

Office of Government Ethics

81 x 34 -- 11/23/81

Letter to a DAEO dated November 23, 1981

By your letter of October 29, 1981, you request our opinion with respect to certain specific questions concerning the application of 18 U.S.C. § 207(g) in the case of [a member] of your Commission. The factual situation is generally described by the letter to you of September 9, 1981, from a member of [the Commissioner's] former law firm which you in turn transmitted to us. This response is not being made pursuant to the formal advisory opinion procedures described in 5 C.F.R. Part 738, Subpart C, because it is not concerned with a matter of general applicability pursuant to the criteria specified in 5 C.F.R. § 738.303. The issues raised by your letter are explored in the enclosed Letter to a Government Employee, dated June 12, 1981, which expresses the general views of this Office. [This letter is excised and has been given the identifier 81 x 19.]

We note that [the Commissioner] previously agreed to recuse himself from any matters involving former clients that he represented before the Commission and from any old or new matters involving his former law firm before the Commission.¹ However, a recusal from a matter within his "official responsibility," as defined in 18 U.S.C. § 202(b), although appropriate for [the Commissioner] because of other concerns under Federal conflicts law, would not have the effect of removing such responsibility over the matter for purposes of § 207(g). Cf. 5 C.F.R. § 737.7(b)(5).

With respect to your first question, section 207(g) does not impose restrictions on employee-shareholders of [the Commissioner's] former law firm who are not also partners [the "Partnership"]. Similarly, the response to your third question is that section 207(g) does not impose restrictions on employee-associates of the law firm since they are not partners of [the Partnership].

Turning to your second question, which asks whether [the Commissioner's] partners in [the Partnership] may practice before the [Commission], we refer you to the third full paragraph on page 2 of the enclosed letter. There we held that a general partner of a limited partnership who is outside the Government is invariably subject to the restriction of section 207(g) in relation to a matter within the province of an individual in the

Federal service who is a limited partner of that enterprise. Although the discussion there is in terms of "appearance" by the outside partner before the one who is in the Government, it is not to be read as meaning that while an appearance before the latter is forbidden, an appearance before someone else employed in his area of responsibility is permissible. (See the last sentence, second paragraph of page one of the OGE letter, which refers to the Federal organization for which the unidentified addressee has official responsibility.)

As we read the letter written to you by [a member of your former law firm], [the Partnership] is composed of four general partners plus [the Commissioner] as the only limited partner. In the light of that understanding, we are of the view that none of the general partners may represent a client before the Commission. If our reading is incorrect and there are in fact other limited partners besides [the Commissioner], we would, of course, reconsider our view as it affects those additional persons upon a showing that they and he are in "the traditionally non-participatory role of a limited partner." (See the last sentence on page 2 of the enclosed OGE letter.)

I hope these comments are helpful to you.

Sincerely,

J. Jackson Walter
Director

1 See opinion letter re: [the Commissioner] dated May 7, 1981, to [the Chairman of the Senate Committee holding the Commissioner's confirmation hearing] from Director, Office of Government Ethics.