Office of Government Ethics
83 x 17 -- 11/09/83

Letter to a Former Employee dated November 9, 1983

On November 3, 1981, you wrote to this Office requesting our interpretation of the application of the post-employment provisions of the Ethics in Government Act to certain contemplated activities which you would undertake on behalf of [a private organization].

You have indicated that from May 1982 to September 1983, [you served in a position with an agency] paid at the rate of $53,000 per annum, leaving in September to resume private practice in Washington. Further, during your time at [the agency] you were substantially involved in developing [certain] proposed legislation.

You inform us that you have now been asked by [a private organization] to assist them in achieving passage of the Bill. This will require lobbying on the Hill as well as coordinating the [organization's] efforts with certain members of the White House and the interested executive departments. You have provided us a copy of [the Bill] for our review and advised that the Bill is scheduled to be voted on in the Senate during the third week of November.

First, you are correct in your understanding that you are not considered a Senior Employee by the Ethics in Government Act of 1978 and, therefore, not subject to the restrictions of 18 U.S.C. § 207(c). Only employees paid at the executive level, active duty uniformed service officers serving in grades 0-9 and above, and employees at or equivalent to GS-17 or above and designated as such by the Director, Office of Government Ethics, are considered Senior Employees. You fall in none of those categories.

You are, however, subject to the post-employment restrictions imposed by 18 U.S.C. §§ 207(a) and (b). After leaving Government employment a former employee may not serve as another person's representative to the Government on a case, contractual matter or other similar application or proceeding, formal or informal, in which he or she participated personally and substantially while a Government employee. There are three important limitations to

this prohibition which attacks "switching sides." The former employee is not restricted unless the matter in which he or she previously participated (i) was a "particular matter involving specific parties"; (ii) is the same matter in which he or she now attempts to represent another before the Government; and (iii) was a matter in which he or she was personally involved in a substantial way. These limitations are embodied in our Office's regulations concerning post-employment conflicts of interest (5 C.F.R. Part 737.5(c)(4)).

Applying these standards to [this Bill] and to the facts as you relate them, we can only conclude that [the Bill] must be viewed as legislation of general applicability which does not involve "a particular matter involving specific parties." Accordingly, you would not be prohibited from engaging in representational activities on behalf of the [organization] with [your former agency] or interested executive departments.

We should also note that 18 U.S.C. §§ 207(a) and (b) do not prohibit a former executive branch employee from appearing before Congress on any matter. Both sections state that the restrictions apply only to representations before or communications to --

> any department, agency, court, court martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof.

This does not include Congress.

Finally, we call to your attention the fact that pursuant to our regulations (5 C.F.R. Part 738) each agency has an officer or employee who is designated by the head of the agency to coordinate and manage the agency's ethics program. You may wish to contact [that office] in the event you have future questions relating to your former specific activities as an employee at [that agency].

Sincerely,

David H. Martin
Director