



**Comptroller General  
of the United States**

**Washington, D.C. 20548**

**B-229435.2**

November 17, 1988

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

Dear Mr. Chairman:

In further response to your letter of December 9, 1987, we have completed our review of alleged conflict-of-interest violations on the part of Mr. Marshall A. Staunton. At the time of your request, Mr. Staunton was the Administrator of the Economic Regulatory Administration (ERA) in the Department of Energy (DOE). He resigned on December 18, 1987.

As your letter pointed out, the Department's Office of Inspector General (OIG) conducted an investigation of Mr. Staunton and issued a report dated June 11, 1987, which substantiated allegations that Mr. Staunton sent a copy of his resume to an official of the Texaco Oil Company with whom he was dealing directly in his capacity as ERA Administrator. The OIG report also substantiated allegations that Mr. Staunton attended a dinner as the guest of a public relations lobbyist who represented clients having matters pending before ERA. You requested our views on whether violations of law occurred with regard to these actions. You also asked what advice DOE gives its employees on providing resumes to prospective employers and how such advice is communicated to them.

It is our understanding that DOE never reached any formal conclusions as to whether Mr. Staunton's actions violated the conflict-of-interest statutes or standards of conduct regulations. However, Mr. Staunton was removed from participation in several matters pending before ERA based on these actions. It is our view that Mr. Staunton did not violate the conflict-of-interest laws but that his actions with respect to each of the two incidents did violate government-wide and DOE standards of conduct.

Mr. Staunton's Provision of His Resume  
to a Texaco Official

The OIG reported that Mr. Staunton provided a copy of his professional resume to Mr. Roland Routhier, a Senior Vice President of Texaco. Mr. Staunton told GAO that he had known Mr. Routhier for approximately 1 to 1-1/2 years and had dealt with him in negotiations between ERA and Texaco concerning U.S. government claims against Texaco for overcharges. He said that he and Mr. Routhier had a conversation in early April 1987, after Texaco had filed for bankruptcy, in which he mentioned to Mr. Routhier that he probably would be leaving the government by October 1987. Mr. Routhier replied that he would keep his eyes open for him and suggested that Mr. Staunton's resume would be helpful since Mr. Routhier did not know the specifics of Mr. Staunton's background.

The OIG report states that Mr. Staunton sent his resume to Mr. Routhier's home address on April 30, 1987.<sup>1/</sup> On May 7, Mr. Joseph F. Salgado, the DOE Under Secretary, met with Mr. Staunton concerning this matter.<sup>2/</sup> According to Mr. Salgado, he asked Mr. Staunton whether he had "applied" to Texaco, to which Mr. Staunton answered "no." Mr. Salgado asked Mr. Staunton whether he had sent his resume to Texaco. Mr. Staunton again said "no." Mr. Salgado told the OIG investigators that he also asked Mr. Staunton whether he had sent his resume to anyone, to which Mr. Staunton answered "no." Mr. Salgado then initiated calls to Texaco officials inquiring about the matter. In response to these inquiries, an attorney representing Texaco, Mr. Bruce McLean, discovered that Mr. Staunton had sent his resume to Mr. Routhier. Mr. McLean advised Mr. Routhier to return the resume to Mr. Staunton.

Mr. Routhier returned the resume to Mr. Staunton with a cover letter dated May 7, 1987, which stated in part:

---

1/ Actually, Mr. Staunton's cover note to Mr. Routhier indicated that two resumes were enclosed. According to his note, the shorter version was the official DOE edition and the longer version was the one prepared for DOE when he came on board.

2/ The OIG report does not discuss how Mr. Salgado became aware of this matter. Mr. Salgado told us that his assistant, \_\_\_\_\_, informed him of a rumor that Mr. Staunton had sent his resume to Texaco. We were unable to identify the source of this rumor.

"When you indicated last week that you had notified Undersecretary Salgado that you would be leaving the government soon and would be seeking a position in private industry, I was hopeful that I would be able to send your resume to some business acquaintances who might be interested in considering someone of your skill and experience.

"It has been brought to my attention that because Texaco has ongoing matters with the DOE in which you have been involved, the potential for the appearance of impropriety, no matter how misplaced, precludes any help I might have been able to give you."

