United States
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3917

October 8, 1992

Harry H. Flickinger
Assistant Attorney General
for Administration
[illegible]epartment of Justice
[illegible]ashington, DC 20530

Dear Mr. Flickinger:

This is in response to your letter (with its enclosures) of October 2, 1992. By your letter, you request a Certificate of Divestiture pursuant to I.R.C. §1043 for William S. Sessions, Director, Federal Bureau of Investigation. Your request relates to shares of AT&T, which were sold on August 5, 1992.

The [illegible]islative history of section 1043 demonstrates the [illegible] intent that this Office is not authorized to issue [illegible]ficates of Divestiture in the case of property previously [illegible] Ethics Reform Act of 1989, which promulgated new [illegible] was enacted on November 30, 1989. Subsequently, [illegible] further provisions were adopted to provide for the [illegible] of the section 1043 mechanism to apply to certain sales [illegible] prior to the issuance of certificates. The limited [illegible]stances to which this procedure could pertain are described [illegible] section [illegible] (a)(2) and (3) of the 1990 Technical Amendments to the [illegible] Reform Act of 1989. The authority of this Office to issue Certificates of Divestiture in such circumstances ceased as of [illegible] 18, 1990. There is no longer any authority for this Office [illegible] issue a certificate relating to property no longer owned.

Even if we exceeded our authority to issue certificates as you [illegible]est, it would not help the situation of Director Sessions. [illegible] [illegible]mination of the tax deferral mechanism shows the futility, in [illegible] absence of ameliorative legislation, of issuing certificates in [illegible] situations such as his where the property has already been sold. [illegible] that subsection (a) of section 1043 provides that the tax [illegible]ferral [illegible]chanism, the basis adjustment, applies only [illegible] permitted property purchased by the taxpayer during the 60-day [illegible] beginning on the date of such sale. From your submission [illegible] appears that permitted property was not purchased by Director [illegible] during the statutorily mandated 60-day period.

You should further note that even the relief legislation [illegible] Technical Amendments required [illegible] the [illegible] [illegible]rtificate issued prior to the sale, the sale must have [illegible] in order to comply with an ethics agreement (as [illegible] section 110(a) of the [illegible] in Government Act of 197[illegible] [illegible] pursuant to specific direction". This requirement supports the purpose of section 1043 in mandating that qualifying sales be made in fulfillment of specific antecedent determinations by ethics program officials as to the appropriateness of the divestiture remedy. In the case you raise, the sale was pursuant to an individual determination by Director Sessions. Accordingly, he could not have qualified under the standards of the relief legislation.

If you have further questions regarding this matter, please contact Norman Smith of this Office at 202-523-5757 ext. 1109.

Sincerely,

Stephen D. Potts

Stephen D. Potts
Director