

Office of Government Ethics

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Letter to a Government Attorney dated February 28, 1990

This is in response to your letter (with its enclosures) of February 22, 1990. By your letter you ask for our views concerning a matter you discuss involving tax liabilities of [a Government employee] which have not been disclosed on his public financial disclosure reports.

Please note that the Ethics in Government Act has been revised by the Ethics Reform Act of 1989 (Pub. L. No. 101-194). Former Title II of the Ethics Act has been repealed, with coverage of the executive branch now appearing in Title I which has been expanded by section 202 of the Ethics Reform Act to cover the three branches of the Federal Government. New section 104 of the Ethics Act, encompassing the material formerly in section 204, apparently relates only to false filings under new section 102. Whether there will be technical corrections legislation to the Ethics Reform Act to resolve such transitional difficulties in coverage is not clear at this time. Accordingly, it may be that any action in cases such as those involving [the employee] must proceed under 18 U.S.C. § 1001.

Former section 202(a)(4) of the Ethics Act provided, as does new section 102(a)(4), that each disclosure report must include a full and complete statement of "the identity and category of value of the total liabilities owed to any creditor which exceed \$10,000 at any time during the preceding calendar year." The exceptions under both provisions are identical. Besides a threshold reporting rule with respect to revolving charge accounts, two exceptions are applicable. One relates to certain consumer items. The second, which concerns us in this matter, subparagraph "(A)" of both provisions, excludes the reporting of "any mortgage secured by real property which is a personal residence of the reporting individual or his spouse."

In regard to the possible relevance of the subparagraph "(A)" exception to the matter you raise, research does not disclose that this type of issue has been previously addressed by this Office. We try to interpret the financial disclosure provisions of the Ethics Act with a view towards the common usage and general understanding of the terminology it employs. In this

regard, one might ask whether it is reasonable to have deemed, as might be asserted in [the employee's] behalf, a tax lien to be a mortgage to which the exception applies. We conclude that it is not. We view a mortgage as a conveyance of real property through a contractual agreement between the parties which becomes void on payment or other performance according to its stipulated terms. The term "lien" is a more generic term which may include the lien arising from a contractual mortgage transaction. However, the term mortgage would not encompass the unilateral filing of a claim arising through an otherwise existing liability. Accordingly, we concur that a tax liability is an item which is required to be reported, and that under the circumstances [the employee] was required to disclose his tax liabilities on his financial disclosure reports.

Sincerely,

Donald E. Campbell
Acting Director