

Office of Government Ethics

79 x 7 -- 11/02/79

Letter to a Government Official dated November 2, 1979

This responds to your letter of October 22, 1979, which requests a waiver of the financial disclosure requirements of section 201 of the Ethics in Government Act of 1978 (Pub. L. No. 95-521, as amended), pursuant to subsection (i) of such section, with respect to the members of the Advisory Committee on Reactor Safeguards and several members of the Atomic Safety and Licensing Board Panel.

In exercising the discretion to grant the waiver we must make the following determinations under subsection (i):

- (1) such individual is not a full-time employee of the Government,
- (2) such individual is able to provide services specially needed by the Government,
- (3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and
- (4) public financial disclosure by such individual is not necessary in the circumstances.

The legislative history illuminates paragraphs 3 and 4, *supra*, as witness the following:

the clear intent of indented paragraphs 3 and 4 [of subsection (i)] is that there will be a comparison made between the individuals' [sic] outside interests and the character of the employment and services he is rendering for the Federal Government to determine whether or not there is a possibility of conflict, both because of the sensitivity of the government position and the nature of the outside holdings or activities, and that it will be

necessary therefore to determine not only that there is no conflict in fact but also the circumstances don't otherwise require the report.

In a situation where somebody's activity for the government was unusually sensitive, such reporting might be required, notwithstanding the lack of existence of a conflict. But there are so many such positions in the government of such variety that we think it is better to proceed on a case-by-case basis under these standards. (emphasis added).

Hearing on H.R. 2805 Before the Subcomm. on Human Resources of the House Comm. on Post Office and Civil Service, 96th Cong., 1st Sess., ser. 96-5, at p. 7 (1979).

The waiver provision is not to be utilized as a bridge between the provisions of subsections (d) and (h) of section 201 (relating to employment of 60 days or less during a calendar year) and the 130-day rule of subsection (i). "This provision [subsection (i)] is meant to apply in unusual situations, and not to serve as a basis for regular extensions of the 60-day exclusion to employment of 130 days." *Id.* at p. 18.

It should be noted that the waiver does not extend to the requirement for filing a financial report by the individual involved. It relates only to whether the report should be exempted from public disclosure.

We cannot act on your request without additional information. Specifically, as to the members of each body, you should amplify your waiver request with a discussion of the subsection (i)(3) and (4) issues. Notwithstanding the fact that the regulations and policies of your agency prohibit the members of these two bodies from having outside interests or employment which create actual conflicts of interest, a central focus under these provisions is whether, and to what degree, an individual who occupies a particular federal position could have outside interests or employment which would create the appearance of a conflict. These provisions also address themselves to the question of whether, in view of the level of public policy concern attached to a particular position as determined by the examination

described in the preceding sentence, there is a countervailing concern with respect to personal privacy in an individual case which would support the grant of a waiver request. As to each member for whom the waiver is requested, please furnish us with a copy of the SF 278 required to be filed pursuant to section 201 along with a review by your agency. You should be aware that in the event the waiver request is granted, your request for such waiver will be subject to public disclosure.

Each member should file his report with your agency in accordance with the normally applicable procedure; however, each report and all copies should bear the legend at the top of page one: "CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 (App.) U.S.C. § 201 (i)." In the event the waiver should not be granted, the legend should be removed and the report made publicly available.

Sincerely,

Bernhardt K. Wruble
Director