

Office of Government Ethics

83 x 19 -- 12/23/83

Letter to an Employee dated December 23, 1983

This is in response to your letter of November 10, 1983 and your subsequent telephone conversations with [a member] of my staff. You have asked how the conflict of interest laws and regulations will affect your acceptance of a consultancy with [a] Corporation while you complete your employment on sick leave status. You have noted that OPM has determined at the end of your sick leave you will be eligible to be placed on the disability retired roll.

While on sick leave, regardless of whether the position you left has been filled, you remain an employee of the United States Government. Specifically for your position, pursuant to the terms of [a specific statute], you are an employee of [a named] Department. That you are on sick leave does not change your status; you are simply taking advantage of an employee benefit. Consequently, you are still subject to the criminal conflict of interest laws found in Title 18 U.S.C. §§ 202-209 and the standards of conduct for executive branch employees promulgated pursuant to Executive Order 11222.

After reviewing the proposed work statement attached to your letter, it appears that the two statutes of most concern to you are 18 U.S.C. §§ 203 and 205. Briefly, section 205, with limited exceptions, prohibits any Federal Government employee from representing anyone with or without compensation, on a matter before any Federal Department, agency or employee. Therefore, you may not represent [the Corporation] on any matter when it involves your making that representation to a Federal agency or a Federal employee.

It appears from your proposed statement of work that you may be asked by [the Corporation] to attend certain meetings at installations where Federal employees would be present. Until you are on actual retired status you will have to be exceedingly careful of your actions at these meetings so as not to make a "representation" on behalf of [the Corporation] and thus violate section 205.

Title 18 U.S.C. § 203 would have an impact on the manner in

which you would be paid as a consultant. In general, that section prohibits you from receiving any compensation based on anyone's representation to the Federal Government. As a practical example, your compensation could not be contingent upon [the Corporation's] successfully securing a Government contract as [Corporation] representatives would have been involved in the process leading to the contract. However, you may be a salaried employee or consultant paid on an hourly basis when your payment is based on an obligation of [the Corporation] to you and not on an obligation contingent on a Federal source of funding.

Finally, because you are still a present employee [a specified agency regulation] requires that you receive approval for any outside employment. This regulation is based on the provisions of Executive Order 11222 and the model regulations promulgated pursuant thereto (5 C.F.R. Part 735).

[My staff attorney] has spoken with an attorney with the [Corporation], and has discussed the statutes outlined in this letter. If you or she have any further questions concerning the restrictions placed upon you while you are in sick leave status, please feel free to contact [my staff] at (202)632-7642. It is our understanding that [an individual in your agency] will be responding to your post employment questions.

Sincerely,

David H. Martin
Director