

Office of Government Ethics

90 x 19 -- 11/02/90

Letter to an Attorney dated November 2, 1990

This is in response to your request for an advisory opinion concerning the propriety of an appearance by a former [Federal agency] official on a videotaped press release being prepared by a client of yours about a new generation of [a specific product]. Although your request for guidance does not meet the criteria for a formal opinion, 5 C.F.R. § 2638.303, we are providing this letter to assist you in considering this matter. See 5 C.F.R. § 2638.305(a)(2). Based upon our understanding of the facts of this matter, we are of the opinion that there is no Federal restriction that would prevent [the former official] from appearing in the press release.

According to your letter [the former official] is a retired [employee]. At the time of his retirement [the official] was detailed to [an agency], where he was the Chief of [a] Branch. The Branch has responsibility for developing standards for, among other products, [the specific product mentioned in the press release]. Your client would like to have [the former official] appear on the promotional video (identified as a former [agency] official) and state the following:

"Today's [product does its job] much more efficiently and produce[s] much less [negative by-product] than those just a few years ago and [this product] meet[s] tough [Federal] standards that were adopted in July. Because they [do their job] more efficiently, the [negative by-product] that used to [be dispersed] is now turned into [a] useful [by- product], and, as a result, more [of the positive by-product] is made available and less [energy is expended]."

The text of the statement given in your letter indicates that [the former official] would not be endorsing a particular brand of [the specific product]; your letter also states that he will not be compensated for his appearance and has no financial interest in the manufacturing or distribution of any [of the specific products]. The video will be mailed to news departments of TV stations nationwide.

The Federal post-employment statute, 18 U.S.C. § 207, does not bar former Government officials from engaging in activities of this type. The restrictions contained in section 207 bar certain representational activities undertaken on behalf of individuals other than the United States before the United States Government. Based upon the information given above, we conclude that [the former official] would not be engaging in representational activities before the Government through his appearance on the videotape. There is no indication that [the former official] will engage in any activities at all in connection with a particular matter involving specific parties that he was either personally and substantially involved in as an officer or employee of the Government, 18 U.S.C. § 207(a), or that was actually pending under his official responsibility during his last year with the Government, 18 U.S.C. § 207(b). There is also no information that would suggest that [the former official] is an attorney subject to [agency] post-employment regulations. [Citation to agency regulations]. Because [the former employee] is no longer a Federal employee, he is not bound by the regulations governing the conduct of Federal employees found at 5 C.F.R. Part 735, or similar regulations governing the conduct of [agency] employees.

Based upon the foregoing, we are of the opinion that there is no Federal statute or regulation that would bar [the former official] from appearing on the promotional videotape.

Sincerely,

Stephen D. Potts
Director