



United States
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Office of the General Counsel

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Robert J. Moore
General Counsel
United States Enrichment Corporation
2300 M Street, N.W. 5th Floor
Washington, D.C. 20037

Dear Mr. Moore:

This is in further response to your telephone request for an interpretation of the personnel section of the United States Enrichment Corporation (USEC) enabling Act, Pub. L. No. 102-486, § 1305, 106 Stat. 2927, 2928 (1992).

As we advised you, our opinion as to the pertinent provisions of the Act is informal and not binding on this Office in any future matter that may come before it. See 31 Comp. Gen. 613 (1952). However, the following is presented for your information.

We believe that the language of the Act is clear that employees of USEC are not subject to the provisions of title 5 of the United States Code as to salary and a pay cap. Section 1305(b) of the Act states that:

"The Board shall, without regard to section 5301 of title 5, United States Code, fix the compensation of all officers and employees of the Corporation, define their duties, and provide a system of organization to fix responsibility and promote efficiency. Any officer or employee of the Corporation may be removed in the discretion of the Board."

Section 5301 of title 5, United States Code is the section that establishes a pay comparability system, and the Act exempts the officers and employees of USEC from the applicability of that section. Therefore, they would not be subject to the salary or pay cap provisions. See e.g., 5 U.S.C. §§ 5305(g)(2), 5306(e). The Act also provides that officers and employees shall be appointed, promoted, and assigned based on merit and fitness and that other personnel actions shall be consistent with fairness and due process,

"but without regard to those provisions of title 5 of the United States Code governing appointments and other personnel actions in the competitive service." Section 1305(c).

Further, the Board may remove officers and employees at their discretion which indicates that the USEC officers and employees are not subject to the adverse action provisions of title 5, 5 U.S.C. § 7501 et. seq. (1988). The statute does provide an entitlement to continuation of title 5 provisions for those federal employees who transfer from other agencies, but only until changed by the Board. 106 Stat. 2928, § 1305(d).

We note that there is a gap in the legislative history as compiled in that the House version of the bill, H.R. 776, specifically stated that employees and officers of the Corporation shall not be officers and employees of the United States. See H.R. Rep. No. 102-474(I), § 1306, reprinted in 1992 U.S. CODE CONG. & ADMIN. NEWS, 2022. The Senate version of the House bill, H.R. 776, § 1504, specifically stated that "Officers and employees of the Corporation shall be officers and employees of the United States. Although H.R. Conf. Rep. No. 102-1018, Oct. 5, 1992, which accompanied H.R. 776, does not discuss the personnel section, it does contain the exact language of the Act as passed. Thus, we can only conclude that a change as to the status of the officers and employees was agreed upon without a reporting.

We trust that the foregoing is responsive to your request. If we can be of further assistance to you, please advise.

Sincerely yours,



Robert L. Higgins
Associate General Counsel