attended Dell's dinner. The employees' duty stations are spread over several FAA Regions, but FAA has designated one management official to determine the appropriate action to be taken.

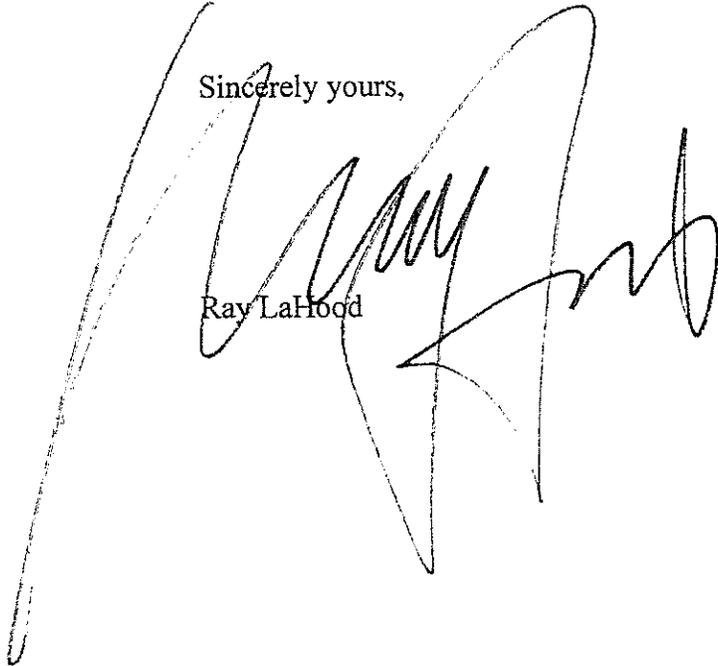
Additionally, to reduce the likelihood of a recurrence of this type of violation, FAA's Deputy Ethics Official, with the concurrence of the Designated Agency Ethics Official for DOT, will send a memorandum to FAA employees reinforcing the gift prohibition in 5 CFR § 2635.202, and the exception in 5 CFR § 2635.204 for "gifts of \$20 or less." The memorandum will also reinforce the explanation in 5 CFR § 2635.204 stating that it is never inappropriate and frequently prudent for an employee to decline a gift.

The Designated Agency Ethics Official for DOT concurs with this reply.

Finally, I want you to know how much I appreciate Mr. Brasch bringing these incidents to our attention.

Sincerely yours,

Ray LaHood

A large, stylized handwritten signature in black ink, appearing to read 'Ray LaHood', is written over the typed name. The signature is highly cursive and fluid, with a large initial 'R' and 'L'.

Enclosure

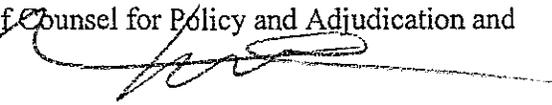


Federal Aviation Administration

Memorandum

Date: September 30, 2009

To: Rosalind A. Knapp, Deputy General Counsel and Designated Agency Ethics Official, C-2

From: James W. Whitlow, Deputy Chief Counsel for Policy and Adjudication and Deputy Ethics Official, AGC-2 

Prepared by: Y. Andrea Armstead, Deputy Assistant Chief Counsel, Personnel and Labor Law, AGC-30

Subject: Office of Special Counsel Disclosure, DI-08-2778

I. Overview:

By letter dated August 5, 2009, the Associate Special Counsel for the U. S. Office of Special Counsel (OSC), William E. Reukauf, referred to you concerns raised by Mr. Stanley Brasch, a computer specialist for the Federal Aviation Administration. Mr. Brasch alleged that several FAA Management officials and their spouses attended a dinner hosted by Dell, Inc (Dell) in violation of 5 C.F.R. Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch." The disclosure was sent to the FAA for investigation. The investigation has been completed and a draft response to OSC is enclosed.

