

Office of Government Ethics

81 x 26 -- 08/07/81

Letter to a Former Government Attorney dated August 7, 1981

This is in response to your written request of July 13, 1981, for the opinion of this Office on a potential post-employment conflict of interest situation.

As the facts have been presented to us, you were personally and substantially involved as a Government attorney in the formulation of certain rules of [a Federal] Commission. Now a client of your firm has asked you to prepare a memorandum analyzing these rules, with regard to the client's ongoing Federal court litigation challenging the validity of these rules. We understand that you were not involved in the litigation as a Government attorney, and that you do not contemplate representing the client before the courts or the [Commission] challenging the validity of these rules.

18 U.S.C. § 207(a) generally prohibits former Government employees from acting as another person's representative in any appearance before, or with the intent to influence, in any communication to, the United States, in connection with a particular matter involving a specific party, in which matter such employee participated personally and substantially.

Since you state that your activities will be limited to writing a memorandum for a client, which does not involve communications to, or appearance before, the United States, there is no violation of the statute. A former Government employee is not prohibited from providing assistance in connection with the representation of another person if there is no communication to or appearance before the United States. See 5 C.F.R. § 737.5(b).

Further, the prohibitions of 18 U.S.C. § 207(a) are based on the former Government employee's prior participation in, or responsibility for, a particular matter involving specific parties. Rulemaking, or the formulation of general policy, standards or objectives, or other action of general application, is not such a particular matter unless there is a specific transaction, or isolatable series of transactions, involving identifiable parties. See 5 C.F.R. § 737.5(c)(1).

Therefore, on the facts as presented, you, as a former Government attorney who, while working for the Government was personally and substantially involved in formulating certain Government rules, may write a memorandum for a client with regard to ongoing litigation challenging those Government rules.

Sincerely,

J. Jackson Walter
Director