

## **Office of Government Ethics**

**82 x 8 -- 06/02/82**

### **Letter to a Designated Agency Ethics Official dated June 2, 1982**

Your letter of April 20, 1982 requests our opinion on the applicability of the post-employment restrictions of 18 U.S.C. § 207(a) and (b) to [an employee of your Department] in the event she should accept a transfer from your Department to the International Bank for Reconstruction and Development (World Bank).

You inform us that [the employee] is presently the Department's Senior Counsel in the Office of the General Counsel, a position which has not been designated as a Senior Employee position, that she has been offered a position at the World Bank and that your Department would agree to the transfer. The query is whether [the employee], if she should accept the transfer to the World Bank, would be subject to the restrictions of 18 U.S.C. §§ 207(a) and (b).

You contend that she comes within the exception to these post-employment provisions contained in our regulation 5 C.F.R. § 737.23(b) which states that for purposes of sections 207(a), (b) and (c) of title 18 United States Code, "[a] former employee does not engage in unlawful activity when he or she acts on behalf of . . . (2) any public international organization if he or she serves . . . on temporary assignment from any agency."

This regulation as initially proposed by our Office exempted an employee "on secondment from any agency." 44 Fed. Reg. 19986 (1979). Secondment is a term applied to a military man detached from his regiment for temporary detail. In the regulation as finally published the term was changed to the present phrase "temporary assignment from any agency." This Office, in response to a comment expressing concern about the treatment of former employees who join international organizations, declared that "such former employees, except those serving under the conditions set forth in § 737.23(b)(2), would be subject to the restrictions of the law and these regulations." 45 Fed. Reg. 7404 (1980).

[The employee] would not be on detail to the World Bank; she would be transferred there. Would this be a temporary

assignment? You claim that it would be by reason of sections 3581-4 of title 5 of the United States Code, which authorizes the transfer of a Federal employee to an international organization for a period not beyond 5 years or any extension thereof with the consent of the employee's agency. During that period the transferred employee "is deemed to remain an employee of the agency from which transferred for retirement, health benefits, and group life insurance purposes." 5 C.F.R. § 352.309(b). At the conclusion of this service, the transferred employee would be entitled to reemployment by his or her former agency. 5 U.S.C. § 3582(b).

Since a transfer rather than a detail would not be construed normally as a temporary assignment, we have looked to the legislative history of the transfer provisions -- 5 U.S.C. §§ 3581-3584 -- for assistance. We find that the State Department in 1958, with the approval of the then Civil Service Commission, sponsored legislation "to encourage and authorize details and transfers of federal employees for service with international organizations," the purpose being to increase the availability of Federal personnel by detail or transfer for "short periods of employment" so as to raise the percentage of well qualified Americans occupying positions with international organizations and at the same time to broaden opportunities "for Federal personnel to acquire international experience of value to the Government." H.R. Rep. No. 2509, 85th Cong., 2nd Sess. 4007 (1958) (emphasis added).

The legislation as enacted -- Pub. L. No. 85-795 -- covered both the detail and transfer of personnel to international organizations for a period of three years. In 1966, when the Civil Service laws were codified Pub. L. No. 89-554, the subject of details was grouped with other civil service details in section 3343 of title 5, United States Code, and transfers were listed separately in sections 3581-3584 of title 5, United States Code. Both details and transfers were extended to five years with the possibility of renewals.

The legislative history evidences that these details and transfers, while different in the manner of their implementation, are intended for the same purpose -- the temporary assignment of Federal personnel to international agencies. Additional substantiation for this conclusion is found in Subpart C of Part 352 of title 5, Code of Federal Regulations, entitled "Detail and Transfer of Federal Employees to International

Organizations." Section 352.301 states that "the purpose of this subpart is to encourage details and transfers of employees for service with international organizations as authorized by sections 3343 and 3581-3584 of title 5, United States Code, and to provide procedures for participation in the program."

In view of the foregoing, we advise you that should [the employee] transfer to the World Bank with the consent of your Department, she would not be subject to the prohibitions of section 207 of title 18, United States Code, during the period of her employment with the World Bank by reason of 5 C.F.R. § 737.23(b).

Sincerely,

J. Jackson Walter  
Director