Recommendation 79-7

Appropriate Restrictions on Participation by a Former Agency Official in Matters Involving the Agency

(Adopted December 14, 1979)

Restrictions on post-employment activities of former Government employees may be necessary in order to protect the Government's interest in confidential information made available to its employees, to guard against the appearance of conflict of interest on the part of its employees, and to minimize the possibility that a departed employee might be able to exert undue influence on the decisions of his former colleagues. However, such restrictions impose burdens on departing employees and, to the extent they make public employment less attractive, they burden the Government itself. Consequently, such restrictions should not be drawn more broadly than necessary to deal with the dangers realistically presented.

Recommendation

1. The problem of post-employment activities of former Federal employees is too complicated, and the distinctions between permissible and impermissible conduct too fine, for fair and effective enforcement by criminal sanctions in most cases. The primary enforcement tool for 18 U.S.C. § 207 should be the administrative remedies provided by subsection 207(j), with criminal penalties reserved for clear cut and egregious violations.

2. Section 207 of Title 18 of the United States Code should be amended to limit the restrictions on post-employment activities to the following:

(a) The present permanent bar (18 U.S.C. § 207(a)) on representation of a private party in any "particular matter involving a specific party or parties" in which the employee participated "personally and substantially" on behalf of the Government should be retained. However, there should be no restriction on representation, except as provided in paragraph 2(b), with respect to other matters such as those which were pending under the employee's official responsibility but as to which he had no personal and substantial participation.

(b) The present one-year "cooling off period" (18 U.S.C. § 207(c) and (d)) on personal advocacy by former high-level personnel before their former agency is a reasonable

compromise and should be retained. The one-year ban should reach only personal attempts to influence the agency, not "aiding or advising" private colleagues or clients, or obtaining information from the agency.

(c) Agencies should be authorized to impose, with the concurrence of the Office of Government Ethics, additional restrictions based on their particular needs, but the proposed amended section 207 should preempt the rules of professional organizations or courts imposing additional post-employment restrictions.

3. Regardless of what action Congress takes on the above proposals, the disqualification of a former employee to act in a matter ordinarily should not extend to his firm or organization. Instead, the former employee should be barred from both personal participation in the matter and receiving compensation for anyone else's work done on it. An affidavit that the former employee is thus "screened" should be submitted by a partner in the firm, not as a basis for Government approval, but to assure that the firm has in fact recognized the issue and taken steps to deal with it. A court should retain its authority to decide that the circumstances in a particular case require a broader disqualification. In considering whether to do so, it should give special weight to the agency's view as to whether the "screening" arrangement affords adequate protection to its interests.

Citations:

45 FR 2309 (January 11, 1980)

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Note: This recommendation has become moot as a result of the Ethics Reform Act of 1989, Pub. L. 101-194, 103 Stat. 1716.