



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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July 17, 1981

The Honorable John D. Dingell
Chairman, Committee on Energy
and Commerce
House of Representatives

Dear Mr. Chairman:

This is in response to your request for our opinion concerning the possibility that a payment by the Mountain States Legal Foundation (the Foundation), to Secretary of Interior, James Watt, would constitute an illegal salary supplement. We were also asked by Mr. Finnegan of the Committee staff to consider at the same time whether Secretary Watt's action with respect to proposed regulations, Waterland Power Regulations for Acreage Limitation (46 Fed. Reg. 12991, February 19, 1981), violated Secretary Watt's recusal statement to the Senate Committee on Energy and Natural Resources.

Based on information supplied us on both questions by the Office of Ethics in Government, we find no basis to disagree with the conclusion of that Office that the severance agreement did not constitute unlawful compensation of Secretary Watt and that the action with respect to the proposed regulations did not violate the Secretary's recusal agreement with the Senate Committee on Energy and Natural Resources.

Severance Pay Question

The principle question concerning the post-employment payment arranged between the Foundation and Secretary Watt is whether it supplements Secretary Watt's salary in violation of 18 U.S.C. § 209(a) which provides:

"(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

"Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

[Possibility of Unlawful Compensation]

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"Shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

On February 18, 1981, the Board of Directors of Mountain States Legal Foundation ratified by resolution the action of the Foundation's Executive Committee granting James G. Watt a severance allowance of \$12,000 "for meritorious and devoted service rendered to the Foundation prior to" January 21, 1981. A copy of the resolution is attached. In a March 11 letter to Chairman McClure, Senate Committee on Energy and Natural Resources, the Director of the Office of Ethics in Government concluded that the severance payment does not violate 18 U.S.C. § 209 or other relevant conflict of interest laws. In reaching this conclusion the Director said:

"In arriving at our conclusion, we have weighed such indicia of intent as the personnel practices of the Foundation; the nature, size and stated purpose of the award; and the expressed nature of the services performed by Mr. Watt while in the employ of the Foundation."

We have no reason to disagree with this conclusion. Federal law does not prohibit severance pay for past services. Rather, it prohibits only compensation from outside sources for services performed as an officer or employee of the Government. The size of the payment in relationship to the Secretary's salary of several times the severance payment, the length of his service with the Foundation, and the fact that it is a single lump sum payment are consistent with the description of the payment in the resolution as a severance allowance for past services rather than compensation for Mr. Watt's services as Secretary of the Interior.

Recusal Question

Secretary Watt provided the Senate Committee on Energy and Natural Resources with the following recusal statement during his confirmation hearings on January 6, 1981:

"I have been a salaried employee of the Mountain States Legal Foundation for the last 3 1/2 years. In that capacity I have been attorney of record in almost all, if not all, its cases. No financial remuneration has been paid to me specifically because of a particular case, nor is any money due me.

"If confirmed as Secretary of the Interior, I would recuse myself from having any direct involvement in, or giving any advice or counsel on, the specifics of any particular case brought while I have been employed by the Mountain States Legal Foundation in which both Mountain States Legal Foundation and the Department of Interior are parties.

"This policy will eliminate any possible appearance of any potential conflict, while enabling me to fully participate in all policy decisions as Secretary of the Interior."

On January 8, he added the following paragraph to his statement:

"In addition to the matters described in my original recusal statement presented to the Senate Committee on Energy and Natural Resources on January 6, 1981, if confirmed as Secretary of [the] Interior, I would recuse myself from participation in any aspect of litigation in Federal or State Court and any Administrative proceedings, other than the formulation or promulgation of a rule of general application, involving the adjudication or decision of a specific matter such as an application or appeal within the Department of Interior or any other Department or Agency of the Federal Government, when the Mountain States Legal Foundation is a party or represents a party." (Emphasis added.)

Secretary Watt also supplied the Committee with a list of litigation that the Foundation had been involved in while he was director.

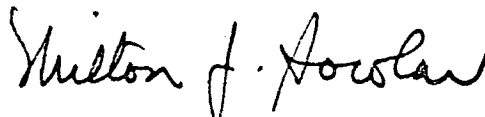
On February 19, 1981, the Department of Interior suspended the comment period on and thus indefinitely postponed issuance of the proposed "Acreage Limitations; Water and Power Rules and Regulations," and related draft environmental impact statement. 46 Fed. Reg. 12991-2, February 19, 1981. While employed by the Foundation, Secretary Watt had commented on behalf of the Foundation on an early version of the proposed regulations at a public comment hearing conducted by the Department of Interior in 1977. The question thus arises whether Secretary Watt violated his recusal statements by being involved as Secretary in a regulatory action relating to a matter he had participated in on behalf of the Foundation.

Secretary Watt's initial recusal statement was clearly limited to restricting his participation in those specific cases brought by the Foundation while he was its employee. The terms of his statement do not apply to the Secretary considering general policy matters when the policy is not being reviewed or decided as part of those particular cases.

The Secretary's January 8 amendment extends the recusal to future legal and administrative proceedings in which the Foundation is a party or represents a party. This amendment clearly excepts "the formulation or promulgation of a rule of general application" from the recusal agreement. Secretary Watt's involvement in the suspension of the rule-making process for the proposed regulation does not involve him in a "case" brought while he was employed by the Foundation nor does it involve litigation or an administrative proceeding brought by the Foundation. Rather it constitutes "the formulation or promulgation of a rule of general application * * *." Accordingly, we agree with the conclusion of the Office of Ethics in Government that the Secretary did not violate his recusal agreement to the extent that he participated in the suspension of the comment period on the proposed rule.

The Office of Ethics in Government indicates that you have been provided the same documents provided this Office. Accordingly, we have not included this material in this letter except where we felt it would help explain our response.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosure