

No. 97-02

Date: November 5, 1997

Foreign Corrupt Practices Act Review
Opinion Procedure Release

The Department has reviewed the FCPA Opinion Request by a U.S.-based utility company. The requestor has commenced construction of a plant in a country in Asia that lacks adequate primary-level educational facilities in the region where the plant is under construction.

An elementary school construction project has been proposed near the location of the requestor's plant. Construction and supply costs of the elementary school will exceed \$100,000 dollars. The requestor plans to donate \$100,000 to this proposed school construction project. The donation will be made by the company directly to the government entity responsible for the construction and supply of the proposed elementary school.

The requestor has represented that, before releasing any funds, it will require a written agreement from the government entity that the funds will be used solely to construct and supply the elementary school. The written agreement will set forth other conditions to be met by the government entity, including, guaranteeing the availability of land, teachers, and administrative personnel for the school; guaranteeing timely additional funding of the school project in the event of any financial shortfall; and guaranteeing provision of all funds necessary for the daily operation of the school.

As the requestor's donation will be made directly to a government entity -- and not to any foreign government official -- the provisions of the FCPA do not appear to apply to this prospective transaction.

Based on all the facts and circumstances, as represented by the requestor, the Department does not presently intend to take any enforcement action with respect to the proposed transaction described in this request.