

## Office of Government Ethics

81 x 30 -- 08/28/81

### Letter to a Former Employee dated August 28, 1981

This is in response to your request for an opinion on the impact of the post-employment restrictions of 18 U.S.C. § 207 on your post-employment activities before a Federal Commission.

You have advised that until [early] 1981, you were [an officer within the legislative branch] and, by virtue of that office, an ex-officio member of the Commission. Your request included as an attachment a letter dated July 22, 1981 to the chairman of the Commission in which you pose several questions on behalf of a group of individuals from a State who are contemplating establishing an independent organization whose activities may fall within the purview of [an Act administered by this Commission].

At the outset, we conclude that even though the Commission is an independent executive branch agency, you as an ex-officio member of the Commission are not subject to the post-employment restrictions of 18 U.S.C. § 207.

We have reviewed the Supreme Court's opinion in *Buckley v. Valeo*<sup>1</sup> and the legislative history surrounding the establishment and membership of the Commission. The legislative history relating to the 1976 amendments to the Act [in question]<sup>2</sup> indicates clear Congressional expression on this point:

This arrangement, I should add, does not violate the decision of the Supreme Court in the above mentioned case [*Buckley v. Valeo*] for it is in the act of voting that the Commission collectively exercise the administrative powers granted to the Commission by the Statute, powers which the Court said may only be exercised by officers of the executive branch.<sup>3</sup>

The Commission is charged with implementing and administering [this] Act. The Act establishes a comprehensive scheme for the regulation of financing in Federal elections, including the disclosure of political campaign contributions, reports by such committees, candidates, and others, the making or receiving of financial contributions and limitations on contributions. We

note particularly that, under the provisions of [a section of the Act], the Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex-officio, without the right to vote and six members appointed by the President with the advice and consent of the Senate. Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. § 5315). It is our understanding that you, by order of the President Pro Tempore of the Senate, were paid at a salary equivalent to the compensation level III while in the employ of the United States Senate.

The final regulations issued by this Office, implementing 18 U.S.C. § 207, define "Government Employee" as including any officer or employee of the executive branch (as defined in 18 U.S.C. § 202 and 5 U.S.C. §§ 2104 and 2105). Other provisions of Title 18 of the United States Code, such as sections 203 and 205, expressly apply to officers and employees in the executive, legislative and judicial branches, but sections 207, 208 and 209 of Title 18 do not apply by their terms to officers and employees of the legislative and judicial branches.

We view the unique composition of the Commission as an allocation of authority between the executive and legislative branches in the politically sensitive area in which [the] Act operates, and we construe section 207 as not covering you as an officer or employee of the Congress (or one of its Houses or agencies) who was responsible in a direct manner to the Congress for the performance of his duties.

Sincerely,

J. Jackson Walter  
Director

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1 424 U.S. 1 (1976)

2 [Citation omitted]

3 122 Cong. Rec. H. 3782 (daily ed. May 3, 1976) (remarks Rep. Brademas).