

## **Office of Government Ethics**

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### **Letter to a Former Employee dated January 2, 1991**

This is in response to your letter of November 9, 1990, requesting post-employment advice.<sup>1</sup> You are seeking our opinion as to whether your serving as a translator between a representative of [a Government agency] and residents of your town who do not speak or understand English would be a conflict of interest. Your letter indicates that you are a retired former employee of [that same agency]. With the limitations indicated below, we are of the opinion that you may serve as a translator without creating a conflict of interest.<sup>2</sup>

The primary restrictions applicable to former Government employees are found at 18 U.S.C. § 207. Section 207(a) imposes a lifetime prohibition on former employees representing or, with the intent to influence, making any oral or written communication on behalf of anyone other than the United States to an agency or court concerning any "particular matter involving a specific party or parties" in which they participated personally and substantially as a Government employee. The phrase "particular matter involving a specific party or parties" refers to a judicial or other proceeding or a particular claim. See 5 C.F.R. § 2637.102(a)(7). An application [to the agency] for benefits would be considered a particular matter involving a specific party or parties for the purposes of section 207. To participate "personally" means directly and includes the participation of a subordinate when actually directed by the former Government employee. 5 C.F.R. § 2637.201(d)(1). "Substantially" means that the employee's involvement must be of significance to the matter or form a basis for a reasonable appearance of such significance. Id.

In addition to the lifetime prohibition contained in section 207(a), section 207 also includes a two-year prohibition against a former officer or employee of the Government representing or, with the intent to influence, making any oral or written communication on behalf of any other person in any "particular matter involving a specific party or parties" that was actually pending under the employee's "official responsibility" within a period of one year prior to the termination of Government service. 18 U.S.C. § 207(b)(i). The term "official

responsibility" is defined as "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government actions." 18 U.S.C. § 202[(b)].

If you were a "Senior Employee" when you retired from Government service, there are other restrictions that you should be aware of. Section 207(c) bars former Senior Employees from representing or making any oral or written communication on behalf of anyone other than the United States before the department or agency in which the employee served concerning any particular matter pending before such department or in which such department has a direct and substantial interest for one year after leaving that position. Section 207(b)(ii) places a two-year restriction prohibiting former Senior Employees from aiding or assisting (in addition to the lifetime prohibition on actually representing) anyone other than the United States concerning any particular matter involving a specific party or parties in which such employee participated personally and substantially as an officer or employee. A Senior Employee is one who is paid at a rate of pay specified in or fixed under subchapter 53 of title 5, U.S.C. (Executive Schedule), 18 U.S.C. § 207(d)(1)(A), or one whose position has been designated by OGE as involving significant decision-making or supervisory responsibility, 18 U.S.C. § 207(d)(1)(C). If you are not sure whether your position was so designated, you should contact the Designated Agency Ethics Official for [your former agency] to ascertain whether these restrictions apply to you.

It is important to note that, with the exception of 18 U.S.C. § 207(b)(ii) (applicable to former Senior Employees only), all of the above statutes only prohibit a former Government employee from engaging in certain representational activities on behalf of anyone other than the United States. It is an open question whether serving as an interpreter between the [foreign language] speaking claimants and [your former agency] would be considered "representational" activity at all. Even if we assume that serving as an interpreter for these claimants is representational activity within the meaning of the post-employment statutes, a few precautions will enable you to provide this service without violating any of the post-employment restrictions. We advise that you decline to serve as an interpreter if the claim being discussed is one that you were personally and substantially involved in as a Government

employee. If you held a supervisory position with the Government, we would also recommend that you decline to serve in connection with any claim that was pending within your official responsibility during your final year of such responsibility for a period of two years after your official responsibility ended.

If you held a "Senior Employee" position with the Government, you should [observe] the restrictions applicable to Senior Employees described earlier. If you served as a Senior Employee during your final year of Government service, you are prohibited from representing or making oral or written communications on behalf of another to [your former agency].<sup>3</sup> 18 U.S.C. § 207(c). As indicated earlier, this is a one-year restriction; if you were a Senior Employee we would therefore advise you not to serve as an interpreter for claimants [before your former agency] until one year has elapsed since your responsibility as a Senior Employee has ceased.

By following the above advice, you will be able to provide service as an interpreter to those who need it while avoiding any potential problems with the post-employment restrictions applicable to you. We hope that the information provided in this letter is helpful to you.

Sincerely yours,

Stephen D. Potts  
Director

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**1** Your letter was initially sent to the Office of Personnel Management, who forwarded it to this Office. As a result, we did not receive your letter until December 6, 1990.

**2** For this opinion, we are assuming that you retired on or after July 1, 1979. If you left Government service before July 1, 1979, you should contact this Office for further information on the restrictions that apply to you.

**3** Although [your former agency] is itself a part of [a] Department, it has been designated as a separate statutory agency for the purposes of 18 U.S.C § 207(c). 5 C.F.R § 2637.214.