

Office of Government Ethics

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Letter to an Agency Ethics Official

dated September 25, 1985

This is in response to your July 15, 1985 request for guidance regarding the application of 18 U.S.C. § 207(a) to certain post-employment activities by [a former employee] on behalf of [a private foundation]. I have determined that your request for guidance is not a matter upon which a formal advisory opinion will be rendered. However, pursuant to 5 C.F.R. § 738.305(a)(2), this informal advisory letter is issued in order to address the individual concerns of [this former employee].

You relate that [in May of] 1983 [the individual], then the [head of a part of your Department] approved the "concept" of creating a museum [for your Department]. The concept document contained considerable detail, including plans for establishing [a private] Foundation as an independent non-profit association to raise funds for the museum and related purposes. The articles of incorporation for the Foundation were executed in May 1983. Thereafter, and prior to his retirement from the [Department] [in] June 1983, [the individual] participated in official discussions concerning the museum. These discussions centered around progress reports and minor details; they did not involve anything of significance. In September 1983 [the individual] became President of the Foundation on a part-time, uncompensated basis.

You state that although you do not question that [the individual] participated "personally and substantially" by approving the concept of the museum and Foundation in early May 1983, you have difficulty determining whether the permanent bar of 18 U.S.C. § 207(a) applies in this situation because you have difficulty identifying a "particular matter involving a specific party." From our review of the facts and the supporting documentation which you have provided, we conclude that the concept of the museum and the Foundation was a "particular matter involving specific parties" within the meaning of 18 U.S.C. § 207(a).

The question of when a particular matter involves a specific party cannot always be determined mechanically by data contained

in a single memorandum. More realistically, such determinations evolve from the degree of interest expressed by and contacts made with interested parties as the requirements of the particular matter develop. Although we have confirmed telephonically with you that [the individual] did not take part in the Foundation's incorporation process, we view the actual incorporation as being simply a ministerial act, which represented the culmination of the idea of creating a support mechanism for this museum. Once the concept of a museum and a support mechanism involving a non-profit foundation was approved, the requisite tests of a particular matter involving a specific party were met. Accordingly, [the employee] would be prohibited from representing the Foundation before the Government on matters involving the establishment of the Foundation or its working relationship with the museum.

Your submission is not clear, however, as to the nature of [the individual's] future representational activities on behalf of the Foundation. The concept of creating a fundraising mechanism such as the Foundation and specific fundraising activities of the Foundation may well be separate matters, with the follow-on fundraising projects being "new matters" for purposes of 18 U.S.C. § 207. Without further information on this point, we cannot give you future guidance in this area.

Sincerely,

David H. Martin
Director