

Office of Government Ethics

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Letter to an Agency General Counsel dated October 31, 1984

This is in response to your October 16, 1984 request for an opinion as to the propriety of your agency's Director making application for a Small Business Administration (SBA) loan.

You relate that the Director is applying for a loan, on his own behalf, from the SBA. The loan is of a direct nature, which he is eligible for by virtue of his veteran's status, rather than the more familiar SBA loan guarantee. You further related that while the Director intends to subsequently form a partnership and purchase a radio station, no such partnership has yet been formed, nor has the proposed purchase taken place. The Director's application before the SBA is as an individual, for himself, not in the capacity of an agent or representative for other parties.

The principal conflict of interest statute involved in a situation such as this is 18 U.S.C. § 205. This section provides in pertinent part:

Whoever, being an officer or employee of the United States in the executive, legislative or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties --

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest --

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

This provision, like the prohibition in 18 U.S.C. § 205(1) against acting as agent or attorney for prosecuting any claim

against the United States was designed to prevent Federal employees from engaging in representational-type activities on behalf of others in their dealings with the United States. However, section 205 has been understood not to prevent a Federal employee's representation of himself before an agency or court.

This right of self-representation is not spelled out by the terms of section 205, but it is instead inferred from the purpose of the statute. See 23 Op. Att'y. Gen. 6533 (1901) and Capt. Tyler's Motion, 18 Ct. Cl. 25 (1883) supporting the long-standing recognition of a right to self-representation under the Constitution.

The implied exception in section 205 for self-representation does not extend to the representation of a distinct legal entity such as a corporation (e.g., through an appearance by its President). Moreover, there is nothing in the legislative history on section 205 that would indicate that a corporation wholly owned by natural persons enumerated in 18 U.S.C. § 205 should also be regarded as being covered by the self-representation exception. See B. Manning, Federal Conflict of Interest Law, 1964 (at pp. 83-84).

Applying the above-discussed principles to the facts as you relate them, we can only conclude that your Director's SBA application as presently constituted would not violate the provisions of 18 U.S.C. § 205. However, in view of the language of 13 C.F.R. § 105.601, the application and the Director's future plans should be discussed with the Designated Agency Ethics Official at the SBA.

Sincerely,

David H. Martin
Director