

## Office of Government Ethics

81 x 4 -- 02/02/81

### Letter to a Member of Congress dated February 2, 1981

This letter responds to your written request which we received on January 7, 1981, for this Office's opinion on whether the proposed performance of certain services on your behalf by [an executive branch employee] before agencies of the executive branch of the federal Government might be prohibited under 18 U.S.C. § 207. (Title V of the Ethics in Government Act of 1978 as amended, "the Act".)

Your letter informs us that [the subject individual] is currently serving as a Principal Regional Official (SES) in a Department's regional office. His position has been designated as a Senior Employee by this Office under 18 U.S.C. § 207(d)(1) (C) for purposes of 18 U.S.C. § 207(c). He began working for the Federal Government on November 3, 1977, as a Regional Director.<sup>1</sup>

You relate that you contemplate retaining the individual on your Congressional payroll in a part-time capacity after he leaves his current executive branch position. The individual would work for you and your constituents, but all of his duties would be performed at his private law office in Chicago, Illinois. [He] would also do work for his own legal clients at the same time.

You have asked questions in two broad areas: (1) whether 18 U.S.C. § 207(c) prohibits [the individual], after he leaves his Federal employment, from contacting employees of [his former Department] in Chicago, Washington, D.C., or elsewhere in order to influence them on behalf of your constituents or others who request your help; and (2) if there is such a prohibition, to what components of [his former Department] and other Federal departments or agencies does it apply.

We will discuss the issue of working for your constituents in light of 18 U.S.C. § 207(c) first. Section 207(c) of Title 18, which pertains solely to Senior Employees, states in part:

Whoever . . . within one year  
after such [senior] employment

has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to . . . [his former agency on particular matters will be subject to criminal penalties]. (emphasis added).

Thus, stated narrowly, the critical question under section 207(c) becomes whether or not [the individual's] proposed employment to work on your constituents' individual problems would be considered prohibited representation because it was not on behalf of the United States. Certainly, assisting your individual constituents in regard to specific problems would normally be considered a "particular matter" for purposes of section 207(c).<sup>2</sup> An individual problem with or complaint about the [individual's Department] submitted to you by one of your constituents is most likely to be a discrete and isolatable transaction, the essence of a "particular matter." Further, constituency matters normally pertain to constituency service, taking care of personal concerns or grievances of individuals involving Federal agencies, and are separate from a Congressman's legislative activities which necessarily are performed on behalf of the United States. Consequently, we believe that an appearance by [the individual as a former employee] before his former Department on your behalf to help solve one of your constituent's problems, would not be "on behalf of the United States" and would be prohibited by section 207(c).<sup>3</sup>

To give, then, the overview of 18 U.S.C. § 207 in regard to [this individual], for a period of one year after termination of his Federal executive branch service, he will be prohibited under 18 U.S.C. § 207(c) from contacting with an intent to influence employees in the immediate office of the Secretary and Under Secretary of his Department or other administrative or operational authorities which were part of his chain of command. As elaborated below, this would include the line of authority from the regional office to the Secretary and other divisions or offices within the Department not designated as separate statutory or non-statutory

components under the Act, and would include [the individual's] communications described above on behalf of constituents who request your help. Pursuant to 18 U.S.C. § 207(b)(ii), for a period of two years after termination of his Federal employment, [the individual] may not knowingly represent or aid your constituents or others by his personal presence at any formal or informal appearance before the United States, in connection with any particular matter involving specific parties in which the United States has a direct and substantial interest, in which he participated personally and substantially as an employee. Further, under the provisions of 18 U.S.C. § 207(a), [the individual] would be permanently barred from representing any of your constituents on your behalf or anyone else's on particular matters involving specific parties in which he participated personally and substantially as a Government employee before [his Department] or any other agency of the executive branch of the Federal Government. Pursuant to 18 U.S.C. § 207(b)(i), he would also be barred for a period of two years from representing your constituents or others before the Department or any other executive agency on particular matters which fell under his direct administrative or operational authority (official responsibility) while serving as a Federal employee.

The second issue is to what components of the Department and other Federal departments or agencies, if any, does this prohibition of 18 U.S.C. § 207(c) apply? In the case of the Department, our regulations at 5 C.F.R. § 737.31 establish [component names deleted] as separate statutory components for purposes of 18 U.S.C. § 207(c), and 5 C.F.R. § 737.32 establishes [component name deleted] as a separate non-statutory component for purposes of 18 U.S.C. § 207(c).

The net effect of such designation is that [the individual] may contact the offices or divisions so designated during the one-year "cooling off" period unless one of those offices was in his direct chain of command from his region to the Secretary of his Department. It should be noted, however, that because designation of the regional offices as separate statutory offices/bureaus has never been requested by this Department, the restrictions of 18 U.S.C. § 207(c) would apply to his regional office as well as to the other regional offices within the Department.

The one-year restriction of 18 U.S.C. § 207(c) would not apply to other agencies of the executive branch. The individual

should keep in mind, however, that the provisions of 18 U.S.C. §§ 207(a) and (b)(i) would apply to such other agencies.

We have reviewed [the individual's] position description and the memoranda detailing the role of a Principal Regional Official. Our comments are based in part on our interpretation of these documents. However, in order to obtain an opinion on a specific matter which might affect his prior Government service, it is suggested that he contact the Department's designated ethics official [name, address and telephone number deleted].

Sincerely,

J. Jackson Walter  
Director

-----  
**1** [Footnote relating to title change deleted.]

**2** It should be noted that "rulemaking" and "legislation" are "particular matters" under section 207(c). See 18 U.S.C § 207 (c)(2); 5 C.F.R § 737.11(d) Example 1. However, "rulemaking" and "legislation" are not generally "particular matters[s] involving a specific party or parties," the more narrow definition under 18 U.S.C. §§ 207(a) and (b).

**3** The other elements of 18 U.S.C. § 207(c) must, of course, be considered. [The individual], as a Senior Employee under the provisions of 18 U.S.C. § 207(d)(1)(C), may not under section 207(c) knowingly act as agent or attorney for, or otherwise represent, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, make any written or oral communication on behalf of anyone to his former Department or agency, in connection with any particular matter in which his Department or agency has a direct and substantial interest. The one year time period begins to run on the date of termination of employment. A similar situation results under 18 U.S.C § 207(b)(ii) with regard to aiding and assisting by Senior Employees, with the two year time period beginning on the date of termination of employment by the agency.