

**Office of Government Ethics**  
**81 x 9 -- 02/25/81**

**Letter to a Designated Agency Ethics**  
**Official dated February 25, 1981**

This Office has received your letter of February 2, 1981, requesting our advice on the applicability of 18 U.S.C. § 207, as amended by the Ethics in Government Act of 1978, to the contemplated activities of a former Senior Employee of your agency.

You stated in your letter that during his employment with [your agency] the former Senior Employee was:

instrumental in the award of a contract and has been involved in the supervision of the contract, both through direct contacts with the contractor and through [agency's] project officer, an employee who was under his supervision. The former employee wishes to continue meeting with the contractor or project officer to provide his advice on the contractor's performance, for example, by reviewing and commenting on drafts of the report the contractor will be obligated to furnish.

You further stated that the report relates to broad policy issues and does not address issues involved in any ongoing [agency] proceeding. You noted that the former Senior Employee has a philosophical interest in the report and not an expectation of financial gain from the contract or the contractor.

As a former Senior Employee defined by 18 U.S.C. § 207(d), the provisions of 18 U.S.C. § 207(c) apply to this individual. You have asked if this subsection would then prohibit the former employee from pursuing the activities outlined above.

First, the provisions of 18 U.S.C. § 207 do not restrict

a former employee from representing or making a communication on behalf of the United States on a particular matter. Clearly, if [the agency] would like for this former employee to comment upon drafts of the report required by the contract, it may do so, without placing him in jeopardy of violating this law, by requesting him to review the drafts.

Your letter appears to indicate, however, that he wishes to take this action on his own without being requested to do so by [the agency]. It is our reading of this statute that he would be prohibited by 18 U.S.C. § 207(c) from making these comments to the Government project officer for a period of one year following his termination of service. It would not, however, prohibit him from making comments directly to the contractor.

18 U.S.C. § 207(c) prohibits a former Senior Employee from making, with the intent to influence, any oral or written communication on behalf of anyone to the "department or agency in which he served . . . in connection with any . . . contract . . . or other particular matter . . . which is pending before such department or agency or in which such department or agency has a direct and substantial interest."

From your letter it would appear that the former employee wishes to influence the substance of the product of this contract through oral or written communications to the Government project officer either alone or in the form of comments on draft reports. This action would fulfill all the required elements of section 207(c). The communication would be made on behalf of "anyone" (himself) to an employee of his former agency (the Government project officer) in connection with a contract or other particular matter (the report which was the subject of the contract) in which his former agency had a direct and substantial interest (party to the contract). While the former employee may argue that the product of the contract was only a report on broad policy issues and not a particular matter, one cannot separate the governing terms of a contract from the product itself.

You argued in your letter that comments on a draft, rather than being a particular matter, should be analogous to communications of a citizen on broad policy issues and permitted under example 2 following 5 C.F.R. § 737.11(d). We disagree. In the example, the individual was voicing his opinion on a Department's general emphasis in a certain area. The situation you have set forth in your letter is easily distinguished in that this former

employee wishes to influence the final policy issues presented in a specific report which is the subject of one identifiable contract. He would not be commenting on a Department-wide policy, which is the end result of a number of individual and distinct positions.

18 U.S.C. § 207(i) contains an exception to subsection (c). It states:

subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature . . . nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

You argue that 18 U.S.C. § 207(i) would apply, in this instance, since the former employee is providing his views to the Government project officer because of his own special knowledge in the particular matter that is the subject of the statement, and that he is doing so without compensation. Your argument that the report was to deal only with broad policy issues would tend to undercut the use of this exception. It is special knowledge of the individual with which this exception is concerned, not his special interest in the subject. His special knowledge in this case might be his knowledge of the terms of the contract which is not, as you pointed out, the subject of his comment. Further, the lack of compensation does not affect this question. One clearly may violate section 207(c) without receiving compensation. Section 207(i) does allow for specific types of statements to be made if the former employee receives no compensation. Since we have determined that the contemplated communications of this former employee do not fall within the type

of statements which may be made, it is of no consequence that the former employee is not being compensated for making them. We cannot read this subsection to allow communications which are otherwise prohibited simply because no compensation is received.

As we pointed out earlier, the former employee may review the drafts on behalf of [the agency] if requested by them to do so. He may also make any comment he wishes directly to the contractor as the contractor is not "the department or agency in which [he] served . . . or any officer or employee thereof." The contractor would not be required to accept such "assistance" from the former employee but should it do so, the former employee must be particularly careful not to inadvertently violate section 207(b)(ii) by being personally present at a meeting between the contractor and [the agency] concerning the substance of the report or terms of the contract or violate section 207(c) by somehow representing the contractor to the agency after the contractor has accepted his assistance.

If you or the former employee has any further questions with regard to this letter, please feel free to contact this Office.

Sincerely,

J. Jackson Walter  
Director