II. Methodology/Background:

This matter was referred to FAA's Office of Security and Hazardous Materials (ASH) by the Department of Transportation's Inspector General. Fifteen subjects were identified for investigation. ASH conducted 15 investigations by compiling relevant documents and conducting interviews. As required by the OSC, Mr. Brasch was interviewed. He alleged:

- Several FAA management officials attended a dinner hosted by the Dell Corporation while participating in an annual "All Hands" meeting/conference in New Orleans. Two additional vendors were present during the conference, Lexmark and Double Take. Lexmark hosted a "Happy Hour" and invited all to attend. Mr. Brasch briefly attended the "Happy Hour" where he learned from John Southard, one of his managers, that Dell invited FAA management to dinner. He also learned from Mr. Southard that permission was sought to have several wives attend the dinner because Dell was paying for the meal.

During a conversation the next morning with Mr. Southard, Mr. Brasch learned that Dell did in fact pay for the meal at a local seafood restaurant.

- Mr. Brasch looked at the restaurant's menu and prices on-line and concluded that it was unlikely that any FAA employee could order a meal for less than the \$20 allowable amount under the ethics regulations applicable to Federal Executive Branch employees, 5 CFR §§ 2635.202, 2635.204.

III. Results of Investigation

The ASH investigation revealed that Dell paid approximately \$60 per meal for 12 FAA employees and two spouses. The ethics regulations include a prohibition against accepting gifts of greater than \$20 from a prohibited source. The regulations define a prohibited source to include any person or entity that does business or seeks to do business with the employee's agency. Dell was at the time, and continues to be, a government contractor responsible for providing services and equipment to the FAA. The employees in question are responsible for providing input and recommendations as to the FAA's needs under the contract. None of the employees consulted with Agency ethics officials to determine if they could attend the dinner. The investigation also revealed that the employees received ethics training that covers the prohibition against accepting gifts in value over \$20 from prohibited sources.

Fifteen ROIs were reviewed by the Senior Managing Attorney for Ethics, Lisa Baccus. Her review determined that the following employees violated 5 CFR §2635.202(a).

- (1) Margaret Ann Barnes- Secretary
- (2) John A Southard- Supervisor
- (3) Michael Robinson- Supervisor
- (4) Michael Green-Manager
- (5) Jeffrey Pierson- Manager
- (6) Warrens S. Herman-Manager
- (7) John Keane-Manager
- (8) Brian Schmidt- Manager
- (9) Danny Waggener- Manager
- (10) Brenda Hensley- Manager
- (11) Steven Watts - Manager
- (12) Tamala Barnes- Manager

The following employees were interviewed but no violation of 5 CFR § 2635 was found.

- (1) Michael Mason- Acting Manager - did not attend event
- (2) Richard Boe- Supervisor, did not attend event¹
- (3) Gary Robinson- did not attend event

¹ The proposing official is considering taking action against Mr. Boe because of his overall responsibility under the Dell contract.

IV. Action Planned as a Result of the Investigation

A Possible Discipline

The Agency takes the determination that ethics violations occurred very seriously and, based on this legal assessment, we have referred the cases for a disciplinary determination. The employees work for the Air Traffic Organization (ATO) and are located in several regions throughout the FAA. To ensure consistency in the imposition of possible penalties, the ATO designated Mr. Robert Tobin, Group Manager, ATO Finance, Information Technology Directorate, as the official to review the ethics violations pursuant to FAA's conduct and discipline guidance and Table of Penalties. Representatives from the Office of the Chief Counsel and the Office of Human Resource Management will be advising Mr. Tobin as he decides what action will be appropriate. Mr. Tobin will provide a status report on the disciplinary determination no later than 60 days from the date of this memorandum.

B. Reiteration of Policy Against Accepting Gifts from Prohibited Sources

To reduce the likelihood of a recurrence of this type of violation, FAA's Deputy Ethics Official, with the concurrence of the Designated Agency Ethics Official for DOT, will send a memorandum to FAA employees reinforcing the gift prohibition in 5 CFR § 2635.202, and the exception in 5 CFR § 2635.204 for "gifts of \$20 or less." The memorandum will also reinforce the explanation in 5 CFR § 2635.204 stating that it is never inappropriate and frequently prudent to decline a gift. The memorandum will be issued within the next 60 days.

We are available to address any questions you have on this matter.