

Office of Government Ethics

83 x 14 -- 09/26/83

Memorandum to a Department Attorney dated September 26, 1983

We have reviewed the August 8, 1983 letter from [a former employee of your Department], which requests an opinion as to whether his acceptance of an offer of employment for the position of Vice President for [Corporation A], a subsidiary of [Corporation B], would be a violation of any rules of conduct for former Government employees or would cause embarrassment to [your Department].

First, the Ethics in Government Act does not prohibit a former employee from accepting employment with any organization, regardless of dealings with that organization while a Government employee. However, for the reasons discussed below, the provisions of 18 U.S.C. § 207 will restrict [the former employee's] representational activities on behalf of [Corporation A] to the Government in general, and in certain additional instances, to [your] Department in particular.

Pursuant to 18 U.S.C. § 207(c), as implemented by 5 C.F.R. § 737.11, for one year after leaving Government employment, a former Senior Employee may not represent anyone in an attempt to influence his former agency on a matter pending before, or of substantial interest to, the agency. [The former employee was] designated a Senior Employee for these purposes (48 Federal Register 8194, Feb. 25, 1983). Accordingly, for a period of one year from the date of his resignation, he may not represent [Corporation A] in any formal or informal appearance before, or with the intent to influence, make any written or oral communication on behalf of [Corporation A] to, [your Department] in connection with any particular Government matter which is pending before the Department or in which the Department has a direct and substantial interest, whether or not he had any prior involvement in the matter.

Pursuant to 18 U.S.C. § 207(a), as implemented by 5 C.F.R. § 737.5, [the former employee] will be prohibited from acting as agent or attorney for, or otherwise representing, [Corporation A] in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of [Corporation A] (1) to the United States Government, (2) in

connection with any particular matter involving a specific party, (3) in which he participated personally and substantially as a Government employee.

From the summary provided by [the former employee], he was "personally and substantially" involved in [his own agency's] contract with [Corporation A] relating to a certain type of network. [Note: The agency mentioned above is one part of the Department involved in this matter.] Further, during the period of time that [the former employee] served as Director [of a program within his agency] and as Executive Secretary of [a Department] taskforce, he was "personally and substantially" involved in the plans for the development of [another] network by the Department.

The phrase "particular matter" as used in 18 U.S.C. § 207 typically means a particular contract, a particular case or a particular proceeding. The development of [the Department] network in this case clearly meets the "particular matter" standard.

The phrase "particular matter" as used in sections 207(a) and (b)(i) is further restricted by the modifying phrase "involving a specific party or parties." Bayless Manning in his commentary, Federal Conflict of Interest Law 204 (1964), described the importance of the limiting phrase "involving a specific party or parties" as follows:

Where the language is used, it is clear that the statute is concerned with discrete and isolatable transactions between identifiable parties -- a close standard of specificity is required in two different respects under subsection (a); for a matter to be swept under the subsection, it must involve a specific party both at the time the government employee acted upon it in his official capacity and at the subsequent time when he undertakes to act as agent or attorney following termination of his government service.

That standard was adopted by this Office in section 737.5 of our Post Employment Conflict of Interest Regulations.

The potential contractor, [Corporation A], was identified as a party or one of a number of parties capable of establishing the [Department Network] based on the evolution of the existing or

planned network capabilities [of the agency.] [The former employee] discussed the evaluation process and the need for the [Department Network] with a representative of [Corporation A] on at least two occasions.

Accordingly, we conclude that [the former employee] was personally and substantially involved in a particular matter involving a specific party during the time of his Government service and, therefore, would be permanently prohibited from representing [Corporation A] before the Department in matters involving the establishment of [the subject Department] network.

I hope this addresses [the former employee's] concern. Should you or he require any follow-up information or advice from the Office of Government Ethics, please do not hesitate to contact me.

Sincerely,

David H. Martin
Director