

Office of Government Ethics

82 x 10 -- 06/22/82

Letter to a Government Official dated June 22, 1982

By letter dated March 15, 1982, you requested a formal advisory opinion with respect to the issue of whether 18 U.S.C. § 207 applies to the post employment activities of employees of the Government Printing Office (GPO). We are rendering this opinion informally since you withdrew your request for a formal opinion by letter dated April 13, 1982, and the question you pose is not one of general applicability.

The post employment provisions contained in 18 U.S.C. § 207 apply to those who have "been an officer or employee of the executive branch, of any independent agency of the United States, or of the District of Columbia." Agency has been defined in our regulations as including "an Executive Department, a Government corporation and an independent establishment of the executive branch, which includes an independent commission." 5 C.F.R. § 737.3(a)(2). The coverage does not include employees in the legislative branch. Compare with 18 U.S.C. § 203(a) which expressly covers officers and employees "in the executive, legislative or judicial branch of the Government" (emphasis added).

Is GPO a part of the legislative branch? There is indication to that effect in Title I of the Ethics in Government Act (the Act), requiring reporting by the legislative branch, where it is stated that for purposes of that Title, the legislative branch includes the General Accounting Office (GAO), the Government Printing Office (GPO) and some other named bodies. 2 U.S.C. § 701(e). Amended 18 U.S.C. § 207, however, is treated in a separate part of the Act -- Title V -- and is governed by the definitions in that Title and the regulations referred to above. It is for this reason that GAO has been determined to be subject to 18 U.S.C. § 207 since it is named specifically as an independent establishment in 5 U.S.C. § 104. (Letter of this Office, dated October 26, 1979).

GPO is under the general supervision of the Congressional Joint Committee on Printing. While the Public Printer is appointed by the President by and with the advice and consent of the Senate (44 U.S.C. § 301), this official must consult with the

Congressional Joint Committee on Printing in carrying out the functions of GPO. See, for example, section 305 (approval of GPO employees' pay by the Committee), section 309 (revolving fund available for expenses authorized in writing by the Committee), section 312 (requisitioning of machinery with approval of the Committee), section 313 (examining board consisting of GPO top personnel and a person designated by the Committee) and section 502 (procurement of printing elsewhere under contracts made by GPO with the approval of the Committee). GPO must do all the printing for the three branches of Government (other than the Supreme Court) except as otherwise approved by the Joint Committee. (44 U.S.C. § 501).

Court decisions and opinions of the Comptroller General confirm that GPO is part of the legislative branch.

"The Government Printing Office is an agency of the legislative branch and not of the executive branch of the Government" is the holding of *Duncan v. Blattenberger*, 141 F. Supp. 513, 515 (D.D.C. 1956). This case was cited with approval in *Barger v. Mumford*, 265 F.2d 380, 383 (D.C. Cir. 1959). See also *United States v. Allison*, 91 U.S. 303, 307 (1876).

In *Doe v. McMillan*, 412 U.S. 306, 321-2 (1973), the Supreme Court noted that Congress can order printing from GPO (44 U.S.C. § 733), whereas the executive branch must request it. (44 U.S.C. § 1103).

The best analysis of the status of GPO is contained in *Hentoff v. Ichord*, 318 F. Supp. 1175 (D.D.C. 1970): "[w]hile the Public Printer is appointed by the President . . . he is a legislative employee" (p. 1180, n.3).

There are at least two opinions of the Comptroller General of the United States holding that GPO is part of the legislative branch of the Government. In 29 Comp. Gen. 388, 390 (1950), the Comptroller General stated: "[i]t has long been recognized that the Government Printing Office is under the legislative branch of the Government." This statement was reiterated in 36 Comp. Gen. 163, 165 (1956):

It is clear from the foregoing analysis that GPO has been recognized as part of the legislative branch rather than of the executive branch of the government. Since the legislative branch is not subject to

18 U.S.C. § 207, it is our opinion that the post employment provisions of this section are not applicable to the employees of GPO.

Sincerely,

J. Jackson Walter
Director