

Office of Government Ethics
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Letter to a DAEO dated May 9, 1985

In your letter of March 15, 1985, you furnished us details about the transfer of some former employees of the Civil Aeronautics Board (CAB) to your agency -- the Department of Transportation (DOT). You informed us that upon the termination of CAB, DOT did not establish a separate operating administration to carry out the transferred CAB functions; instead these functions were integrated into the existing DOT organizational structure. This background was necessary for us in answering the question posed in your letter of January 29, 1984, as to the applicability of section 207(c) of Title 18, United States Code, to former Senior Employees of CAB.

Section 207(c), in pertinent part, provides as follows:

Whoever [senior employee] . . . knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication . . . to

(1) the department or agency in which he served as an officer or employee, or any officer or employer thereof, and

. . . .

(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest. (Emphasis added.)

The statutory language is explicit. It refers to the "department or agency" in which the Senior Employee served. This was CAB, not DOT. This conclusion is substantiated by subsequent subsections (d)(1)(C) and (e) of section 207 which empower the Director of the Office of Government Ethics (OGE) to limit the one year restriction to bureaus within the Department or agency in which the Senior Employee served. Subsection (d)(1)(C) permits:

a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before . . . persons in an unrelated agency or bureau, within the same department or agency (Emphasis added.)

In addition, subsection (e) provides that whenever the Director of OGE:

determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall . . . designate such agency or bureau as a separate department or agency (Emphasis added.)

Section 207(c) was enacted to close the "revolving door" through which former Presidential appointees and other high level agency officials would return in their private capacities to their former agencies to take immediate advantage of their stature within that agency. At times a Senior Employee would sever his or her official position one day and appear the next day before that very agency to represent a client. Some employees would be confused as to whether that person was before the agency in an official or private capacity. It is the particular agency in which the official served where his or her influence could be exercised most effectively.

In your letter of March 15, you inform us that CAB employees who have been transferred to DOT have been assigned to several different divisions and bureaus within DOT. Some are in DOT's Office of General Counsel, Office of Administration, Office of the Inspector General and in other areas of DOT. In most cases, they have different functions and supervisors than they had while they were at CAB. The units in which they are now employed have no necessary relationship to the functions in which they were engaged while at CAB. In short, there is no part of DOT that could be considered CAB for purposes of the application of the statute.

Under the language of section 207(c), as further buttressed by subsections (d)(1)(C) and (e) and the legislative history, it is our conclusion that former Senior Employees of CAB are not subject to the one year "revolving door" provision in section 207(c) with respect to any matters pending before DOT

or in which DOT has a direct and substantial interest.

As a reminder, you should review any new positions created within the Department for transferring CAB employees to see if you should recommend those positions for designation by this Office as Senior Employees under section 207(d)(1)(C). These new recommendations, if any, should be included in your May 15 designation package.

Sincerely,

David H. Martin
Director