

Letter to a Federal Employee
dated December 15, 2006

This responds to your electronic mail transmission dated December 7, 2006, in which you requested an advisory opinion on whether you properly may file, in Federal court, an *amicus curiae* brief representing the views of [an] Association. The case in question involves issues of importance to [the Association's] membership. I understand that you are both an [employee] employed by [a Federal agency], and [you hold a position in the Association].

In your request for an opinion, you correctly noted that 18 U.S.C. § 205 generally prohibits a United States Government employee from acting as agent or attorney for anyone before a Federal agency or court in connection with any covered matter in which the United States is a party or has a direct and substantial interest.¹ Section 205(i), however, provides that "[n]othing in this section prevents an employee from acting pursuant to (1) chapter 71 of title 5" Chapter 71 of title 5 provides that an employee² may form, join, or assist a labor organization,³ including acting as a representative of the organization before a Federal agency, the Congress, or other appropriate authorities. 5 U.S.C. § 7102. It does not authorize such activity, however, where "the participation or activity would result in a conflict or apparent conflict of

¹ A similar statute, 18 U.S.C. § 203, prohibits the receipt of compensation for representational services. Although your request did not specify whether the [Association] would pay you to prepare the *amicus* brief, my assumption is that you will not be paid and thus section 203 is not at issue.

² "'Employee' means an individual employed in an agency" (with certain limited exceptions). 5 U.S.C. § 7103(a)(2). "'Agency' means an Executive agency" (with certain limited exceptions). 5 U.S.C. § 7103(a)(3).

³ "'Labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment" 5 C.F.R. § 7103(a)(4).

interest or would otherwise be incompatible with law or with the official duties of the employee." 5 U.S.C. § 7120(e).

I understand that you are employed with [an office within your agency]. Thus, it is clear that you are an "employee" within the meaning of chapter 71. The [Association] is an organization representing approximately 1,000 [individuals] serving [two Federal agencies]. It is an affiliate of a labor organization representing more than 75,000 professional, technical, and administrative employees. The [Association], which charges dues of [a certain amount] per pay period, exists, *inter alia*, to raise the standards by which its members are employed. Thus, the [Association] appears to be a "labor organization" within the meaning of chapter 71 of title 5.

Assuming that your submission of an *amicus curiae* brief on behalf of the [Association] would not create a conflict or apparent conflict of interest, and would not otherwise be incompatible with your official duties, our opinion is that chapter 71 of title 5 provides you with the authority to file the brief without violating 18 U.S.C. § 205.

Sincerely,

Robert I. Cusick
Director