Mr. Staunton told the OIG investigators that he had no intention of seeking employment with Texaco and that Mr. Routhier understood this. Instead, the resume was for Mr. Routhier's exclusive use as a reference should he think of someone outside of ERA's arena whom Mr. Staunton might want to contact. For this reason, Mr. Staunton felt he was correct in telling Mr. Salgado that he had not sent his resume to Texaco. Mr. Routhier likewise told the OIG investigators he was certain that Mr. Staunton was not thinking of applying to Texaco for employment, nor could the referral of Mr. Staunton's resume be considered an "application" to anyone.

Our review<sup>3/</sup> confirms the essential facts set forth in the OIG report as described above. Based on these facts, we conclude that Mr. Staunton's actions did not amount to a statutory violation but constituted a violation of the standards of conduct.

The statutory provision having potential application to this matter is 18 U.S.C. § 208(a), which makes it a crime for a federal employee to participate personally and substantially in any particular matter in which a person or organization with whom he is "negotiating" or has any arrangement concerning prospective employment has a financial interest. Mr. Staunton was participating personally and substantially in a particular matter in which Texaco had a financial

---

3/ In addition to reviewing the OIG report and supporting documents, we interviewed Messrs. Staunton, Routhier, Salgado, McLean, and concerning this aspect of the conflict-of-interest allegations.

interest at the time that he provided his resume to Mr. Routhier.<sup>4/</sup> As discussed in our recent letter to you concerning <sup>5/</sup> the prevailing view is that the mere unilateral act of providing a resume to a prospective employer does not constitute "negotiating" for purposes of 18 U.S.C. § 208(a). Such action does, however, require disqualification under the government-wide standards of conduct unless it is part of a mass distribution of resumes without additional communication.

The advice provided by DOE to its employees is consistent with this approach. Thus, in a memorandum of September 28, 1982, captioned "Restrictions Relating to Future Employment," the DOE Assistant General Counsel for Standards of Conduct advised DOE employees:

"The term 'negotiating' connotes discussions and active interest on both sides regarding the prospective employment, and DOE regulations at 10 CFR § 1010.302(a)(1)(iii) state that 'an employee shall be deemed to be negotiating for prospective employment upon an expression of interest in response to a solicitation for future employment by either the employee or 'the prospective employer.' However, to avoid creating any appearance of conflict-of-interest, it would be prudent for a DOE employee to refrain from participating in any particular matter involving a firm or organization which he has contacted about future employment and which has not rejected his overture . . . ."

Mr. Staunton did not provide his resume to Mr. Routhier as a mere unilateral and unsolicited act. Rather, it followed a preliminary discussion in which Mr. Routhier expressed an interest in helping Mr. Staunton find future employment. Nevertheless, it appears that Mr. Staunton was not seeking employment with Texaco or any other specific source by providing his resume to Mr. Routhier. Both Mr. Staunton and Mr. Routhier stated their understanding that Mr. Staunton was merely enlisting Mr. Routhier's assistance in a general way as part of a "networking" effort to find a job with an

---

<sup>4/</sup> In his interview with us, Mr. Staunton minimized the significance of his role in the ERA-Texaco negotiations at the time he gave his resume to Mr. Routhier. However, it is clear that his role did satisfy the statutory criteria of personal and substantial participation.

<sup>5/</sup> B-229215, Feb. 22, 1988, particularly Appendix A.

organization other than Texaco. While there is no documentary evidence to support this understanding, we found nothing to contradict their statements. Therefore, accepting their statements, we believe that there was no violation of 18 U.S.C. § 208(a).

