

**Office of Government Ethics**

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**Letter to a Private Attorney  
dated January 2, 2003**

This is in response to your letter of December 27, 2002, in which you request our opinion concerning the application of 18 U.S.C. § 207(f) to a former [agency official] who is a member of your law firm. As you know, the former [agency official] is subject to a lifetime prohibition on representing, aiding or advising a foreign entity with the intent to influence a decision of an officer or employee of a department or agency of the United States. 18 U.S.C. § 207(f)(2).

You have indicated that you need a response from us as soon as possible. Consequently, our discussion will be relatively brief and will assume familiarity with the facts you have provided in your letter and in various e-mail messages and telephone conversations with our Office. We also want to point out that we have no independent information concerning the foreign organizations involved, in part because you have not identified those organizations, and therefore our conclusions are based solely on your representations and the information you furnished concerning the nature and functions of those entities.

The critical issue in this case is whether any entity which the former [agency official] proposes to advise would constitute a "foreign entity" under section 207(f). More specifically, the issue is whether a particular [product] manufacturer, which is a corporation owned by a foreign government, would be deemed a "government of a foreign country," under section 207(f)(3). The former [agency official's] actual client would be a foreign trade association, of which the government-owned corporation is one of six members, all of which are engaged in the manufacture and sale of [the same type of] products in the same country. Only one of the six members is a government-owned [product] corporation; the other five are all privately owned. Moreover, the trade association itself is a privately established trust organization, and, apart from the membership of one government-owned corporation, it is neither owned nor controlled by a foreign government. However, you have indicated that a representative of the government-owned corporation will serve on the board of trustees of the association and that the former [agency official] inevitably would be placed in the position of advising this representative along with the other board members.

As you know, section 207(f)(3) defines the phrase "government of a foreign country" by reference to section 1(e) of the Foreign Agents Registration Act of 1938. The latter provides, in pertinent part, that "government of a foreign country" includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country . . . and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated." 22 U.S.C. § 611(e). In this connection, OGE has observed that "[a] foreign commercial corporation will not generally be considered a 'foreign entity' for purposes of section 207(f) unless it exercises the functions of a sovereign." Summary of Post-Employment Restrictions of 18 U.S.C. § 207, at 11, Attachment to DO-00-006, February 17, 2000, available at <https://www.oge.gov/Web/OGE.nsf/Legal%20Advisories>. The question, then, is whether the government-owned [product] corporation at issue here exercises the functions of a sovereign or simply operates as a commercial enterprise.

Based on your description and the information you provided, we conclude that the corporation does not exercise the functions of a sovereign. You have described the corporation as "a [product] manufacturing/producing enterprise." Electronic Mail Message to [OGE], 12/20/02 (12/20 E-mail). In discussions with my office, you characterized the corporation as strictly commercial. In this regard, the government-owned corporation is comparable to the privately owned [product] companies that comprise the other members of the [product] trade association. You indicate that the corporation has "no policy-making powers," 12/20 E-mail, that it has "no governmental functions," Letter of December 27, 2002, and that it does not "have any delegated authority" to exercise sovereign political jurisdiction, *id.* You also indicated that the corporation does not have Governmental trade policy functions "in any way comparable to, for example, the United States Department of Commerce." *Id.* Moreover, from the redacted organizational papers you provided with respect to the trade association, we note that one main objective of the association is "to examine the problems of [product] producers in [redacted] and represent the industry's view to the Government"; this would appear to contemplate that the corporation, as a [product] manufacturer and association member, may well have views distinct from those of the foreign government.

Therefore, based on the information and descriptions provided to us, we do not believe that section 207(f) would prohibit the former [agency official] from advising the government-owned corporation or the trade association of which it is a member. If you have any further questions about this matter, please contact my Office.

Sincerely,

Marilyn L. Glynn  
General Counsel