

87TH CONGRESS
1ST SESSION

H. R. 8140

IN THE SENATE OF THE UNITED STATES

AUGUST 8, 1961

Read twice and referred to the Committee on the Judiciary

AN ACT

To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) so much of chapter 11 of title 18 of the United
4 States Code as precedes section 214 is amended to read as
5 follows:

I

1 **"CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS**
 2 **OF INTEREST**

"Sec.

- "201. Bribery of public officials and witnesses.
 "202. Definitions.
 "203. Compensation of Members of Congress, officers and others, in mat-
 ters affecting the Government.
 "204. Practice in Court of Claims by Members of Congress.
 "205. Activities of officers and employees in claims against and other
 matters affecting the Government.
 "206. Exemption of retired officers of the Armed Forces.
 "207. Disqualification of former officers and employees in matters con-
 nected with former duties or official responsibilities; disqualifica-
 tion of partners.
 "208. Acts affecting a personal financial interest.
 "209. Salary of Government officials and employees payable only by
 United States.
 "210. Offer to procure appointive public office.
 "211. Acceptance or solicitation to obtain appointive public office.
 "212. Offer of loan or gratuity to bank examiner.
 "213. Acceptance of loan or gratuity by bank examiner.
 "214. Offer for procurement of Federal Reserve bank loan and discount
 of commercial paper.
 "215. Receipt of commissions or gifts for procuring loans.
 "216. Receipt or charge of commissions or gifts for farm loan, land bank,
 or small business transactions.
 "217. Acceptance of consideration for adjustment of farm indebtedness.
 "218. Voiding transactions in violation of chapter; recovery by the United
 States.

3 **"§ 201. Bribery of public officials and witnesses**

4 " (a) For the purpose of this section :

5 " 'public official' means Member of Congress, or
 6 Resident Commissioner, either before or after he has
 7 qualified, or an officer or employee or person acting for
 8 or on behalf of the United States, or any department,
 9 agency or branch of Government thereof, in any offi-
 10 cial function, under or by authority of any such depart-

1 ment, agency, or branch of Government, or a juror;

2 and

3 “‘person who has been selected to be a public offi-

4 cial’ means any person who has been nominated or

5 appointed to be a public official, or has been officially

6 informed that he will be so nominated or appointed; and

7 “‘official act’ means any decision or action on any

8 question, matter, cause, suit, proceeding or controversy,

9 which may at any time be pending, (or) which may by

10 law be brought before any public official, in his official

11 capacity, or in his place of trust or profit.”

12 “(b) Whoever, directly or indirectly, corruptly gives,

13 offers or promises anything of value to any public official or

14 person who has been selected to be a public official, or offers

15 or promises any public official or any person who has been

16 selected to be a public official to give anything of value to

17 any other person or entity, with intent—

18 “(1) to influence any official act; or

19 “(2) to influence such public official or person who

20 has been selected to be a public official to commit or aid

21 in committing, or collude in, or allow, any fraud, or

22 make opportunity for the commission of any fraud, on

23 the United States; or

24 Congress, or any agency, commission or officer authorized

25 by the laws of the United States to hear evidence or take

1 “(3) to induce such public official or such person
2 who has been selected to be a public official to do or omit
3 to do any act in violation of his lawful duty, or

4 “(c) Whoever, being a public official or person selected
5 to be a public official, directly or indirectly, corruptly asks,
6 demands, exacts, solicits, seeks, accepts, receives, or agrees
7 to receive anything of value for himself or for any other per-
8 son or entity, in return for:

9 “(1) being influenced in his performance of any
10 official act; or

11 “(2) being influenced to commit or aid in com-
12 mitting, or to collude in, or allow, any fraud, or make
13 opportunity for the commission of any fraud, on the
14 United States; or

15 “(3) being induced to do or omit to do any act in
16 violation of his official duty; or