By the same token, there was no violation of the standards of conduct based on the theory that Mr. Staunton was inquiring about employment with Texaco. However, the standards come into play in another sense. The government-wide standards of conduct provide at 5 C.F.R. § 735.202:

"(a) Except as provided in paragraphs (b) and (f) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

"(1) Has, or is seeking to obtain, contractual or other business or financial relations with his agency;

"(2) Conducts operations or activities that are regulated by his agency; or

"(3) Has interests that may be substantially affected by the performance or nonperformance of his official duty."<sup>6/</sup>

The DOE standards of conduct contain similar prohibitions. Thus, the DOE standards provide at 10 C.F.R. § 1010.205(a):

"Acceptance of gifts, entertainment, or favors, no matter how innocently tendered and received, from those who have or seek business with DOE may be a source of embarrassment to DOE and the employee involved, may affect the objective judgment of the recipient and may impair public confidence in the integrity of the business relations between DOE and industry. Therefore, except as provided in paragraph (b) of this section, DOE employees shall not knowingly solicit or accept any gift, entertainment, or favor (including complimentary meals

---

<sup>6/</sup> The exceptions referred to in 5 C.F.R. § 735.202(b) and (f) do not apply here. The latter provision refers to reimbursements of travel and subsistence expenses. The former provision merely authorizes agencies to make appropriate exceptions in their standards of conduct regulations.

and beverages), either directly or indirectly from any interested party."<sup>7/</sup>

We believe that in providing his resume to Mr. Routhier, Mr. Staunton solicited or accepted a favor from Mr. Routhier in violation of the above-quoted prohibitions. In this context, it does not matter that Mr. Staunton was seeking Mr. Routhier's assistance in finding a job with a firm other than Texaco. The problem is that he was seeking a "favor" from Mr. Routhier--his assistance in obtaining future employment generally--that might have been of substantial benefit and value to him, at a time when Mr. Routhier was an individual with whom he had official dealings as ERA Administrator.

#### Mr. Staunton's Acceptance of a Dinner Invitation

The OIG investigation determined that Mr. Staunton attended a dinner on May 6, 1987, honoring United States Information Agency Director Charles Wick, as the guest of \_\_\_\_\_, a public relations lobbyist for Hill and Knowlton. According to the OIG report, Mr. Staunton indicated that \_\_\_\_\_ and his firm had as clients two companies (Tesoro and Diamond-Shamrock) which were at that time negotiating settlements of cases with ERA.

Mr. Staunton told the OIG investigators that he understood that his attendance at the dinner could be construed as a potential appearance of conflict of interest. Therefore, he said that on April 30, 1987, he sent the following note to Ms. Susan Fonner, an ethics official in the DOE Office of General Counsel:

"I have received an invitation to a dinner from \_\_\_\_\_, a public relations consultant, to honor Charles Wick, the head of the US Information Agency. The guest list numbers about 100.

" \_\_\_\_\_ has been retained by certain firms who are the subject of enforcement actions by the ERA. His representation does not involve advocacy for his clients in defending these actions, but rather extends only to making of appointments, obtaining the answers to questions and transmitting financial information of a confidential nature.

---

<sup>7/</sup> Paragraph (b) of 10 C.F.R. § 1010.205 lists a number of exceptions, none of which seems in any way relevant to Mr. Staunton's provision of his resume to Mr. Routhier.

"The dinner is scheduled for May 6. I plan to attend unless you see some conflict of interest."

Mr. Staunton told the investigators that since he did not hear from Ms. Fonner, he assumed that there was no problem.

According to the OIG report, Mr. Salgado asked Mr. Staunton whether he attended the dinner during their May 7 meeting.<sup>8/</sup> Mr. Staunton said that he had attended the dinner as the guest of and that the invitation had been "cleared" with Ms. Fonner. Mr. Staunton also told the OIG investigators and Mr. Salgado that he talked with Ms. Fonner on May 7 as he was getting on or off an elevator and asked her opinion regarding the dinner, at which time she indicated that she had not received his note. According to Mr. Salgado, Mr. Staunton informed him of this conversation with Ms. Fonner when he and Mr. Salgado first met on May 7. However, Mr. Staunton told us that he encountered Ms. Fonner after his initial meeting with Mr. Salgado on May 7 and informed Mr. Salgado of this conversation in a subsequent meeting.

Ms. Fonner told us that she did not recall an encounter with Mr. Staunton by an elevator on May 7. She said that Mr. Staunton came to her office on May 7 and asked for her advice on the propriety of accepting the dinner invitation, but never referred to an April 30 note to her. She advised Mr. Staunton that since he had already attended the dinner, he should consider paying a reasonable amount for it. Ms. Fonner told the OIG investigators and us that she had never seen the April 30 note from Mr. Staunton. She said that if Mr. Staunton had approached her before the dinner, she would have advised him to consider the propriety of attending at all, regardless of who paid.

