

Office of Government Ethics

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Letter to an Agency Ethics Official dated February 3, 1987

Reference is made to your letter of December 24, 1986, requesting an opinion with respect to the application of the exemption provisions of 18 U.S.C. § 207(d)(2)(B)(i). More specifically, you ask whether the employment of a former [agency] Senior Employee as a member of the staff of [the "Board"] would qualify the former official for an exemption from the one-year cooling off provisions of 18 U.S.C. § 207(c).

18 U.S.C. § 207(d)(2) states in part:

The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is --

- (A) an elected official of a State or local government, or
- (B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government.

For the reasons stated below we are of the opinion that the section 207(d) exemption would be applicable to the Board employee.

The Board is a non-profit interstate compact organization serving as the regional representative of 16 southern states and the commonwealth of Puerto Rico in energy and environmental matters.² Integral to the statutory scheme of an interstate compact organization is a close working relationship among the states and the Federal Government. The Preamble to the Act granting consent for such an organization emphasizes the benefits which may result from such cooperation and specifically refers to the creation of an agency (emphasis added) of the party states. The Board itself is composed of representatives from each member party state, and the Federal Government may be represented without vote. Board personnel are appointed with approval of the Board. The Board may borrow, accept, or contract for the services of personnel from any state or the United States, or any

subdivision or agency thereof, from any interstate agency or from any institution, person, firm or corporation.

The exception in the statute for representation of a state or local government is grounded in considerations of federalism. If a former high-ranking Federal official is elected to a state or local position which requires extensive communications with the Federal Government, statutory restrictions should not unduly impede the ability of the elected representative of the people to perform the duties of his position. Similar considerations apply to appointed officers and employees of state and local governments. They do not, however, extend to the "hired gun" operating independently who would stand to profit personally from the representation of a state in a particular instance.³

Finally, since the stated purpose of the compact is to provide the instruments and framework for a cooperative effort to improve the economy of [a particular region of the country] and contribute to the well-being of the region's people, we conclude that those employed by such an organization fit within the purpose and meaning of the exemption created by 18 U.S.C. § 207(d)(2)(B)(i).

Sincerely,

David H. Martin
Director

¹ Under 18 U.S.C. § 207(c), for a period of one year after leaving Government employment, a former Senior Employee may not represent anyone in an attempt to influence his or her former agency on a matter pending before, or of substantial interest to, such agency.

² [The statutory citation for the interstate compact.]

³ A colloquy on the House floor underscores this point, noting that the term "full time" is really intended to describe the bona fide employee, and that the term includes people who may work only a few days a week, e.g., a part-time city manager in a small community. Lobbyists and consultants would not be exempt from the one-year contact ban. 125 Cong. Rec. H. 3696-97 (Daily ed. May 24, 1979).