17 “(d) Whoever, directly or indirectly, corruptly gives,
18 offers, or promises anything of value to any person, or offers
19 or promises such person to give anything of value to any
20 other person or entity, with intent to influence the testimony
21 under oath or affirmation of such first-mentioned person as a
22 witness upon a trial, hearing, or other proceeding, before
23 any court, any committee of either House or both Houses of
24 Congress, or any agency, commission, or officer authorized
25 by the laws of the United States to hear evidence or take

1 testimony, or with intent to influence such person to absent
2 himself therefrom; or

3 “(e) Whoever, directly or indirectly, corruptly asks,
4 demands, exacts, solicits, seeks, accepts, receives, or agrees
5 to receive anything of value for himself or for any other
6 person or entity in return for being influenced in his testi-
7 mony under oath or affirmation as a witness upon any such
8 trial, hearing, or other proceeding, or in return for absenting
9 himself therefrom—

10 “Shall be fined not more than \$20,000 or three times
11 the monetary equivalent of the thing of value, whichever is
12 greater, or imprisoned for not more than fifteen years, or
13 both, and may be disqualified from holding any office
14 of honor, trust, or profit under the United States.

15 “(f) Whoever, otherwise than as provided by law for
16 the proper discharge of official duty, directly or indirectly
17 gives, offers, or promises anything of value to any public
18 official, former public official, or person selected to be a pub-
19 lic official, for or because of any official act performed or to
20 be performed by such public official, former public official,
21 or person selected to be a public official; or

22 “(g) Whoever, being a public official, former public
23 official, or person selected to be a public official, otherwise
24 than as provided by law for the proper discharge of official
25 duty, directly or indirectly asks, demands, exacts, solicits,

11 seeks, accepts, receives, or agrees to receive anything of
2 value for himself for or because of any official act performed
3 or to be performed by him; or

4 “(h) Whoever, directly or indirectly, gives, offers, or
5 promises anything of value to any person, for or because
6 of the testimony under oath or affirmation given or to be
7 given by such person as a witness upon a trial, hearing, or
8 other proceeding, before any court, any committee of either
9 House or both Houses of Congress, or any agency, com-
10 mission, or officer authorized by the laws of the United
11 States to hear evidence or take testimony, or for or be-
12 cause of his absence therefrom; or

13 “(i) Whoever, directly or indirectly, asks, demands,
14 exacts, solicits, seeks, accepts, receives, or agrees to receive
15 anything of value for himself for or because of the testimony
16 under oath or affirmation given or to be given by him as a
17 witness upon any such trial, hearing, or other proceeding,
18 or for or because of his absence therefrom—

19 “Shall be fined not more than \$10,000 or imprisoned
20 for not more than two years, or both.

21 “(j) Subsections (d), (e), (h), and (i) shall not be
22 construed to prohibit the payment or receipt of witness fees
23 provided by law, or the payment, by the party upon whose
24 behalf a witness is called and receipt by a witness, of

1 the reasonable cost of travel and subsistence incurred and the
2 reasonable value of time lost in attendance at any such trial,
3 hearing, or proceeding, or, in the case of expert witnesses,
4 involving a technical or professional opinion, a reasonable
5 fee for time spent in the preparation of such opinion, and in
6 appearing and testifying.

7 “(k) The offenses and penalties prescribed in this sec-
8 tion are separate from and in addition to those prescribed in
9 sections 1503, 1504, and 1505 of this title.”

