

**Office of Government Ethics**  
**81 x 11 -- 03/18/81**

**Letter to a Designated Agency Ethics**  
**Official dated March 18, 1981**

This is in response to your letter of March 2, 1981. In connection with the question of whether the disqualification of 18 U.S.C. § 207(c) applies to a former General Counsel of your Department with respect to [a major statutory agency within the Department], you raise the broad issue of the proper interpretation of the word "supervision" as used in 18 U.S.C. § 207(e) and 5 C.F.R. § 737.13(c)(3). While we have no desire to expansively construe a criminal statute, we are also mindful that a convoluted interpretation of these provisions is not permitted.<sup>1</sup>

In creating a limitation to the application of section 207(c) for those in distinct and separate segments of a Department, the Congress wished to avoid unfairness to those who actually had work which was separable. However, the principal objective -- to address the problem of unfair or undue influence -- was retained.<sup>2</sup> Influence is not coextensive with formal line authority, but is rather an intangible personal factor built upon contacts both at the level of those upon whom it would potentially be brought to bear and at higher levels in the organizational hierarchy.<sup>3</sup>

Under the statute and our regulations, the key to a determination pursuant to section 207(e) of whether section 207(c) is applicable to bar post-employment activity of a former Senior Employee of the parent agency is whether his or her responsibilities included supervision of the subordinate agency.<sup>4</sup> In view of the concerns expressed in the preceding paragraph, the use of the "supervision" limitation in subsection (e) is appropriate. Webster's dictionary gives the ordinary usage of the term "supervision" to mean a critical watching and directing. This is certainly consistent with both the common notion of the General Counsel's function, his legal authority, and the nature of supervision as discerned by managerial organization specialists.<sup>5</sup> These organizational analysts demonstrate that the supervisory function is participatory with the efforts of several higher-ranking authorities bearing on activities below. Even though the General Counsel might not exercise detailed control over activity within the [major agency] his authority is clear and his influence is pervasive.<sup>6</sup>

Accordingly, we determine that the official responsibilities of the General Counsel of [your] Department include supervision of the [this major agency] within the meaning of 18 U.S.C. § 207(e) and 5 C.F.R. § 737.13(c)(3) and that, therefore, the disqualification of 18 U.S.C. § 207(c) is applicable with respect to that agency.

Sincerely,

J. Jackson Walter  
Director

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**1** Cf. United States v. Louis Irons, No. 80-1478, slip op. (7th Cir. 1981)

**2** S. Rep. No. 170, 95th Cong., 1st Sess. 154(1977)

**3** See Center for Applied Ethics of the New York Society for Ethical Culture, The Revolving Door 9-13(1977)

**4** See 5 C.F.R. § 737.13(c)(3)

**5** See Peter F. Drucker, Management: Tasks, Responsibilities, Practices, especially 390 et seq. and 450(1973).

**6** Input into the Department's policymaking is usually an important indication of influence which in turn is a critical element of "supervision" under 18 U.S.C. § 207(e). See 124 Cong. Recl H 10183 (daily ed. Sept. 20, 1978)(remarks of Rep. Danielson). While you have told us that the [major agency] does not have to clear its regulations with the [Department's] General Counsel, you have also advised us that the [Department's] General Counsel does provide "legal counsel" on issues [handled by the agency] to the Secretary of [the Department] who, of course, does have direct supervisory authority over the [major agency].