

Office of Government Ethics
81 x 21 -- 06/26/81

**Letter to an Acting General Counsel of a
Department dated June 25, 1981**

This is in response to your request for our opinion on the question whether 18 U.S.C. § 203 precludes a Government employee from preparing income tax returns for compensation. Stated more broadly, the question is whether section 203 prohibits compensated non-representational services with respect to a Federal matter. There is, of course, no doubt that the statute bars paid representational activity by a Federal employee before a Federal Department or agency.

The Justice Department's Office of Legal Counsel (OLC) has furnished us a copy of its memorandum of February 26, 1968, to the Criminal Division in which, as you pointed out, it construed section 203 to extend to non-representational services. OLC has informed us that this memorandum was withdrawn by its communication of May 8, 1968, to the Criminal Division (copy attached). OLC there reverted to the Justice Department's previously consistent position that section 203 proscribes only representational conduct. We are also attaching a copy of an interpretive legal memorandum on section 203 that OLC sent to the Criminal Division with the second communication.

We have studied that OLC legal memorandum and see no reason to vary from its conclusion that section 203 applies only where a person acts as the representative of another.

We have not attempted to ascertain whether the United States Attorney or other Justice Department official who approved the indictment of a Federal employee under section 203's precursor, 18 U.S.C. § 281, for non-representational action in the case you cited, *United States v. Kupper*, 179 F. Supp. 264 (E.D. Pa 1959), was following departmental precedent. Whatever the measure of uncertainty that may have existed in the Justice Department at that time concerning section 281, it was dispelled by the issuance of 42 Op. Att'y Gen. III on January 31, 1962, a year before section 203 came into force. That opinion made representation a *sine qua non*. See the references to "representational activities" at pp. 113-114 and 119-120, and the reference to "services rendered before [*italics in the original*] a department or agency" at p. 124.

Turning to your specific inquiry, we are of the opinion that section 203 does not foreclose a Government employee from merely preparing income tax returns for another person who pays him for that service. On the other hand, there is nothing in section 203 to prevent a Department or agency of the Government from forbidding some or all of its employees to engage in that particular activity if it concludes that it would be adverse to its interests for them to do so. We notice from the enclosures to your letter that Internal Revenue Service employees are so restricted. Whether additional employees in [your Department] should be limited in the same way is a question on which section 203 casts no light.

We trust that this discussion will be helpful to you.

Sincerely,

J. Jackson Walter
Director