

Office of Government Ethics

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Letter to a Designated Agency Ethics

Official dated January 9, 1981

This responds to your request of November 28, 1980, for this Office's opinion regarding the extent to which former Senior Employees of your Department may, for the first year following their departure from Government service, contact the Department with respect to legislation in which the Department may be interested.

In essence, the issue you present is whether legislation is considered a "particular matter" for purposes of the restrictions applicable to a former Senior Employee appearing before his or her agency as set forth in 18 U.S.C. § 207(c).

It is the policy of this Office not to render opinions in response to hypothetical questions. In conformance with that policy, we cannot answer the questions which you posed.

We will, however, respond to the issue as phrased in the second paragraph above. Although the language and legislative history of subsection 207(c) are inconclusive on the question whether the term "particular matter" includes within its ambit legislative matters, this Office concluded early on that legislation does constitute a "particular matter" for purposes of 207(c). Accordingly, it is our position that a former Senior Employee could not, within one year after leaving Government service, lobby his or her former agency concerning legislation in which it has an interest.

For example, many programs developed within a particular Department or agency may require implementing legislation. Such legislation would constitute a particularizing phase of the program in question and, while the legislation would not be considered a "particular matter involving a specific party or parties" as that phrase is used in 18 U.S.C. § 207(a) or § 207(b), it would, in our opinion, constitute a "particular matter" as that phrase is used in subsection 207(c), in regard to which a former Senior Employee would be barred from representing anyone.

We view the above stated position to be consistent with the

language of the statute and the regulations issued thereunder. While the regulations (subsection 737.11(c)) provide that "broad technical areas and policy issues and conceptual work done before a program has become particularized into one or more specific projects" are not covered, we did not then nor do we now consider such language to exclude "legislation" from the coverage of § 207(c). Example 1, following the discussion in § 737.11(c), illustrates our position.

I hope the foregoing will prove helpful to you in responding to the questions of your current and former employees. If you have any questions, please feel free to contact me.

Sincerely,

J. Jackson Walter
Director