Office of Government Ethics
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Letter to an Employee
of the District of Columbia Government
dated December 9, 1986

This is in response to your letter of July 2, 1986, requesting an informal advisory letter from our Office on issues relating to the applicability of the post-employment conflict-of-interest statute at 18 U.S.C. § 207 to officers and employees of the District of Columbia following the passage of the District of Columbia Self-Government and Governmental Reorganization Act ("Home Rule Act").

The central issue you have raised is whether 18 U.S.C. § 207 applies to employees of the Council of the District of Columbia government.

By letter, [we] asked the Office of the Deputy Assistant Attorney General, Office of Legal Counsel, United States Department of Justice for their views on whether Council employees are within the scope of coverage of section 207.

We have concluded in light of the reply we received from the Department of Justice that section 207 does apply to Council employees, based on the plain language of the statute, its legislative history, and consistent administrative practice.

In your letter to our Office, you stated that certain provisions of the Home Rule Act establish "an elected District of Columbia government resembling our tripartite federal government." Section 404 of the Act provides that "the legislative power granted to the District . . . is vested in and shall be exercised by the Council . . . ." (D.C. Code Ann. § 227(a)(1981)). Section 422 of the Home Rule Act vests executive power in the Mayor (D.C. Code Ann. § 1-242(1981); Section 431 of the Act vests judicial power in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia (D.C. Code Ann., Title 11, Appendix, § 431 (1981)).

In a July 21, 1986 telephone conversation with one of our staff attorneys, you further explained your understanding of the effect of the Home Rule Act and your position questioning whether

18 U.S.C. § 207 applies to employees of the Council of the District of Columbia, in view of the passage of the Act vesting legislative power in the Council. You stated that prior to the Act, the Council was more like an executive agency than a legislative body, because its members were appointed by the President with the advice and consent of the Senate and because the Council had only those powers delegated by Congress; now, however, the elected Council in form and function closely resembles a state legislature. You would contend, then, that because the Council is now characterized as a legislative body, it should be exempted from the coverage of section 207, as is the United States Congress.

By its terms, section 207 applies to any individual who has been "an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia . . . ." Thus, under the plain statutory language, section 207 applies to all officers and employees of the District of Columbia and not merely to those in executive agencies.

The legislative history of section 207 located by this Office fails to limit the wide applicability of section 207 to all District of Columbia employees based on the plain language of the statute.

ccording to the legislative history of Title V of the Ethics in Government Act of 1978, which revised 18 U.S.C. § 207 (emphasis added):

> 18 U.S.C. § 207 . . . is the major statute concerning restrictions on post service activities by officials and employees of the Executive Branch. It covers, unless otherwise noted, all officials and employees of the Executive Branch and of the District of Columbia.

S. Rep. No. 95-170, 95th Cong., 2d Sess. 47, reprinted in 1978 U.S. Code Cong. & Ad. News 4216, 4263.

Although 18 U.S.C. § 207 was amended in 1979, the legislative history of the amendment mentions nothing about any clarification relating to employees of the District of Columbia government. According to the legislative history:

> [the amendment] would clarify the language of

> subsection (b) of section 207 to make it clear that the bar on aiding and assisting applies only to an individual's participation by his physical presence at a formal or informal appearance. Further, the subject involved must be a particular matter in which the individual participated personally and substantially while an officer or employee. This bar applies only to those senior officers and employees designated under subsection (d) of section 207.

H.R. Rep. No. 115, 96th Cong., 1st Sess. 1, reprinted in 1979 U.S. Code Cong. & Ad. News 328, 329.

Similarly, the foremost treatise of Federal ethics laws, Bayless Manning's Federal Conflict of Interest Law (1964), indicates that 18 U.S.C. § 207 applies to all District of Columbia employees. According to Mr. Manning, "[T]he coverage of Section 207 is . . . identical to that of Section 208 . . . ." Id. at 186. Then Mr. Manning states, regarding 18 U.S.C. § 208, "[E]mployees of the District of Columbia are specifically covered . . . ." Id. at 114. The 1978 and 1979 amendments to section 207 did not change this aspect of the statute.

Additionally, evidence of past administrative practice supports the applicability of section 207 to all District of Columbia employees. This Office has not issued any opinions or letters that we believe could be construed to limit the statutory coverage to employees of the executive branch of the District of Columbia government. The Department of Justice has consistently interpreted section 207 as covering all District of Columbia employees. (See, e.g., letter to David A. Clarke, Chairperson, Committee on the Judiciary, Council of the District of Columbia, from Mary C. Lawton, Deputy Assistant Attorney General, Office of Legal Counsel, May 18, 1979 (attached).)

As a practical matter, of course, the impact of the prohibitions of sections 207(a) and (b)(i) on former District of Columbia legislative branch employees, including former Council employees, varies according to the type of legislative activity engaged in while with the Government, and in many instances the impact may be limited because of the requirement of particular matters involving specific parties. Although special legislation affecting a selected class rather than the public generally might amount to a particular matter involving specific parties, most

legislation would not so qualify.

Sincerely,

David H. Martin
Director