



DEPARTMENT OF THE NAVY
COMMANDEER NAVAL REGION (SOUTH)/KEY
ECCT 192, NAVAL AIR STATION 1
JACKSONVILLE, FL 32213-0102

5500

Ser NO2L/1988

26 OCT 2007

CAPT James K. Scholl, USN (Ret.)

Dear CAPT Scholl,

This responds to your request for advice regarding post-Government employment restrictions and is based on the information you provided as well as known issues during your tenure as CO of NAS Key West and your employment with Naval Sea Systems Command.

You are currently employed by the City of Key West, Florida (the "City") as their City Manager. I understand from the information you provided that you are no longer employed by Naval Sea Systems Command.

Based on the information you have provided, it does not appear that you are restricted from commencing employment with the City upon leaving federal employment. The scope of your employment with them will, however, be restricted by 18 USC. § 207, a criminal statute. This law prevents former government employees from "communicating or appearing before any agency of the government, with the intent to influence" (i.e. direct involvement or contact) in connection with any matter that you participated in personally and substantially. In plain language, it prevents an individual who participated in, or was responsible for, a particular matter while employed by the Government from later "switching sides" and representing someone else in the same matter. "Personally and substantially" means that you participated by decision, approval, disapproval, recommendation, advice, or investigation, in the project, **and this includes any such participation by your subordinates who were acting on your authority.**

While the format of the Post-Government Ethics Questionnaire is worded in such a way that it does not solicit responses concerning involvement with local civilian authorities, please be aware that 18 U.S.C. § 207 does impose a "lifetime ban" upon you concerning any

matters you were involved with as CO of NAS Key West/employee of Naval Sea Systems Command in which the Navy and the City had adversarial or contrary interests. Specific matters include, but are not limited to, the following:

- (1) Issues involving AICUZ 2007;
- (2) Issues involving the Truman Annex master Property Owner's Association (TAMPOA) and the Navy's easements on Southard and Eaton streets as access to Truman Annex;
- (3) Truman Annex BRAC issues to include the TACTS tower, especially related to the Navy's retention of certain waterfront property;
- (4) Issues involving the City and School District housing plan that includes land owned by the City on Sigsbee base surrounding Sigsbee elementary school;
- (5) Issues related to the transfer of Trumbo Point or Fleming Key property or housing for the benefit of the City;
- (6) Issues involving the privatization of utilities;
- (7) Issues related to Public Private Venture (PPV) housing;
- (8) Issues regarding the joint use airfield discussions between NAS Key West and Key West International Airport or the joint use of NAS Key West airfield;
- (9) Issues involving the Cruise Ship Lease; and
- (10) Issues involving Palm Avenue and Sailboat Row that are related to encroachment and easements surrounding Perry Court and Sailboat lane.

In addition to the aforementioned "lifetime ban" on projects you were personally and substantially involved with, 18 USC § 207 also imposes a two-year restriction on any projects which you were not personally and substantially involved with but which were "pending under (your) official responsibility during the one year period prior to (your) leaving federal service." "Official responsibility" is defined as direct administrative or operating authority to approve, disapprove, or otherwise direct government action.

The aforementioned lifetime and two-year bans do not prohibit you from participating in such matters in a "behind the scenes manner," however, you have a continuing obligation to the Government not to disclose or misuse any

other information that you acquired as part of your official duties and which is not generally available to the public. Extreme caution should be used especially when making public statements related to the AICUZ issues based on information that you gained while you were the Commanding Officer. These AICUZ issues have received widespread attention in Key West and throughout the Navy. In addition, 18 USC § § 793, 794, and 1905 protect and prohibit the disclosure of trade secrets, confidential business information, and classified information.

Based on the information which you provided to me, other than with respect to those matters discussed above, I do not believe that 18 U.S.C. §207 imposes any limitation on your ability to represent the City to the United States Navy or any other branch or arm of the federal government. As you have informed me that you have left federal employment, the restrictions contained in 18 U.S.C. §205 which prevent you from representing the City to the Navy or other branch or arm of the Federal Government do not apply.

Based on the information which you provided, I do not believe that the provisions of the procurement integrity law, 41 USC § 423, impose any additional requirements on you as far as giving additional notices concerning your contacts with the City, or restrict your ability to receive compensation from the City in the future. You should, however, be aware that, if you have had any access to any source selection or contract bid or proposal information, the procurement integrity law continues to protect that information.

My opinion as an agency ethics official concerning the aforementioned laws and regulations do not have the same weight as an opinion authorized by statute, such as the procurement integrity law (41 U.S.C. § 423). The *Standards of Ethical Conduct for the Executive Branch* makes it clear that, although my opinion should be persuasive concerning the aforementioned regulations and law, my opinion does not bind the Department of Justice with respect to prosecuting you for any violations thereof.

Please be aware that 18 U.S.C. §§ 205, 207, 208, 793, 794, 1905 and 41 U.S.C §423 are criminal statutes and that any violation of them can result in fines and/or imprisonment.

I hope that this information is helpful to you. This letter, issued under the authority of 41 U.S.C. § 423(d)(5) and 5 CFR 2635.107 and 602(a)(2), is an advisory opinion of an agency ethics official based on the information you provided. If you need further information or have questions about this opinion, please do not hesitate to contact me directly at 904-542-0213.

Sincerely,



K. E. Kubas
CDR, JAGC, USN
Ethics Counselor