The OIG investigators could find no record of the April 30 note in the chronological files of outgoing correspondence for Mr. Staunton's office. Mr. Staunton's secretary told them that she was familiar with the note and probably typed it, but she could not recall when.

Again, our review confirmed the essential facts as set forth in the OIG report. The account that Mr. Staunton provided to us was consistent with the OIG report. Mr. Staunton did add that a number of government officials attended the dinner, including the Secretary of Energy and one other DOE

---

<sup>8/</sup> Mr. Salgado told us that the Secretary of Energy informed him that Mr. Staunton had attended the dinner.

official, Mr. Theodore J. Garrish.<sup>9/</sup> Mr. Staunton said it was his understanding that had hosted the entire event and paid for all the attendees.

confirmed to us that he had paid for the entire dinner. He also confirmed that a number of other federal officials had attended. added that he had met Mr. Staunton through a friend and was later invited to a dinner at Mr. Staunton's home. (According to Mr. Staunton, his wife invited and two other guests to dinner.) suggested that he was reciprocating by inviting Mr. Staunton to the Wick dinner. Finally, told us that the dinner was purely a social event at which no business was discussed.

We do not believe that Mr. Staunton violated any statutory prohibition in attending the dinner. However, in our opinion, his attendance did violate the standards of conduct provisions cited previously which generally proscribe acceptance of gifts or entertainment from interested parties. None of the exceptions to the standards of conduct prohibitions seems applicable to this dinner. The closest potential exception is a provision of the DOE standards, 10 C.F.R. § 1010.205(b)(5), which permits:

"Acceptance of gifts, entertainment, of [sic] favors where there is an obvious family or personal relationship between the employee and the other party, where the circumstances make it clear that it is that relationship rather than the business of the persons concerned which is the motivating factor for the gift, entertainment, or favor."

It does not appear that and Mr. Staunton had the type of "obvious . . . personal relationship" contemplated by the regulation. It is significant, in this regard, that Mr. Staunton did not mention a personal relationship between and himself in his note to Ms. Fonner. Moreover, we do not believe that Mr. Staunton's attendance at the Wick dinner may be regarded as a reciprocation for the earlier invitation to since the Wick dinner was paid for by firm rather than himself.

---

<sup>9/</sup> Mr. Garrish confirmed to us that he did attend the dinner. He told us that he believes he was invited to this function not because he worked at DOE but because of his long-standing personal relationship with both and Mr. Wick, stemming from the 1981 Presidential Inaugural Committee in which all three of them served as officials.



Actions Taken by DOE With Respect to Mr. Staunton

On May 8, 1987, the day after their meeting, Under Secretary Salgado "recused" (removed) Mr. Staunton from further involvement in the Texaco and Tesoro cases pending before ERA and initiated the OIG investigation. Mr. Salgado removed Mr. Staunton from the Diamond-Shamrock case on May 11. Following receipt of the OIG report, these recusals remained in place. We were informed by DOE officials that they took no other action in response to Mr. Staunton's activities.

According to Under Secretary Salgado, he and the Secretary had been aware for some time that Mr. Staunton planned to leave DOE. It was for this reason that Mr. Chandler van Orman was brought on as Deputy Administrator in July 1987. Mr. van Orman was nominated by the President to be ERA Administrator in November 1987. The original plan was for Mr. Staunton to remain as ERA Administrator until Mr. van Orman was confirmed. However, at the request of the Secretary, Mr. Staunton resigned on December 18, 1987.

Under Secretary Salgado advised us that the only reason for removing Mr. Staunton from further involvement in the Texaco, Tesoro, and Diamond-Shamrock cases was the conflict-of-interest allegations discussed above. Mr. Salgado further informed us that he believed that Mr. Staunton's actions in sending his resume to Mr. Routhier and in attending the dinner created an appearance of conflict of interest. However, he expressed greater concern over what he perceived to be Mr. Staunton's poor judgment and lack of candor with respect to these actions.

This letter will be made available to the public 30 days from today unless you release it earlier.

Sincerely yours,



*for* Comptroller General  
of the United States