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THE PRESIDENT HAS SEEN

THE WHITE HOUSE

WASHINGTON

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December 13, 1994

MEMORANDUM FOR THE PRESIDENT

THROUGH: LEON PANETTA

FROM: HAROLD ICKES HI

SUBJECT: Restrictions on transfer of White House and other Federal employees to the Democratic National Committee or the Clinton/Gore Re-elect Committee

As you requested, I have checked with the Counsel's Office regarding the legal restrictions on White House and other federal employees moving to the Democratic National Committee ("DNC") or the Clinton/Gore Re-election Committee ("Re-elect") (which has yet to be formed). My understanding of the applicable law is as follows.

Section 207, Title 18 U.S.C.: The basic restriction is contained in sections 207 (c) and (d) of 18 U.S.C., a criminal statute, which applies to "senior" and "very senior" federal employees. In essence the statute states that if one has served as a "senior" or "very senior" employee, then, for 1 year after the former employee leaves that "senior" or "very senior" position, the employee may not knowingly make, with the intent to influence, any communication or appearance (sometimes referred to herein as "contacts") seeking official action before an employee or officer of his/her former agency. For "senior" or "very senior" former employees serving in the Executive Office of the President ("EOP"), this includes contacts with the entire EOP and includes communications with and appearances before the President and the Vice President, if that contact is made on behalf of any other person (i.e., the DNC or Re-elect).

For former "very senior" employees the list of prohibited contacts also includes individuals appointed to Executive Schedule positions (essentially Senate-confirmed Presidential appointees) in any agency which includes the Secretary/Administrator of the department/agency and typically the top 4 levels in the department/agency.

Unlike "very senior" employees, those classified as "senior" employees are not barred from contacts with federal Executive level employees in agencies outside the EOP. (Note, however, that the President's Senior Appointee pledge, discussed below, bars contacts by certain former "senior" employees with Executive level employees holding positions outside the EOP.)

This restriction applies to all matters, regardless of whether the former "senior" or "very senior" employee was ever officially involved in a matter that is the subject of the contact. In addition, the restriction applies to any matter about which the former senior employee is seeking official action, not just matters involving specific parties.

The basic criteria for a "senior" employee is compensation in excess of $108,200. The basic criteria for a "very senior" employee is compensation in excess of $148,400 (or $133,600 for EOP employees), as well as all Assistants to the President regardless of pay level. By way of example, I am considered a "very senior" employee and thus, if I were shifted to the Re-elect, I could not communicate with or appear before anyone in the EOP, including you and the Vice President, or any Senate confirmed appointees at any agency, for a period of one year if that communication or appearance were for the purpose of seeking official action on behalf of any other person, which, in this case, would be the Re-elect.

The restrictions with respect to each former employee vary depending upon the status (title, jurisdiction and salary) of the employee, but the basic rule is outlined above. Thus, for example, it is my understanding that John Emerson, is classified as "senior" (not "very senior"), and, therefore, would be barred from communicating or meeting with any EOP employee, the President, and Vice President for 1 year. Since he is not "very senior", unlike me, he would be able to communicate or meet with non-EOP senior officials and employees outside of the EOP. However, restrictions under the Senior Appointee pledge, discussed below, will limit the scope of permissible non-EOP communications/appearances by "senior" employees like John Emerson.

By contrast, Counsel has determined that Kevin O'Keefe is neither a "senior" nor a "very senior" employee and, therefore, sections 207 (c) and (d) would not be applicable to him as long as his communication with or appearances before EOP employees don't concern matters that he participated in personally and substantially while at the EOP.

By way of another example, the bar contained in section 207 would apply to Eli Segal only with respect to communications or appearances before his agency. Thus he would be able to appear before or communicate with anyone in the EOP other than on matters which pertain to his agency (National Service).

Restrictions under the President's Senior Appointee pledge:

In addition to section 207 of 18 U.S.C., there is a 5 year ban imposed by the President's "Senior Appointee pledge," ("pledge") which you initiated. It applies to all Assistants to the President, to Deputy Assistants to the President earning $100,000 or more and to other full time non EOP, non-career Presidential, Vice Presidential or Agency head appointees whose basic rate of pay is at or above Level V of the Executive Schedule (currently $108,200).

The language basically tracks that of section 207 and, therefore, it can be argued that the 5 year ban under the pledge, must be applied as if section 207 required a 5 year, rather than a 1 year, bar.

There are 2 ways of dealing with this. One would be to reduce the 5 year period in the pledge to 1 year or, in the alternative, interpret it so as not to apply to personnel who are shifted to political campaigns or political committees. The latter is probably the preferable route.

According to Beth Nolan, the ethics expert in Counsel's office, there have been prior, but, to date, unadopted, proposals to amend section 207 so as to make it not applicable to personnel who are being transferred from federal employment to a campaign committee. This exception was again unsuccessfully sought in the last Congress. Whether we want to again seek such an exception, needs to be discussed, and I will take it up with Leon.

In addition to being 4 years longer, the pledge is broader than sections 207 (c) and (d) in connection with EOP employees (but not in connection with non EOP federal employees). Under the pledge, an EOP employee is prohibited from communicating with/appearing before any employee of the EOP and, in addition, any non EOP department/agency where the former EOP employee was personally and substantially involved in the ongoing oversight of, or significant ongoing decision-making in the department's/agency's budget, programs or personnel actions.

Thus, for example, even though under section 207, John Emerson, as a "senior" employee, would be permitted to communicate with/appear before non EOP departments/agencies, under the pledge, he would be prohibited from doing so for any department/agency for which he had responsibility (for example, an agency for which he had responsibility for selecting personnel) while he was an EOP employee.

Similarly, Eli Segal, as a former senior EOP employee, is subject to the pledge regarding communications/meetings with EOP officials (for 5 years after he terminated service with the EOP).