10 **“§ 202. Definitions**

11 “(a) For the purpose of sections 203, 205, 207, 208,
12 and 209 of this title the term ‘special Government employee’
13 shall mean an officer or employee of the executive branch
14 of the United States Government, of any independent agency
15 of the United States or of the District of Columbia, who is
16 retained, designated, appointed, or employed to perform, with
17 or without compensation, for not to exceed one hundred and
18 thirty days during any period of three hundred and sixty-
19 five consecutive days, temporary duties either on a full-time
20 or intermittent basis. Notwithstanding section 29 (c) and
21 (d) of the Act of August 10, 1956 (70A Stat. 632; 5
22 U.S.C. 30r (c) and (d)), a Reserve officer of the Armed
23 Forces, or an officer of the National Guard of the United
24 States, unless otherwise an officer or employee of the United

1 States, shall be classified as a special Government employee
2 while on active duty solely for training. A Reserve officer
3 of the Armed Forces or an officer of the National Guard
4 of the United States who is serving a period of extended
5 active duty in excess of one hundred and thirty days shall
6 be classified as an officer of the United States within the
7 meaning of section 203 and sections 205 through 209 and
8 218. The terms 'officer or employee' and 'special Govern-
9 ment employee' as used in sections 203, 205, 207 through
10 209, and 218, shall not include enlisted members of the
11 Armed Forces.

12 " (b) For the purposes of sections 203, 205, and 207
13 of this title, the term 'official responsibility' means the direct
14 administrative or operating authority, whether intermediate
15 or final, and either exercisable alone or with others, and
16 either personally or through subordinates, to approve, dis-
17 approve, or otherwise direct Government action.

18 **"§ 203. Compensation to Members of Congress, officers, and**
19 **others in matters affecting the Government**

20 " (a) Whoever, otherwise than as provided by law for
21 the proper discharge of official duties, directly or indirectly
22 receives or agrees to receive, or asks, demands, solicits, or
23 seeks, any compensation for any services rendered or to be
24 rendered either by himself or another—

1 “ (1) at a time when he is a Member of Congress,
2 Member of Congress Elect, Resident Commissioner, or
3 Resident Commissioner Elect; or

4 “ (2) at a time when he is an officer or employee of
5 the United States in the executive, legislative, or judicial
6 branch of the Government, or in any agency of the
7 United States, including the District of Columbia,
8 in relation to any proceeding, application, request for a
9 ruling or other determination, contract, claim, controversy,
10 charge, accusation, arrest, or other particular matter in
11 which the United States is a party or has a direct and
12 substantial interest, before any department, agency, court-
13 martial, officer, or any civil, military, or naval commission,
14 or

15 “ (b) Whoever, knowingly, otherwise than as provided
16 by law for the proper discharge of official duties, directly
17 or indirectly gives, promises, or offers any compensation for
18 any such services rendered or to be rendered at a time when
19 the person to whom the compensation is given, promised, or
20 offered, is or was such a Member, Commissioner, officer, or
21 employee—

22 “Shall be fined not more than \$10,000 or imprisoned

1 for not more than two years, or both; and shall be incapable
2 of holding any office of honor, trust, or profit under the
3 United States.

4 “(c) A special Government employee shall be sub-
5 ject to subsection (a) only in relation to a particular matter
6 (1) in which he has at any time participated personally and
7 substantially as a Government employee or as a special Gov-
8 ernment employee through decision, approval, disapproval,
9 recommendation, the rendering of advice, investigation or
10 otherwise, or (2) which is or within two years has been a
11 subject of his official responsibility, or (3) which is pending
12 in the department or agency of the Government in which he
13 is serving: *Provided*, That clause (3) shall not apply in the
14 case of a special Government employee who serves no more
15 than fifteen days during any period of three hundred and
16 sixty-five consecutive days.

17 **“§ 204. Practice in Court of Claims by Members of**
18 **Congress**

19 “Whoever, being a Member of Congress, Member of
20 Congress Elect, Resident Commissioner, or Resident Com-
21 missioner Elect, practices in the Court of Claims, shall be
22 fined not more than \$10,000 or imprisoned for not more
23 than two years, or both, and shall be incapable of holding
24 any office of honor, trust, or profit under the United States.

