

Office of Government Ethics

93 x 26 -- 10/04/93

Letter to a Former Employee dated October 4, 1993

I recently reviewed a memorandum from you concerning the applicability of 18 U.S.C. § 207(a) to your proposed post-employment activities on behalf of citizens of [a community], a political subdivision of [a political entity]. Your memorandum was a follow-up to your telephone discussions with me in February and more recently with another attorney-advisor at the Office of Government Ethics (OGE).

You terminated service as an employee of [an agency] earlier this year. This Office first became involved in the issue relating to your representation of the community when contacted by an ethics official [of your former agency]. Because of the difficulty of the issue, the fact that the circumstances relevant to your inquiry arose at a time when you served with other executive branch agencies, and the possibility that your question would require coordination with several other agencies, it was decided that OGE was in the best position to respond to your inquiry.

As described in your memorandum and clarified in our subsequent telephone conversations, the key issue is whether your proposed post-employment communications to the executive branch on behalf of the community would be in connection with the same particular matter in which you participated while a Federal employee. While assisting [two Federal agencies] in efforts to conclude an agreement between the United States and the [political entity], you were personally and substantially involved in the negotiation of a[n agreement]. More specifically, you played a key role in negotiating [a] Section of the [agreement] settling claims arising from a U.S. program conducted in the [political entity].

You also indicated that you "served as legal advisor to Administration officials who were responsible for conducting consultations with Members of Congress and Congressional staff..." concerning approval of the [agreement]. When the Congress approved the [agreement], it included additional language in a public law specifically concerning [the community]. In part, the Congress stated in that legislation that --

It is the intent of Congress that such steps (if any) as are necessary to restore [the community] and return the people to their homeland will be taken by the United States in consultation with the Government of the [political entity] and, in accordance with its authority under the constitution of the [political entity], the local government council.

As you explained to me over the phone, you would expect to assist the community in obtaining financing for resettlement. You would not expect to be seeking funds that may still be available under [a] Section for the settlement of claims. However, arguments that you present to the executive branch in favor of a new appropriation might or might not require reliance on the language set forth in the Public Law. You indicate in your memorandum that you do not believe you were ever involved in any discussion of [the] Section during your contacts with the Congress concerning approval of the [agreement] itself.

It is my view that you should not contact departmental or agency officials in an attempt to seek funds that may yet be available pursuant to the original Section appropriation. I believe such a contact would be barred by 18 U.S.C. § 207(a) since you would be making a communication, with the intent to influence, in connection with the same particular matter involving a specific party in which you participated personally and substantially during Government service. On the other hand, you could in my view contact departmental or agency officials in order to seek an entirely new appropriation to be used toward the resettlement of your clients or others [in the community]. In this connection, it is also my view that you could make reference to the intent of Congress as expressed in [the] Public Law.

You also asked if 18 U.S.C. § 207(a) bars you from contacting the Congress concerning funding for the resettlement of [the community]. Section 207(a) bars certain communications to and appearances before Federal departments, agencies, and courts. It does not bar communications to Congress or to legislative staff. However, OGE has in the past indicated that former employees must exercise care in their communications with the legislative branch since such communications may unavoidably also be directed to employees of a department or agency. In this regard, please see OGE Informal Advisory Letters 81 x 5(1), 81 x 5(2), and 83 x 7.

I hope this guidance is of assistance.

Sincerely,

[an OGE Associate General
Counsel]