According to Ms. Nolan, section 207 as well as the pledge would apply to someone like Secretary Brown, in connection with his communicating with or appearing before his former agency (the Commerce Department) on behalf of another person (i.e., the Re-elect) as well as individuals appointed to executive level positions (primarily Senate-confirmed appointees) which basically include the top 5 levels of Cabinet and other agencies. For example, under section 207, he would be barred for 1 year after leaving Commerce from communicating with/appearing before any other Secretary/Administrator of any department/agency and the first 4 or so levels below them. Thus, he may well be greatly hampered in his efforts, were you and he to decide that he should become Chair of the Re-elect Committee.

Finally, with respect to Senator Dodd, were he to remain a Member of the Senate as well as becoming Chair of the DNC, he may communicate with/appear before any employee in the Executive branch. He may not, however, be compensated for his work on behalf of the DNC and he may not use his Congressional staff for DNC-related activities. See attached 12 December 1994 memo to me from Kathleen M. Whalen of the Counsel's office.

You, Leon, Erskine and I should discuss this overall situation at your convenience.

cc: Erskine Bowles
Maggie Williams
Jack Quinn

THE WHITE HOUSE

WASHINGTON

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: MS DATE: 4/5/20

2019-0990-S

~~Confidential~~

December 12, 1994

MEMORANDUM FOR HAROLD ICKES
ASSISTANT TO THE PRESIDENT AND
DEPUTY CHIEF OF STAFF

FROM: KATHLEEN M. WHALEN KMW
ASSISTANT COUNSEL TO THE PRESIDENT

SUBJECT: Potential Service by Senator Dodd as Chair of the Democratic National Committee

This responds to your question whether Senator Christopher Dodd may serve as Chair of the Democratic National Committee (DNC), while continuing to serve as a Senator. Provided that he is not compensated for his services to the DNC and that his congressional staff members do not engage in representational activities on behalf of the DNC, Senator Dodd may assume the position of DNC Chair while serving as a Senator.

A conflict statute prohibits an employee or officer of the executive, legislative, or judicial branch, whether or not for compensation, from acting "as agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest. 18 U.S.C. § 205(a). This statute specifically does not apply to a **Member of Congress**, the President, or the Vice President. However, it would apply to members of Senator Dodd's staff. Therefore, staff members would not be permitted to engage in representational activities on behalf of the DNC.

Another conflict statute prohibits **Members of Congress**, as well as officers or employees of the executive, legislative, or judicial branch, from accepting compensation for seeking, receiving, or accepting "any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another." 18 U.S.C. § 203(a). Thus, Senator Dodd may serve as DNC Chair, provided that he is not compensated for such services.

Attached is a Senate Ethics Committee Interpretive Ruling (No. 359, dated January 3, 1983) indicating that it is appropriate under Senate rules for a Senator to serve as the General Chairman of a national political party committee. While the opinion states that the Senator could accept compensation for such services, section 203 discussed above would not permit compensation for representational activities. Because representational activities are not easily divisible from other committee activities for which a Senator presumably could be compensated, it would be best for Senator Dodd not to be compensated at all for his service as DNC Chair.

If you have any further questions about the scope of Senator Dodd's participation as DNC Chair, please call me at 6-7900.

cc: Abner J. Mikva

INTERPRETATIVE RULING NO. 359

Date Issued : January 3, 1983
Applicable Rules : 34, 37

QUESTION CONSIDERED:

Does the Senate Code of Official Conduct prohibit a Senator from serving as the compensated General Chairman of a national political party committee?

Ruling:

The Committee held that the Code of Official Conduct does not prohibit a Senator from serving as General Chairman or receiving reasonable compensation commensurate with the services rendered to the party. Additionally, the Committee concluded that Senate Rule 34 (Title I of the Ethics in Government Act of 1978, as amended) requires the Senator to make an annual disclosure of the receipt of outside income aggregating $100 or more from any one source during a calendar year, and reimbursements to cover travel and related expenses and aggregating $250 or more from any one source during a calendar year.

Facts:

A Senator has been requested to serve as a General Party Chairman, a position which would include the following duties: to provide advice and guidance to the party's National Committee and to its other officers and staff; and to coordinate the activities of the party's National Committee with those of the party's Senatorial Committee, the Congressional Committee, and any committee or committees organized to secure the election of the party's candidates for the Presidency or Vice Presidency of the United States.

Discussion:

While the Committee found that no provision of the Code of Conduct specifically addressed the questions raised by the ruling request, it concluded that two provisions must be considered.

Paragraph 2 of Rule 37 (Conflict of Interest) provides a general admonition against engaging in non-Senate activities which interfere with the conscientious performance of Senate duties. While the Committee will customarily offer its comments when asked, it has been the Committee's policy to place upon the Member primary responsibility for determining whether the activity he intends to engage in presents a conflict of interest and to caution him that he has an on-going responsibility to avoid conflicts of interest and the appearance thereof. Thus, while the Committee found that no inherent conflicts of interest appeared to be raised by the Senator's service as General Chairman, the Senator would nonetheless want to remain sensitive to the possibility that some conflict might arise and, if that should occur, to take appropriate action.

As to the acceptance of compensation for services rendered as General Chairman, paragraph 5 of Rule 37 provides: "No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association, or corporation; or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed. For the purposes of this paragraph 'professional services' shall include, but not be limited to, those which involve a fiduciary relationship."

The type of services that the drafters of the Code of Conduct intended to prohibit were those of a professional nature, involving a fiduciary duty to outside commercial or business organizations, which on their face were likely to present conflicts between Senate duties and outside responsibilities. The Committee therefore concluded that this provision was not intended to be applicable to services provided as General Chairman of a political party.