1 "§ 205. Activities of officers and employees in claims
2 against and other matters affecting the Gov-
3 ernment

4 "Whoever, being an officer or employee of the United
5 States in the executive, legislative, or judicial branch of the
6 Government or in any agency of the United States, includ-
7 ing the District of Columbia, otherwise than in the proper
8 discharge of his official duties—

9 "(1) acts as agent or attorney for prosecuting any
10 claim against the United States, or receives any gratu-
11 ity, or any share of or interest in any such claim in
12 consideration of assistance in the prosecution of such
13 claim, or

14 "(2) acts as agent or attorney for anyone before
15 any department, agency, court, court-martial, officer, or
16 any civil, military, or naval commission in connection
17 with any proceeding, application, request for a ruling
18 or other determination, contract, claim, controversy,
19 charge, accusation, arrest, or other particular matter in
20 which the United States is a party or has a direct and
21 substantial interest—

22 "Shall be fined not more than \$10,000 or imprisoned for
23 not more than two years, or both.

1 "A special Government employee shall be subject to the
2 preceding paragraphs only in relation to a particular mat-
3 ter (1) in which he has at any time participated personally
4 and substantially as a Government employee or as a special
5 Government employee through decision, approval, disap-
6 proval, recommendation, the rendering of advice, investiga-
7 tion or otherwise, or (2) which is or within two years has
8 been a subject of his official responsibility, or (3) which is
9 pending in the department or agency of the Government
10 in which he is serving: *Provided*, That clause (3) shall
11 not apply in the case of a special Government employee who
12 serves no more than fifteen days during any period of three
13 hundred and sixty-five consecutive days.

14 "Nothing herein prevents an officer or employee from
15 taking uncompensated action, not inconsistent with the
16 faithful performance of his duties, to aid or assist any person
17 who is the subject of disciplinary, loyalty, or other person-
18 nel administration proceedings with respect to those pro-
19 ceedings.

20 "Nothing herein or in section 203 prevents an officer or
21 employee, including a special Government employee, from
22 acting, with or without compensation, as agent or attorney
23 for or otherwise aiding or assisting his parents, spouse, child,
24 or any person for whom he is serving as guardian, executor,
25 administrator, trustee, or other personal fiduciary except in

1 those matters in which he has participated personally and
2 substantially as a Government employee, through decision,
3 approval, disapproval, recommendation, the rendering of
4 advice, investigation, or otherwise, or which are the sub-
5 ject of his official responsibility, provided that the Govern-
6 ment official responsible for appointment to his position
7 approves.

8 “Nothing herein or in section 203 or 207 prevents
9 a present or former special Government employee from aid-
10 ing or assisting another person in the performance of work
11 under a contract with or for the benefit of the United States
12 provided that the head of such special Government em-
13 ployee’s department or agency shall certify in writing that
14 the national interest requires such aid or assistance.

15 “Such certification shall be published in the Federal
16 Register.

17 “Nothing herein prevents an officer or employee from
18 giving testimony under oath or from making statements
19 required to be made under penalty for perjury or contempt.

20 **“§ 206. Exemption of retired officers of the Armed Forces**

21 “Sections 203 and 205 of this title shall not apply to a
22 retired officer of the Armed Forces of the United States while
23 not on active duty and not otherwise an officer or employee
24 of the United States, or to any person specially excepted by
25 Act of Congress.

1 "§ 207. Disqualification of former officers and employees
2 in matters connected with former duties or offi-
3 cial responsibilities; disqualification of partners

4 " (a) Whoever, having been an officer or employee of
5 the executive branch of the United States Government, of
6 any independent agency of the United States, or of the
7 District of Columbia, including a special Government em-
8 ployee, after his employment has ceased, knowingly acts as
9 agent or attorney for anyone other than the United States
10 in connection with any judicial or other proceeding, applica-
11 tion, request for a ruling or other determination, contract,
12 claim, controversy, charge, accusation, arrest, or other partic-
13 ular matter in which the United States is a party or has a
14 direct and substantial interest and in which he participated
15 personally and substantially as an officer or employee,
16 through decision, approval, disapproval, recommendation,
17 the rendering of advice, investigation, or otherwise, while
18 so employed, or

