

Office of Government Ethics

87 x 3 -- 03/04/87

Letter to a Former Employee dated March 4, 1987

This Office has received your letter of February 18, 1987, which in essence asks for guidance on the application of the post-employment restrictions of 18 U.S.C. § 207 to two particular activities in which you would like to engage. The facts presented in your letter indicate that while you are a former Senior Employee of [a] Department, having served there in an Executive Level position and thus coming within the terms of section 207(c), you left the Department more than two years ago. Therefore, the only statutory post-employment restriction with which you must continue to concern yourself is that in section 207(a).

In your first question you indicate that while at the Department, you were personally and substantially involved in presenting and testifying on particular legislation before the 97th and 98th Congresses. The legislation was general and dealt with the scope of [certain protections]. That legislation was not enacted. Legislation is now pending in Congress which is virtually identical to the bills on which you had substantially participated while at [the Department]. You have asked whether you may represent your present employer in discussions with members of Congress, Congressional staff and Government agencies on this legislation now pending or on similar bills which may be introduced.

The answer is yes, you may discuss this legislation with them without fear of violating 18 U.S.C. § 207(a). That statute prohibits you from representing another back to an entity within the Federal Government (except Congress) on a particular matter in which you personally and substantially participated and which involved a particular party or parties at the time of your participation. A particular piece of legislation is a "particular matter;" it does not, however, generally involve a particular party or parties. An exception, of course, would be, for example, a private relief bill, or a bill establishing a grant program for which only one known organization was eligible. Since that is not the case in this instance, there is no need to pursue the analysis of the statute further. For your own information, however, the post-employment restrictions do not

prohibit representations on any matter made only to members of Congress or their staffs. See OGE Informal Advisory Letter 83 x 7, which is enclosed.

In your second question, you state that while at [the Department] you were appointed as a special Ambassador to serve as the head of the U.S. delegation to [two] sessions of [a specific] diplomatic conference. The Department has asked you to attend a meeting with several other persons who have been involved in the treaty revision negotiations to discuss follow-on negotiations which may occur. You believe you will be asked to give your views in order to help develop a U.S. position for follow-on negotiations. You have asked whether it would be appropriate to attend.

The answer to this question depends upon the invitation you received. The U.S. Government can always approach a former employee for assistance in a special Government employee capacity or for the provision of personal views as opposed to representative views. It makes no difference whether the information or assistance sought by the Government is on a particular matter involving a specific party in which the former employee participated substantially or not. Therefore, if you were approached by the Department to attend this meeting as a special Government employee or asked by the Department to attend the meeting for your personal observations based on your prior participation in the [two] sessions of the conference, then you may do so without fear of post-employment problems.

If, however, the Department has asked you to attend the meeting because of your past experience, but also to represent the views of some private person or organization, we would have to have more specific information on the authority the Department relied upon to call the meeting, the subject matter of the meeting, whether the "matter" under discussion was a particular matter involving a specific party and whether you had personally participated in that same matter when you were an employee. A treaty can be a particular matter involving a specific party or parties. Whether these treaty amendment discussions can be considered an additional part of a particular matter in which you participated would require much additional information to determine.

We recognize that while we were able to answer your first question, we may not have been able to answer your second,

depending upon what services you were asked to provide. Please feel free to contact us again if the guidance is not sufficient to your needs, and we will outline the additional information we will require in order to more fully analyze your second question.

Sincerely,

David H. Martin
Director

Enclosure