

Office of Government Ethics

90 x 15 -- 07/26/90

Letter to an Alternate Designated Agency Ethics Official dated July 26, 1990

Your letter of July 18, 1990, requested our advice for [an employee of your agency] on ethical concerns in connection with [a license] application, which is pending with [a regulatory commission]. As discussed below, we concur in your analysis of all issues presented and believe that [the employee] may proceed with her application, subject to the cautions noted herein.

You indicate that [the employee] filed her application prior to becoming a Federal employee; that her application was filed as an individual and not in behalf of anyone else; that upon becoming a Federal official, she executed a recusal memorandum, whereby she agreed not to participate in any Government matter relating to the [regulatory commission]; that her attorney has handled all contacts with the [commission], to date; that [earlier this year] she was accepted by the [commission] as one of 11 final applicants for the particular [license], which will now require her to appear before or make personal representations to the [commission] in connection with a hearing process; that she will not disclose to the [commission] her current position with [your agency], unless required to do so, and will avoid any focus on her connection with the Administration which might create the appearance of misusing official position for private gain.

Against this background, we agree with your conclusion that the conflict of interest statutes do not pose any obstacles. [The employee] will not share in compensation for her attorney's representational services before the [commission] in her behalf, and her own representational acts will be strictly for herself alone; therefore, the proscriptions of 18 U.S.C. §§ 203 and 205 are inapplicable. Nor is the financial conflict statute, 18 U.S.C. § 208, triggered, so long as she adheres to her recusal agreement. As to the post-employment statute, 18 U.S.C. § 207, we understand that [the employee] will be a "very Senior" Employee under the revised statute which takes effect on January 1, 1991, for those leaving Government service thereafter, and that she does not anticipate leaving her position before that

time. As you noted, she would not be barred by the restrictions on "very Senior" Employees from representing herself on a personal matter before the [commission].

Concerning the regulatory standards of ethical conduct, we also concur in your analysis that, so long as [the employee] continues her efforts to avoid focusing on her Federal position in connection with the application, she should effectively preclude any appearance of misusing her position for private gain. She has also indicated that her only personal contacts with the [commission] would be those necessitated by her application, through established procedures, and that matters which can be handled by a representative would continue to be handled by her attorney. Of course, she must also avoid any other actual or apparent violation of the model standards of conduct in 5 C.F.R. Part 735 and your implementing regulations. For example, she must not use Government assets, such as title, time, personnel, supplies, equipment or non-public information in connection with her application.

Subject to these restrictions, we believe that [the employee] can pursue her [license] application with the [commission] without violating conflict of interest statutes or regulatory standards of ethical conduct.

Sincerely,

Donald E. Campbell
Acting Director