19 " (b) Whoever, having been so employed, within two
20 years after his last employment has ceased, appears per-
21 sonally before any court or department or agency of the
22 Government as agent, or attorney for, anyone other than
23 the United States in connection with any proceeding, appli-
24 cation, request for a ruling or other determination, contract,
25 claim, controversy, charge, accusation, arrest, or other par-

1 ticular matter in which the United States is a party or
2 directly and substantially interested, and which was under
3 his official responsibility as an officer or employee of the
4 Government at any time within a period of two years prior
5 to the termination of his employment—

6 “Shall be fined not more than \$10,000 or imprisoned
7 for not more than two years, or both.

8 “(c) Whoever, being a partner of a former officer or
9 employee of the executive branch of the United States Gov-
10 ernment, of any independent agency of the United States, or
11 of the District of Columbia, including a former special Gov-
12 ernment employee, engages, during a period of two years
13 following the termination of the latter’s employment by the
14 Government, in any activities which such former officer or
15 employee of the Government or special Government em-
16 ployee is himself prohibited from engaging in by subsection
17 (a) hereof; or

18 “(d) Whoever, being a partner of an officer or
19 employee of the executive branch of the United States Gov-
20 ernment, of any independent agency of the United States,
21 or of the District of Columbia, including a special Govern-
22 ment employee, acts as agent or attorney for anyone
23 other than the United States, in connection with any
24 judicial or other proceeding, application, request for
25 a ruling or other determination, contract, claim, contro-

1 versy, charge, accusation, arrest, or other particular matter
2 in which the United States is a party or has a direct and
3 substantial interest and in which such officer or employee of
4 the Government or special Government employee partici-
5 pates or has participated personally and substantially as a
6 Government employee through decision, approval, disap-
7 proval, recommendation, the rendering of advice, investiga-
8 tion or otherwise, or which is the subject of his official
9 responsibility—

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

12 “A partner of a present or former officer or employee of
13 the executive branch of the United States Government, of
14 any independent agency of the United States, or of the
15 District of Columbia or of a present or former special Gov-
16 ernment employee shall as such be subject to the provisions
17 of sections 203, 205, and 207 of this title only as expressly
18 provided in subsections (c) and (d) of this section.

19 **“§ 208. Acts affecting a personal financial interest**

20 “(a) Except as permitted by subsection (b) hereof,
21 whoever, being an officer or employee of the executive
22 branch of the United States Government, of any independent
23 agency of the United States, or of the District of Columbia,
24 including a special Government employee, participates per-
25 sonally and substantially as a Government officer or em-

1 ployee, through decision, approval, disapproval, recommen-
2 dation, the rendering of advice, investigation, or otherwise,
3 in a Government action, proceeding, or other particular
4 matter in which, to his knowledge, he, his spouse, child, part-
5 ner, business organization in which he is serving as officer,
6 director, trustee, partner or employee, or any person or or-
7 ganization with whom he is negotiating or has any arrange-
8 ment concerning prospective employment, has a financial
9 interest,

10 "Shall be fined not more than \$10,000, or imprisoned
11 not more than two years, or both.

12 "(b) Subsection (a) hereof shall not apply (1) if the
13 officer or employee first advises the Government official re-
14 sponsible for appointment to his position of the nature and
15 circumstances of the action, proceeding, or other particular
16 matter and makes full disclosure of the financial interest and
17 receives in advance a written determination made by such
18 official that the interest is not so substantial as to be deemed
19 likely to affect the integrity of the services which the Gov-
20 ernment may expect from such officer or employee, or (2)
21 if, by general rule or regulation published in the Federal
22 Register, the financial interest has been exempted from the
23 requirements of clause (1) hereof as being too remote or
24 too inconsequential to affect the integrity of Government
25 officers' or employees' services.

