



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

Director

May 7, 2003

The Honorable Russell D. Feingold
United States Senate
ATTN: Ms. Sarah Preis
506 Hart Senate Office Building
Washington, DC 20510

Dear Senator Feingold:

This is in response to your letter to the Office of Government Ethics (OGE) dated April 21, 2003, and received in this Office on April 28, 2003. Enclosed with the letter was a constituent's transmittal to you concerning the appointment of Mr. Monte Belger, a former Government employee, to a position at Lockheed Martin. In your letter to OGE, you requested that we forward any information we have regarding this matter.

We understand that Mr. Belger retired as Acting Administrator, Federal Aviation Administration, Department of Transportation, in September 2002, and that Lockheed Martin later named Mr. Belger to the position of Vice President, Transportation Systems Solutions, for its Air Traffic Management.

The concerns outlined in your constituent's transmittal relate to the post-employment activities of former Government employees. We have summarized briefly below the law that is applicable to these concerns.

18 U.S.C. § 207

Certain post-employment restrictions applicable to former Government employees are contained in 18 U.S.C. § 207, a criminal conflict of interest statute. As a general matter, section 207 will not restrict an employee from accepting employment with a particular employer. The provisions can, however, serve to limit a former employee's ability to interact with the executive branch. Of the statute's substantive restrictions, three are most broadly applicable to former employees. Each of these restrictions prohibits employees from communicating to or appearing before the Government on behalf of another, with the "intent to influence" the Government concerning certain matters.

The first two of these restrictions at 18 U.S.C. §§ 207(a)(1) and (a)(2), prohibit any former employee from representing another person or entity before any Federal department, agency, or court concerning certain "particular matters" involving "specific parties" -- like contracts or lawsuits -- in which the individual participated or over which he had official responsibility as a Government employee. If the matter was under the individual's official responsibility during his last year of Government service, the restriction lasts for two years. The restriction is permanent if the individual participated personally and substantially in the matter as a Government employee.

The one-year restriction of section 207(c) prohibits a former "senior" employee from communicating to or appearing before an employee of his former agency to seek action on any matter. This prohibition applies even if the former "senior" employee was never involved in the matter as a Government employee.¹ A "senior" employee includes a person employed at a rate of pay specified in or fixed according to 5 U.S.C. §§ 5311-5318 (the Executive Schedule) as well as a person employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment or additional pay such as bonuses, awards, and various allowances, is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service.

PROCUREMENT INTEGRITY

Like section 207, 41 U.S.C. § 423 restricts the post-employment activities of a former Government employee under certain circumstances. Although OGE does not give definitive advice about the procurement-integrity restrictions on post-employment activities, the following information might be relevant to the concerns raised by your constituent. Subsection 423(d) prohibits a former Government employee from accepting compensation from a Government contractor

¹ For purposes of section 207(c) only, certain former "senior" employees may communicate to or appear before components of their former agencies, other than the component in which the former "senior" employee served, if those components have been designated as separate agencies or bureaus by OGE. Such designated components for the Department of Transportation include the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, Maritime Administration, National Highway Traffic Safety Administration, Saint Lawrence Seaway Development Corporation, Surface Transportation Board, and United States Coast Guard. 5 C.F.R. § 2641, Appendix B.

within a period of one year after the former employee either: (1) served, at the time of selection of the contractor or the award of a contract to that contractor, as a member of a source selection evaluation board, the procuring contracting officer, the source selection authority, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000; (2) served as the administrative contracting officer, deputy program manager, or program manager for a contract in excess of \$10,000,000 awarded to that contractor; or (3) personally made for the Federal agency a decision to: (a) award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor; (b) establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000; (c) approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or (d) pay or settle a claim in excess of \$10,000,000 with that contractor. A former Government employee may, however, accept compensation from any division or affiliate of a contractor that does not produce the same or similar services or products as the entity of the contractor that is responsible for the contract discussed in the previous sentence.

Accordingly, subsection 423(d) bars a former Government employee from accepting compensation from a contractor when he has served in an identified Government position which involves the approval or award of more than \$10 million to that contractor or made certain contract decisions involving more than \$10 million to that contractor.

Allegations of misconduct by a former Government employee ordinarily are investigated by the Inspector General of the individual's former agency. However, the facts described by your constituent do not indicate whether a violation of any of the provisions described above may have occurred. Under the circumstances, we recommend that if your constituent has additional information suggesting that any of these provisions have been violated, he should provide that information to the Department of Transportation Inspector General Kenneth M. Mead. Inspector General Mead's telephone number is 202-366-1959.

Please do not hesitate to contact me at 202-208-8022 if I can be of further assistance.

Sincerely,


Amy L. Comstock