

Office of Government Ethics

90 x 9 -- 05/07/90

Letter to an Employee dated May 7, 1990

This is in response to your letter of March 16, 1990, requesting guidance concerning a future employment opportunity that you are currently considering.

In your letter you gave your full-time and part-time job titles, but did not state whether you are a regular Federal employee, a special Government employee or an employee of [a] State. For the purpose of this letter, we have assumed that you are a regular Federal employee and are subject to the criminal conflict of interest statutes in Chapter 11 of Title 18 of the United States Code. However, we direct you to the definition of a special Government employee at 18 U.S.C. § 202(a) so that you may ascertain for yourself the nature of your former employment with the Air National Guard. We also suggest that you contact the two individuals whose titles are given below for advice related to your status as a Federal employee and an employee of [a] State.

The criminal conflict of interest statute that applies to you as a former Federal Government employee is 18 U.S.C. § 207. There is a total of four proscriptions in section 207, of which two, those in subsections (a) and (b)(i), could affect your potential employment opportunities. The remaining two proscriptions, (b)(ii) and (c) which apply only to Senior Employees, do not apply to you because a GM-13 position cannot be designated as a Senior Employee position.

In discussing the limitations of 18 U.S.C. § 207(a), we must bear in mind that it is a criminal statute and is meant to be narrowly construed. It bars a former officer or employee of the executive branch from acting as agent or attorney for anyone other than the United States before or to any Federal Government agency in connection with any "particular matter involving a specific party or parties" in which the United States is a party or has a direct and substantial interest and in which he or she participated personally and substantially when employed by the Government. The phrase "particular matter involving a specific party or parties" refers to a discrete and isolatable transaction between identifiable parties. More specifically, a "particular

matter" is "a particular contract, a particular case, a particular proceeding or a particular claim." See OGE Informal Advisory Letters 80 x 9, 80 x 10 and 5 C.F.R. § 737.5(a).

Party, as it is used in section 207, is a specific, identifiable party. For section 207 to apply, a specific, identifiable party must have been involved when you worked on the matter in your official capacity. Thus, you may not, for instance, after personally working on a specific contract for the Air National Guard (a matter involving a specific party), represent any person or entity to the Government on that contract. In general, however, any type of employment is permissible so long as it does not call upon you to make representations, written or oral, to the United States Government.

Section 207(b)(i) prohibits a former officer or employee from acting as agent or attorney or making any oral or written communication on behalf of any person, other than the United States Government, for a period of no more than two years to the United States in connection to a particular matter in which the United States has an interest, if that matter was pending under the officer's or employee's official responsibility during his last year of Government service. The two-year period starts at the end of one's official responsibility for a matter, not necessarily at the end of one's Government service. Section 202(b) defines official responsibility as "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

For example, you are banned for a period of two years from the termination of your employment with the Air National Guard from making any representations to the United States Government on a contract which was under your official responsibility during your last year of Government service by virtue of your supervisory authority over a subordinate who administered the contract.

This letter is meant to be a general answer to the question you raised in your letter. Your former employer, the Air National Guard, is responsible for assisting you with post-employment advice. You should contact an ethics official of that agency for guidance related to any specific questions you may have concerning limitations which may apply to you as a former Air National Guard employee and as a former Federal Government

employee. Furthermore, the Air National Guard may have standards of conduct regulations which may impose additional restrictions on your future activities and which may impact on the question raised in your letter. For this reason, you should contact the ethics official for the Air National Guard. You may also want to contact the Office of the State Adjutant General for [your state's] Air National Guard.

Sincerely,

Donald E. Campbell
Acting Director