1 "§ 209. Salary of Government officials and employees pay-
2 able only by United States

3 " (a) Whoever receives any salary, or any contribu-
4 tion to or supplementation of salary, as compensation for
5 his services as an officer or employee of the executive branch
6 of the United States Government, of any independent
7 agency of the United States, or of the District of Columbia,
8 from any source other than the Government of the United
9 States, except as may be contributed out of the treasury of
10 any State, county, or municipality; or

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

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

18 " (b) Nothing herein prevents an officer or employee of
19 the executive branch of the United States Government, or of
20 any independent agency of the United States, or of the Dis-
21 trict of Columbia, from continuing to participate in a bona
22 fide pension, retirement, group life, health or accident insur-

1 ance, profit-sharing, stock bonus, or other employee welfare
2 or benefit plan maintained by a former employer.

3 “(c) This section does not apply to a special Govern-
4 ment employee or to an officer or employee of the Govern-
5 ment serving without compensation, whether or not he is a
6 special Government employee, or to any person paying,
7 contributing to, or supplementing his salary as such.”

8 “(d) This section does not prohibit payment or accept-
9 ance of contributions, awards, or other expenses under the
10 terms of the Government Employees Training Act (Public
11 Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7,
12 1958).”

13 (b) Sections 214 and 215 of chapter 11 of title 18 of
14 the United States Code are respectively redesignated sections
15 210 and 211;

16 (c) Sections 216 and 223 of chapter 11 of title 18 of
17 the United States Code are repealed;

18 (d) Sections 217, 218, 219, 220, 221, and 222 of
19 chapter 11 of title 18 of the United States Code are respec-
20 tively redesignated sections 212, 213, 214, 215, 216, and
21 217;

1 (e) Chapter 11 of title 18 of the United States Code
2 is further amended by adding at the end thereof the following
3 new section:

4 **“§ 218. Voiding transactions in violation of chapter; re-**
5 **covery by the United States**

6 “In addition to any other remedies provided by law
7 the President or, under regulations prescribed by him, the
8 head of any department or agency involved, may declare
9 void and rescind any contract, loan, grant, subsidy, license,
10 right, permit, franchise, use, authority, privilege, benefit,
11 certificate, ruling, decision, opinion, or rate schedule awarded,
12 granted, paid, furnished, or published, or the performance
13 of any service or transfer or delivery of any thing to, by
14 or for any agency of the United States or officer or employee
15 of the United States or person acting on behalf thereof, in
16 relation to which there has been a final conviction for any
17 violation of this chapter, and the United States shall be
18 entitled to recover in addition to any penalty prescribed by
19 law or in a contract the amount expended or the thing
20 transferred or delivered on its behalf, or the reasonable
21 value thereof.”

22 SEC. 2. Sections 281 and 283 (except as they may
23 apply to retired officers of the armed forces of the United
24 States), 282 and 284 of chapter 15 of title 18, section 434
25 of chapter 23 of title 18, and section 1914 of chapter 93 of

1 title 18 of the United States Code are repealed and will, re-
2 spectively, be supplanted by sections 203, 205, 204, 207,
3 208, and 209 of title 18 of the United States Code as set
4 forth in section 1 of this Act. All exemptions from the pro-
5 visions of sections 281, 282, 283, 284, 434, or 1914 of title
6 18 of the United States Code heretofore created or author-
7 ized by statute which are in force on the effective date of
8 this Act shall, on and after that date, be deemed to be ex-
9 emptions from sections 203, 204, 205, 207, 208, or 209,
10 respectively, of title 18 of the United States Code except to
11 the extent that they affect officers or employees of the execu-
12 tive branch of the United States Government, of any inde-
13 pendent agency of the United States, or of the District of
14 Columbia, as to whom they are no longer applicable.

15 SEC. 3. Section 190 of the Revised Statutes (5 U.S.C.
16 99) is repealed.

17 SEC. 4. This Act shall take effect ninety days after the
18 date of its enactment.

Passed the House of Representatives August 7, 1961.

