

Emoluments Clause of the U. S. Constitution

The Emoluments Clause of the United States Constitution applies to all U.S. Government employees, including most Special Government Employees (SGE's). The Clause places constitutional limitations on a SGE advisory committee member's employment by a foreign government, including political subdivisions of a foreign government. This provision has particular relevance to positions with foreign universities that are government-operated rather than private institutions. United States Constitution, art. I 9, cl. 8.

The Emoluments Clause **applies at all times during an SGE's appointment**, and not just the periods of time during their actual duty on behalf of NIH. During an SGE's advisory committee appointment, they cannot be an employee of a foreign government entity. Without the consent of Congress, they cannot receive any present, emolument, office, or title of any kind whatsoever from a foreign state. They cannot accept concurrent outside employment with a foreign government or a political subdivision of a foreign government, including a public university or commercial enterprise* owned or operated by a foreign government. The constitutional ban does not apply to employment with, or presents or emoluments received from, a foreign privately owned corporation or an international organization. An emolument includes salary, honoraria, transportation, per diem allowances, household goods shipment costs, and housing allowances.

Under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, Congress has authorized employees, including advisory committee members, to accept items from a foreign government that do not exceed minimal value (currently \$350). The Act authorizes acceptance of items over minimal value when such items consist of an educational scholarship, medical treatment, or expenses for travel taking place entirely outside the United States, thus permitting hotel and meal reimbursements in the foreign country, but not airfare for flights originating or terminating in the United States. The statutory restriction on gifts over minimal value extends to the spouse and dependents of the employee.

The restrictions of the Emoluments Clause are constitutional, and are not matters of policy that can be waived or reconsidered. Questions regarding possible conflicts relating to the Emoluments Clause may be referred to the Deputy Ethics Counselor for the institute the SGE committee member advises, or to the Committee's Executive Secretary.

* A list of foreign entities that are considered independent of their foreign government may be found at: <https://ethics.od.nih.gov/foreign>