

## Office of Government Ethics

79 x 4 -- 08/17/79

### Letter to an Agency Counsel dated August 17, 1979

As indicated in our letter of May 18, 1979, we have reviewed the materials which you enclosed relating to possible conflict-of-interest violations by [employees] employed by the [agency]. Because 18 U.S.C. § 208 is a criminal statute, we have sought the views of the Department of Justice on this issue. A copy of a letter dated July 18, 1979, from the Department is enclosed.

The Department of Justice concludes, and we agree, that the leave-of-absence agreements described in your supporting memorandum are "arrangements concerning prospective employment" within the meaning of section 208(a) of title 18. Moreover, one of these employee's performance of his responsibility in a matter which involves [an] organization in which he has a re-employment right would raise a prima facie case under the statute.

Divestiture of re-employment rights would, of course, solve the problem. Your memorandum suggests that attempting to isolate an employee from matters involving [an organization] in which he has a right of re-employment is not practical. As to the possibility of a rule of general applicability granting an exemption pursuant to subsection 208(b), our view differs somewhat from that of the Department.

The Department emphasizes the possible impact of the employees' work on the financial interest of the [organizations] in which they held re-employment rights. We believe, however, that the statutory test involves the financial interest of the employee, which is not the same thing. The facts you advance do suggest a quality of "remoteness" in that interest which might be weighed administratively against practical considerations and agency needs.

The test under subsection 208(b) is whether the "financial interest . . . (is) too remote or too inconsequential to affect the integrity of" the employee's services. Here, the financial interest involved is a right to re-employment, the use of which is problematical and the primary function of which appears to be the maintenance of retirement benefits which are otherwise established

by formula. You suggest that empirical evidence would conclusively establish an absence of effect on integrity of performance. We believe this is a matter which may properly be proposed, explored in detail, and aired in a public rulemaking process.

Sincerely yours,

Bernhardt K. Wruble  
Director