

Office of Government Ethics
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Letter to a Former Government Employee dated August 7, 1981

This is in response to your July 10, 1981 request for an opinion on the impact of the post-employment restrictions of 18 U.S.C. § 207(c) upon your future employment activities. You have asked that we focus our particular attention on your "agency" status. Your request was forwarded to this Office by the Deputy Designated Agency Ethics Official of a Department.

You have advised that [in late summer] 1977 you took office as the President's Personal Representative [in a certain matter]. On assuming office, you became head of the Office [directing the negotiations in this matter]. You were also nominated for the rank of ambassador and were confirmed in the same by the Senate. You resigned from the Federal Government effective March 17, 1981.

At the outset, we conclude that you, as an executive branch employee serving in a position at an ambassador's rank, were a Senior Employee¹ as the term is used in the final regulations issued by the Office of Personnel Management for this Office of February 1, 1980, to whom all of the post-employment restrictions of 18 U.S.C. § 207 apply.²

Further, we conclude that for purposes of the restrictions contained in 18 U.S.C. § 207(c) your one year "cooling off" period applies to representational activities conducted before the Executive Office of the President.

It is our understanding that arrangements for the operation, staffing and financing of the Office [of which you became the head] were originally established by a Presidential Directive [in] 1971. Although administrative support is provided to the Office by one Department, with staffing requirements met by [it as well as two other Departments], the primary goal of the Office and your primary responsibility as the head of the Office was to conduct negotiations on behalf of the executive branch and make recommendations on negotiations to the President through the Office of the Assistant to the President for National Security Affairs (Executive Office of the President). These functions remained unchanged under [a subsequent] Presidential Directive in

1977. We feel that this primary function, that of negotiating on behalf of the President through an established chain of command, is dispositive of the issue.

Having concluded that, for purposes of your inquiry, your "agency" is the Executive Office of the President, we must go one step further and advise that, contrary to the thoughts expressed in your initial inquiry, there are restrictions on your dealings during the remaining portion of your first year following separation from U.S. Government service which are not limited to matters involving [the matter for which you served as the President's representative] but extend to any subject pending before the Executive Office of the President or in which the Executive Office of the President has a direct and substantial interest.³ The Director, Office of Government Ethics, has not by rule designated your former Office as a "separate" statutory agency or bureau under the provisions of 18 U.S.C. § 207(e). It merits emphasis that such exceptions are to be made only in those kinds of exceptional and clear cases, where an agency -- exercising wholly separate and distinct functions -- happens to be contained within a Department. The Office of Government Ethics has not made such a finding nor has such a finding been requested by the Executive Office of the President in the case of [your former] Office. Additionally, even if such a rule were issued by this office, you would not enjoy the benefits of such a finding. The limitations on the scope of 18 U.S.C. § 207(c) cannot be extended to those officers and employees of the Department whose official responsibility included supervision of that departmental agency.⁴

A copy of this opinion will be forwarded to the Designated Agency Ethics Officials at the White House Office, and [the three Departments involved]. An informational copy will also be sent to the Deputy Director [of your former] Office.

Sincerely,

J. Jackson Walter
Director

¹ 18 U.S.C § 207(d)(1)(A) makes the provisions of of 18 U.S.C § 207(c) automatically applicable to any person employed at a rate of pay specified in or fixed according to subchapter 11 of chapter 53 of title 5,

United States Code, "or a comparable or greater rate of pay under other authority" (emphasis added).

2 5 C.F.R. Part 737. More specifically, section 737.11 contains the basic prohibitions of 18 U.S.C. § 207(c) and states that for a period of one year after terminating employment by the United States, no former Senior Employee shall knowingly act as an agent or attorney for, or otherwise represent, anyone informal appearance before, or with the intent to influence, make any written or oral communication on behalf of anyone to (1) his or her former Department or agency, or any of its officers or employees, (2) in connection with any particular Government matter, whether or not involving a specific party, which is pending before such Department or agency, or in which it has a direct and substantial interest.

3 S. Rep. No.170, 95th Cong., 1st Sess. 154 (1977) states that "In several important regards, subsection (c) differs from the two preceding subsections. First, unlike subsections (a) and (b), the restrictions apply regardless of the degree of association the former official had with a particular matter. Second, it covers all matters -- including general rulemaking and formulations of general standards -- that are pending before the department or agency for one year after the official leaves office. Third, unlike prior subsections (that apply only to cases considered during agency services), this subsection includes new matters that arose after the official left the department or agency. Fourth, subsection (a) and (b) bar participation in any agency, department or court proceeding where the prohibited matter is considered; but subsection (c) bars contact only with the agency or department where the former official was employed."

4 18 U.S.C. § 207(e) states in part "the Director [Office of Government Ethics] shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau."