

APR 10 1968

Mr. Joseph W. Bartlett  
Acting Director  
Office of Foreign Direct Investments  
Department of Commerce  
Washington, D. C. 20230

Dear Joe:

In response to your letter of February 16, 1968, there is enclosed a letter stating our view that your informal committee of private practitioners is not subject to the conflict-of-interest enactments applicable to intermittent "employees" of the Government. That letter has been written in formal style with the thought that you might wish to be in a position to distribute copies of it to the committee independent of your informal note to Marty. I may add that your outline of a limited and controlled role for this group seems to us sound and reasonable.

For your information, I enclose a copy of a letter of October 22, 1962, from this Office to the Under Secretary of the Treasury, giving advice with respect to an IRS advisory group along the same lines as the enclosed letter to you. I do not think the differences in the composition of the two groups are sufficient to warrant any difference in the basic conclusions expressed in both letters.

Sincerely yours,

Frank M. Wozencraft  
Assistant Attorney General  
Office of Legal Counsel

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Mr. Joseph W. Bartlett  
Acting Director  
Office of Foreign Direct Investments  
Department of Commerce  
Washington, D.C. 20230

Dear Mr. Bartlett:

You have requested our advice as to whether the statute and Executive order regulating potential conflicts of interest by Government employees, including part-time advisers and consultants, would apply to an informal committee you have organized. The committee is composed of lawyers and accountants to whom you look for advice, from the viewpoint of experienced private practitioners, on many technical problems arising under regulations issued by the Office of Foreign Direct Investments.

Under your plan, no persons outside the Government will be privy to the facts or circumstances of any individual case. Although you propose to submit draft language of amendments and interpretations of the regulations to the committee, no member will participate in any final decisions. You contemplate that comments of members will be noted and discussed, but no member of the group will be given an opportunity to examine or learn the contents of final versions of amendments or interpretations prior to the public at large. In selecting the members of the committee you have drawn on lawyers and accountants whose professional reputation is known to you. They will serve without compensation. In addition to the exchange of views with this committee of practitioners, you expect from time to time to receive written suggestions and materials from, and to have discussions with, other appropriate groups of interested business and professional people.

On the basis of the plan thus outlined by you, the members of your committee appear to us clearly to be participating in a general professional capacity broadly representative of their professions and the financial community served by such practitioners, rather than in any direct representational capacity on behalf of specific clients. On the other hand, in view of limitations described above on their activities as members of the committee, we do not believe they can be characterized as "officers or employees" of the Government serving temporarily or intermittently, within the contemplation of either 18 U.S.C. 201 et seq. or Executive Order No. 11222. If, for example, you were to turn to a single expert on occasion for informal advice respecting a regulation or interpretation under consideration by your office, such contact would not make such expert an "employee" to whom the conflict-of-interest statute or Order is applicable. The result is not changed, it seems to us, because you seek the benefit of collective advice of a number of experts on an equally informal basis as described above. It is our view, therefore, that the activities of your informal committee are outside the scope of the conflict-of-interest statute and Order.

It must be recognized, of course, that the members of the committee may be expected at times to seek to protect or espouse the interests of the financial community or of particular groups in it that they ordinarily represent. But it seems to us that the limitations you have described will serve both to put the views of members of the committee in proper perspective and to prevent any appearance of improper influence by, or favoritism toward, the members. We would suggest, however, that you bring to the attention of the members of the committee the provisions of sections 302-305 of Executive Order No. 11222, in which standards of ethical conduct are prescribed for consultants, advisers and other intermittent Government employees. While the members of your committee are not "special Government employees" in the technical sense,

for the reason noted above, these sections set forth fundamental rules of ethics which ought to be observed in the conduct of public business independently of the more specific prohibitions of conflict-of-interest enactments. In particular, the attention of your committee should be called to the primary ethical standard concerning use of official "inside information" not yet available to the general public. For your convenience a copy of these sections of the Order is annexed.

Sincerely,

Frank M. Wozencraft  
Assistant Attorney General  
Office of Legal Counsel

Extract from Executive Order No. 11222 of May 8, 1965  
(30 F.R. 6469 of May 11, 1965)

**PRESCRIBING STANDARDS OF ETHICAL CONDUCT  
FOR GOVERNMENT OFFICERS AND EMPLOYEES**

**PART III--STANDARDS OF ETHICAL CONDUCT FOR SPECIAL  
GOVERNMENT EMPLOYEES**

**SECTION 301.** This part applies to all "special Government employees" as defined in Section 202 of Title 18 of the United States Code, who are employed in the Executive Branch.

**SEC. 302.** A consultant, adviser or other special Government employee must refrain from any use of his public office which is motivated by, or gives the appearance of being motivated by, the desire for private gain for himself or other persons, including particularly those with whom he has family, business, or financial ties.

**SEC. 303.** A consultant, adviser, or other special Government employee shall not use any inside information obtained as a result of his government service for private personal gain, either by direct action on his part or by counsel, recommendations or suggestions to others, including particularly those with whom he has family, business, or financial ties.

**SEC. 304.** An adviser, consultant, or other special Government employee shall not use his position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to him or persons with whom he has family, business, or financial ties.

**SEC. 305.** An adviser, consultant, or other special Government employee shall not receive or solicit from persons having business with his agency anything of value as a gift, gratuity, loan or favor for himself or persons with whom he has family, business, or financial ties while employed by the government or in connection with his work with the government.

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