

Office of Government Ethics

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Letter to a Designated Agency Ethics Official dated July 5, 1996

This is in reply to your letter of March 6, 1996, concerning a proposed waiver of the post-employment restrictions at 18 U.S.C. § 207(a)(1), (a)(2), and pursuant to 18 U.S.C. § 207(j)(5). The waiver would be granted by [a] Department to a former "senior employee" at [the department] who now serves as Vice President, [of a division of a large corporation].

Subsections (a)(1), (a)(2), and of section 207 prohibit a former employee from representing others by making certain communications to or appearances before current Government officials. When a former employee is granted a waiver under section 207(j)(5), these restrictions will not bar a communication made by the former employee with respect to a matter specified in the waiver. Specifically, section 207(j)(5) provides that --

[the restrictions contained in subsections (a), and (d) shall not apply ... if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. /1

Regulatory guidance published at 5 C.F.R. § 2637.207(b) provides that an exemption should be granted pursuant to this statutory provision only where the former Government employee's involvement is needed on a "continuous and comprehensive" basis. Under that regulation, an exemption takes effect "upon the execution of the certification, provided that it is transmitted to the Federal Register." 5 C.F.R. § 2637.207(c). /2

Prior to joining [the] Corporation earlier this year, [the former employee] had been employed at [the department] since 1990. He first served as [an] Advisor to the Secretary of [the department]. Beginning in 1991, he then served as the Principal Deputy Assistant Secretary in [a Departmental Office]. Prior to joining the Government, he had been employed at the [Federal facility]. Your letter and its enclosures outline [the former employee's] "outstanding qualifications in [a particular]

field."

As described by [the department's] Assistant Secretary in one of those enclosures, [the former employee's] position at the Corporation was established "to deal with the operating performance of the [division] of the company, the sector responsible for all of the work done by [the Corporation] for the Department, as well as [certain] work done for [another] Department." The Assistant Secretary added that "[the former employee] can be in a position to impact directly the performance of work at a number of the Department's key [facilities]." You explain that [the former employee's] contacts with the Government "will primarily relate to operational deficiencies and [certain] problems requiring [the former employee's] managerial, technical, and scientific knowledge in [specific] areas." You conclude that [the former employee] "will be unable to perform the full range of his responsibilities in that position if he is restricted in his dealings with the Government"

The proposed waiver would permit [the former employee], as a Vice President at [the] Corporation, to "appear before and communicate with employees of the Department and other Government agencies with respect to the technological development, operation and management, and direction of the national [facilities] being managed by [the Corporation] for the Department." After reviewing your letter of March 6 and its several enclosures, we are persuaded that the Secretary of [the department] may grant this waiver.

Sincerely,

Stephen D. Potts
Director

1 The limitations imposed by 18 U.S.C. § 207(d) are not at issue in [the former employee's] case since he did not serve in a "very senior" employee position while employed by [the department].

2 Although 5 C.F.R. part 2637 relates to 18 U.S.C. § 207 as in effect prior to its substantial revision by the Ethics Reform Act of 1989, we are continuing to rely on section 2637.207 in relation to the interpretation of section 207(j)(5), pending the promulgation of a new regulation.