

Office of Government Ethics

80 x 7 -- 08/22/80

Letter to a Former Employee dated August 22, 1980

This is in response to your letter of August 12, 1980, wherein you requested our interpretation of section 502 of the Ethics in Government Act of 1978, as amended ("the Act") (Pub. L. No. 95-521), as it applies to your particular factual situation.

You relate that you were employed by [a] Federal commission [(commission)] and by [its predecessor commission] from July 2, 1974 through May 31, 1979. You resigned as Acting Director of [adivision], (GS-15), effective May 31, 1979. You were subsequently reemployed by [the commission] as a special Government employee, effective November 5, 1979. You state that you worked a total of 22 days, completed your assignment and terminated your employment on December 26, 1979.

The issue is whether your service as a special Government employee subsequent to July 1, 1979, makes your activities as a regular Federal employee up until you resigned (effective May 31, 1979) subject to the amended post employment conflict of interest provisions set forth in the Act.

Section 502 of the Act provides, in part, as follows:

The amendments made by Section 401 shall not apply to those individuals who left Government service prior to the effective date of such amendments . . . except that any such individual who returns to Government service on or after the effective date of such amendments . . . shall be thereafter covered by such amendments (emphasis added).

We have reviewed the legislative history concerning section 502 and find nothing which deals precisely with the above issue.

However, the Committee report on S. 555 does clearly provide that "[f]ormer officers or employees who have left government service prior to the effective date of this Title (Title V) shall be subject to the former provisions of 18 U.S.C. § 207." **1**

In view of the foregoing, it is the opinion of this Office that, as applied to your situation, section 502 makes the new restrictions of the amended law applicable to any and all matters upon which you worked subsequent to your reemployment (i.e., after July 1, 1979). However, as to those particular matters in which you were either personally and substantially involved or which were pending under your official responsibility during your previous period of Government service (i.e., before July 1, 1979) you would be subject to the former provision of 18 U.S.C. § 207.

We believe the foregoing interpretation to be the most reasonable and equitable. Such interpretation, we believe, comports with the spirit and intent of the statute in that it provides for enabling executive agencies to utilize, from time to time, the services of former Government employees without subjecting such individuals to undue restrictions on what otherwise would constitute lawful post-employment activity. To hold otherwise would deny the United States the ability to utilize the expertise of such individuals, a result which clearly is contrary to the intent of Congress as expressed throughout the legislative history of the Act.

Sincerely,

J. Jackson Walter
Director

1 S. Rep. No. 170, 95th Cong., 1st Sess. 49(1977).