Attest: RALPH R. ROBERTS,
Clerk.

87TH CONGRESS
1ST SESSION

H. R. 8140

AN ACT

To strengthen the criminal laws relating to
bribery, graft, and conflicts of interest, and
for other purposes.

AUGUST 8, 1961

Read twice and referred to the Committee on the
Judiciary

or employ.”⁷⁸ The evidence showed that the lawyer had not in fact had any personal contact with the case while in government service, either in the oil procurement or in setting the price regulations. The question raised by the motion therefore was whether the actions and knowledge of other employees of ECA while the lawyer was an employee would be imputed to him. There was little doubt in the judge’s mind that if the lawyer was barred his firm was barred. In an extended opinion, the court concluded that the knowledge of employees of the Washington office would not automatically be imputed to employees of the Paris office, or vice versa, but that within one “office” the knowledge of subordinates would be imputed to higher officials. Whether the Paris and Washington operations worked so closely together as to constitute one office was held to be a question of fact for proof. The motion to disqualify was denied.

Though arising under the lawyers’ canons of ethics rather than the federal statutes, this case is worth noting. It well illustrates the kinds of problems encountered by post-employment restrictions, the unexpected complications raised by rules on vicarious responsibility of partners and by fictions of imputed knowledge, and — most important — the kind of government in which conflict of interest restraints must operate today. Fifty years ago the United States government was a small-scale affair, centered in Washington, D.C., and engaged in relatively limited operations. In such a world, it was perhaps reasonable to talk in terms of imputed knowledge as among government employees. Modern government, on the other hand, must operate in a world in which a fire ranger in Alaska and a State Department official in Addis Ababa are both government “employees,” and both know as little of each other and each other’s work as they know of another “employee” working at the Atomic Energy Commission in Washington, D.C.

This is the real world of modern government. This is the context in which all conflict of interest restraints must be assessed today.



OUTSIDE COMPENSATION

18 U.S.C. § 1914 (1917)

The four statutes passed immediately before and during the Civil War and the two post-employment statutes are oriented pri-

⁷⁸ See AMERICAN BAR ASSOCIATION, CANONS OF PROFESSIONAL ETHICS, Canon 36 (1958). The government also relied upon Canons 6 and 37.

marily toward abuses in the prosecution of government claims and in government contracting. The seventh of the statutes considered here, Section 1914 of Title 18, is the only conflict of interest statute that does not share this heritage. Its history and purposes are unique.

Though Section 1914 dates from the year 1917, it did not arise out of the war. It appears that the Bureau of Education of the Department of the Interior had entered into "cooperative relations" with certain private organizations, including the Rockefeller and Carnegie Foundations, for the purpose of studying and promoting educational projects, such as Negro education and kindergarten programs. These outside organizations made no direct monetary contribution to the Bureau, but they did pay the real salaries of certain men who were employed by the Bureau at a dollar a year to perform Bureau tasks under the direct supervision and control of the Commissioner of Education. Furthermore, a considerable number of persons throughout the United States who were employed in universities and normal schools or held other educational positions, such as county school superintendent, were appointed to perform "occasional services" without pay for the Bureau of Education.⁷⁹

At least since Socrates was alleged to have corrupted the youth of Athens, new educational ideas have been among the more volatile of social explosives. In 1917 John Dewey and progressive education were abroad in the land, and in some quarters there was alarm that the foundations were wielding undue and noxious influence on national educational policy. A real, or ostensible, side issue in the debate over the influence of the foundation dollar-a-year men concerned the franking privilege. Senator Chamberlain of Oregon, foremost proponent of legislation in the field, argued: "Some great educator of this country, who may be ever so highly respected by our people, writes a thesis on some great educational subject that may be very dear to the hearts of the American people, and yet he has no way of getting it before the American people except as he may be able to pay to get his literature distributed, or insofar as he may be able to get the press to publish it; and yet one of these pets of the Bureau of Education, Mr. President, may get his answer to it,

