

Office of Government Ethics
83 x 8 -- 04/25/83

Letter to an Employee dated April 25, 1983

You have inquired about the post employment disabilities you would have if you should leave the Government to become an associate of a law firm, and about any resultant disqualifications for the law firm by reason of your former Federal employment.

You inform us that you are a contract attorney with the Federal Government in [an agency]. You raise post employment problems with respect to three cases with which you have been involved. In advance of discussing them we shall outline briefly the basic prohibitions under 18 U.S.C. § 207 of which you evidence general knowledge.

Subsection 207(a) would prevent you as a former Government employee from serving as a representative for another person or firm before the Government in connection with any contract, claim or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which you participated personally and substantially while with the Government. This is a lifetime prohibition. If such a matter was under your official responsibility during the last year of your Government service, but you were not personally and substantially involved in it, subsection 207(b) would bar you for two years from handling it before the Government. The term "official responsibility" is defined in 18 U.S.C. § 202(b).

There is an additional prohibition in subsection 207(c) applicable to Senior Employees designated by the Director of this Office pursuant to 18 U.S.C. § 207(d). We shall not define it since you do not appear to be in this category. You have made reference in your letter to subsection 207(g) but this covers law partners of present Federal employees, not post employment.

I am sure you will understand that it is difficult for us to render a binding opinion with respect to the cases presented by you since you have furnished us only a sketchy outline of the facts. In case (A), in which you "prepared a litigation report," and in case (B), in which you "rendered considerable staff advice

on an administrative decision," it would appear that you have participated personally and substantially. If (A) and (B) constituted particular cases or matters involving specific parties at the time of your participation, you would be barred forever from representing outside persons in those cases before the Government.

In case (C) you state: "I have just been involved in some in-house discussions with people who handled the case" and "I never actively participated in it." Your involvement in it, depending on the actual discussions, could possibly fall within the prohibition of section 207. In this connection, see 5 C.F.R. § 737.5(d)(1) and its example 2, reading as follows: "A Government lawyer is not in charge of, nor has official responsibility for a particular case, but is frequently consulted as to filings, discovery, and strategy. Such an individual has personally and substantially participated in the matter."

Regardless of section 207, there could be a question of legal ethics in this matter. Whether or not the firm with which you would become associated would be disqualified in any particular case which you would be prohibited from handling is an issue of professional responsibility cognizable under the rules of your local and State bar associations. The American Bar Association (ABA) has rendered an opinion (Formal Opinion No. 342) that the Model Code of Professional Responsibility -- Disciplinary Rules 5-105(D) and 9-101(B) -- does not cause an absolute disqualification of a law firm under those circumstances. The employment of appropriate screening measures, such as excluding the former Government attorney from any participation in the case with no access to relevant files and with no remuneration from funds obtained by the firm from that case, could erect a "Chinese Wall" which could effectively insulate the former Federal attorney and permit the firm to handle the case. This subject has been discussed at length in *Armstrong v. McAlpin*, 625 F.2d 433 (2d Cir. 1980), judgment vacated, 449 U.S. 1106 (1981). This case contains valuable references to ABA's Opinion No. 342, Opinion No. 889 of the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York, and relevant legal articles, such as the Note, *The Chinese Wall Defense of Law Firm Disqualification*, 128 U. Pa. L. Rev. 677 (1980).

I hope we have been of assistance.

Sincerely,

David R. Scott
Acting Director