

United States Senate

SELECT COMMITTEE ON ETHICS
HART SENATE OFFICE BUILDING, ROOM 220
SECOND AND CONSTITUTION AVENUE, NE
WASHINGTON, DC 20510-6425

October 27, 2008

Mr. Marc C. Johansen
2nd Vice President, Programs
National Space Club
2025 M Street, N.W., #800
Washington, DC 20036

Dear Mr. Johansen:

This responds to your correspondence to the Committee seeking guidance on whether Senate Members and staff may attend the National Space Club's 4th Quarter Luncheon on November 7, 2008, at the Grand Hyatt Washington, in Washington, D.C. According to your letter to the Committee, the background in this matter is as follows.

Mary M. Glackin, Deputy Under Secretary for Oceans and Atmosphere of the National Oceanic and Atmospheric Administration ("NOAA"), will speak to the aerospace community at the event regarding climate and earth observation efforts. At least 25 non-Congressional attendees, including government employees (NOAA and other executive branch employees, Members of Congress, and congressional staff) and aerospace leaders from industry, academia, and non-profit organizations, will attend the luncheon. The National Space Club plans to provide lunch to attendees and will sell tickets to the event for \$75.

Senate Rule 35 prohibits a Member, officer, or employee of the Senate from receiving any gift (including food or meals) of a value of \$50 or more, or gifts from one source (of \$10 or more) that aggregate \$100 or more during a calendar year. Further, Senate Rule 35 prohibits the knowing acceptance of *any* gift from a registered lobbyist, a foreign agent, or a private entity that retains or employs a registered lobbyist or a foreign agent, except as permitted by one of the specific exceptions to the Rule. Paragraph 1(d)(1) of Senate Rule 35 provides:

A Member, officer, or employee may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if –

- (A) the Member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Member's, official's, or employee's official position; or
- (B) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, officer, or employee.

Paragraph 1(d)(4) states further that "free attendance may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event." Paragraph 1(d)(2) also provides that a Member or employee may accept a sponsor's unsolicited offer of free attendance at a widely-attended event for an accompanying individual if others in attendance will generally be similarly accompanied, or if such attendance is appropriate to assist in the representation of the Senate.

Under these provisions, a Senate individual may accept an unsolicited offer of free attendance at a widely-attended event only from the sponsor or sponsors of the event. An offer of free attendance from anyone other than the sponsors would be a gift that could not be accepted by a Senate Member, officer, or employee, unless the face value of the ticket is less than \$50 and provided that the gift is not from a registered lobbyist, an agent of a foreign principal, or a private entity that retains or employs a registered lobbyist or an agent of a foreign principal. For purposes of the Gifts Rule, an individual or company does not become a "sponsor" of an event merely by donating goods or money for, or purchasing tickets to, an event.

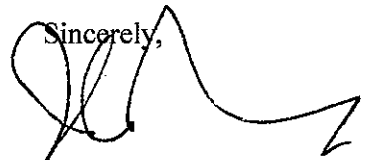
The Committee has determined that an event is "widely-attended" when attendance at the event is expected to include at least 25 persons from outside Congress, and attendance at the event is open to members from throughout a given industry or profession, or to a range of persons interested in an issue.

Based upon the information which you provided, it appears that expected attendance at the event described will include at least 25 persons from outside Congress representing a range of persons. Under these circumstances, it appears that the event will be consistent with paragraph 1(d)(1) relating to widely-attended events. Thus, as a threshold matter, it appears that Senate Members and staff may accept the National Space Club's unsolicited invitation to attend the event in compliance with paragraph 1(d)(1) of the Gifts Rule, and may accept the lunch to be provided at the event.

Because it is impossible for the Committee to know the exact circumstances surrounding a Member, officer, or employee's attendance at this event, the determination that (a) a Member, officer, or employee is performing a ceremonial role, or (b) the event is appropriate to the performance of a Member, officer, or employee's official duties, or representative functions, must be made by the Member, officer, or employee involved. Once this determination is made, then it would be consistent with paragraph 1(d)(1) of the Gifts Rule, for a Member, officer, or employee to attend the event.

I hope this information is helpful. Please provide a copy of this letter to all invited Senate personnel and feel free to contact the Committee if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Sassaman", with a long, sweeping horizontal stroke extending to the right.

John C. Sassaman
Chief Counsel and Staff Director