

Office of Government Ethics

83 x 13 -- 09/21/83

Letter to a Private Attorney dated September 21, 1983

Your letter of August 26, 1983, to [a Department official] requesting an advisory opinion regarding the applicability of 18 U.S.C. § 207 has been referred to this Office for response.

In your letter you state that from April 1980, to March 1982, you were [employed as an attorney in the office of a] United States Attorney for [a judicial District]. Sometime during that time period a grand jury investigation of [an individual] was commenced and assigned to [a specific attorney in your office]. You had, at that time, direct supervisory control over [this attorney].

In April of 1983, you were contacted by [the same individual] and asked to assist him in negotiating with the Government during a grand jury investigation. You sought an opinion from [your former] office and were advised by the Assistant United States Attorney then in charge of the investigation [of the individual] that he perceived no conflict of interest. Thereafter, you represented [the individual] in meetings and correspondence with the United States Attorney, an Assistant United States Attorney, and officials [of the client agency] regarding a possible resolution of the matter [involving this individual].

You were recently advised by another Assistant United States Attorney, who is now handling [this same] matter, that he perceives a conflict of interest problem under 18 U.S.C. § 207. In your letter to [the Department] you ask whether, under the circumstances, you may represent [the individual] and, if not, whether you may engage in activities which consist of aiding and assisting in the representation of [the individual] but which involve no direct contact with the Government in the form of an appearance or a communication with the intent to influence.

With respect to your first question, it is our view that you may not represent [the individual] in meetings and correspondence with Government officials in connection with the grand jury matter. It appears that [this] matter was pending under your official responsibility during your last year of Government service by virtue of your supervisory authority over [the

attorney then handling the matter]. See 5 C.F.R. § 737.7(b)(2). Consequently, you are barred under 18 U.S.C. § 207(b)(i) for a period of two years after your responsibility ceased from representing anyone other than the United States by means of an appearance before the Government or a communication to the Government with the intent to influence, in connection with the matter.

Because your letter indicates that you may have already violated the statute, we were required to consult with the Criminal Division of the Department of Justice. See 5 C.F.R. § 738.305(d) and 28 U.S.C. § 535(b). In accordance with their request, we have referred the matter to [the] Conflict of Interest Crimes Branch, Public Integrity Section, Department of Justice.

With respect to your second question, you are correct in your understanding that 18 U.S.C. § 207 does not preclude you from engaging in activities that consist of aiding and assisting in the representation of [the individual] but which involve no direct contact with the Government in the form of an appearance or a communication with the intent to influence.

Please feel free to contact this Office if we can be of further assistance.

Sincerely,

David H. Martin
Director