⁷⁹ See 54 CONG. REC. 2039, 2045 (1917).

or his own view, before the American people through the franking privilege."⁸⁰

The bill originally introduced by Senator Chamberlain to curb the dollar-a-year employees of the Bureau of Education was restricted in its application to that Bureau and was a rider to an appropriation act. Despite opposition from those who thought some good might derive from cooperative work between government and private agencies, the bill passed the Senate. It failed in the House, apparently on the ground that it was too broad. Yet the bill emerged from conference committee in even more sweeping form and, after two rejections, was finally adopted by both houses. No substantive changes have been made in Section 1914 since its adoption.⁸¹

The section announces in general that no private source is to pay a government employee for his government work. The technical wording of this statute is particularly crucial, however: read closely, it forbids the employee to receive any "salary in connection with his services as such" from any non-government source; complementarily, it forbids others to make any contribution to, or in any way supplement, the salary of any government employee "for the services performed by him for the government." The section contains an exception for payments received by federal employees from state and local government sources, an exception deemed necessary by representatives of rural areas to preserve the county agent program and other agricultural extension programs. Section 1914 is backed up by criminal penalties.

In the strictest sense, Section 1914 is a conflict of interest statute. The employee does not have to *do* anything improper in his office to violate the statute. His receipt of the outside salary for his government work, coupled with his status as a government employee, is all that is required; his special status makes an unexceptionable act

⁸⁰ *Id.* at 2099.

⁸¹ The section reads: "Whoever, being a Government official or employee, receives any salary in connection with his services as such an official or employee 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 a person, association, or corporation, makes any contribution to, or in any way supplements the salary of, any Government official or employee for the services performed by him for the Government of the United States —

"Shall be fined not more than \$1,000 or imprisoned not more than six months, or both." 18 U.S.C. § 1914 (1958).

wrongful — wrongful because of the potential dangers in serving two paymasters.

No cases have been decided under Section 1914, but both the Attorney General and the Comptroller General have frequently been called upon to express opinions upon its meaning. The Comptroller General's posture is interesting. His office becomes involved when an outside private source makes a payment to an employee and a question is raised whether the government may claim the payment for itself as illegal under Section 1914. If the payment was improper in the Comptroller General's view, he may just dock the employee's salary by the amount received. Most often questions of this kind have arisen in the context of travel or accommodation expenses paid to a government employee in connection with, for example, a talk or seminar conducted by him on a topic related to his government job. The Comptroller General has also available to him the argument that outside compensation to an employee of an agency constitutes an unauthorized augmentation of the appropriation of the agency — an abuse his office is charged by Congress to prevent. Thus the Comptroller General from time to time publishes opinions on Section 1914. These opinions generally point out that the Comptroller General is not charged with giving legal opinions, that interpretation of the law is rather within the province of the Attorney General, and that reliance on the Comptroller General's opinions as such cannot be recommended.⁸² Nonetheless, an important agency of the government, the General Accounting Office, acts on the basis of the Comptroller General's opinions. Frequently action by the GAO is of greater functional importance to an agency or employee than an abstract legal decision. And the opinion of the Comptroller General on the proper interpretation of Section 1914 has not in fact always corresponded to that voiced by the Attorney General.⁸³

As will be seen later, Section 1914 is one of the most comprehensive and troublesome of the conflict of interest statutes. It is interesting, and a touch ironic, to recall its narrow original purpose.

⁸² See, e.g., 37 DECS. COMP. GEN. 776 (1958).

⁸³ The Comptroller General has apparently taken a more restrictive position on travel expense reimbursements under section 1914 than has the Attorney General. Compare 36 DECS. COMP. GEN. 155 (1955) and 18 DECS. COMP. GEN. 460 (1938) and 26 DECS. COMP. TREAS. 43 (1919) with 33 OPS. ATT'Y GEN. 273 (1922).