

Office of Government Ethics

02 x 8

Letter to a Former Federal Employee dated October 16, 2002

This letter responds to your correspondence dated September 23, 2002, inquiring whether you are prohibited from making representations and communications designed to influence members of [a] Department during your post-employment one-year "cooling-off" period under 18 U.S.C. § 207(c). Based on the information you provided, we concur with the Department that you remain subject to the post-employment restrictions of 18 U.S.C. § 207(c) for the one-year period from the date of termination of your senior position at the Department.

Your letter states that you were employed by the Department until your May 3, 2002 retirement, when your rank was "Executive Level 6." In early May 2001, you were on home leave after an assignment [abroad]. From May 8, 2001 to May 3, 2002, you were on detail to [an agency]. In your letter, you query whether, in light of your home leave and detail during the relevant time period, the post-employment restrictions of 18 U.S.C. § 207(c) apply to your contacts with the Department, as well as to your contacts with the [agency].

Section 207(c) is a one-year post-employment restriction that prohibits a former "senior employee" from communicating to or appearing before his former department or agency, on behalf of another person or entity, with the intent to influence official action. The restriction lasts for one year from the date the individual terminates the senior position. Senior employees include those "employed in a position . . . for which the basic rate of pay . . . is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service" See 18 U.S.C. § 207(c)(2)(A)(ii). Based on your letter and discussions with the Department, we are assuming your rank was equivalent to ES-6 in the civil service. The rate of basic pay for ES-6 (currently \$130,000) per annum is equal to the rate of basic pay for level 5 of the Senior Executive Service (currently \$130,000). Accordingly, you would be considered a "senior employee" for purposes of the post-employment statute.

Section 207(c) "prohibits communications to or appearances before employees of any department or agency in which [the senior employee] formerly served in any capacity during the one-year period prior to his termination from senior service." OGE

Memorandum to Designated Agency Ethics Officials, General Counsels, and Inspectors General, DO-00-006 (Feb. 17, 2000) (emphasis added). The provision does not require that the high-level employee have been involved in any way in the matter that is the subject of the communication or appearance. Thus, the fact that you were not actively involved in any matters on behalf of the Department during the year preceding May 3, 2002, is not relevant to the conclusion that, for purposes of section 207, you were an employee of the Department while on home leave and during your detail to the [agency].

The analysis that you were still an employee of the Department during the period of time you were on home leave (April 7 to May 7, 2001) is supported by looking to a published OGE Informal Opinion in which this Office addressed the question of whether an employee on terminal leave from a supervisory position has "official responsibility" for particular matters involving specific parties that become pending in the employee's former office solely during the employee's terminal leave. See OGE Informal Advisory Opinion 98 x 20 (Dec. 8, 1998). In that opinion, we concluded that the official's terminal leave status did not terminate his official responsibility for matters within his agency's office because "such an individual remains a Government employee." *Id.* Even if, as you claim in your letter, you did not perform any work for the Department while on home leave, you would still be considered a Department employee during that time for purposes of the post-employment statute. Given that you were on home leave for part of the relevant one-year period, you would be covered under section 207(c) regardless of whether you were assigned on detail to the [agency].

Based on the information provided, we also believe that you remained a Department employee while you were a detailee at the [agency]. For purposes of section 207, a person who is a detailee from one department or agency to another is considered to be an employee of both entities. The statute specifically provides that ". . . a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of *both* departments, agencies, or such entities." 18 U.S.C. § 207(g) (emphasis added). Therefore, from May 8, 2001 to May 3, 2002, the dates of your detail, you would be considered for section 207 purposes to have been an employee not only of the [agency], but also of the Department. This is true regardless of whether or not you performed work on behalf of the Department.

We hope that this information is helpful to you. If you have additional questions, please do not hesitate to contact us. Alternatively, if you have questions about additional post-employment restrictions or the specific application of these restrictions to particular facts, we suggest that you consult with the appropriate agency's ethics official.

Sincerely,

Marilyn L. Glynn
General Counsel