

LU:GA:dlh

cc:Alexis(2)  
Ulman  
Sudol  
Retrieval(on tape)  
File

2 6 JAN 1981

MEMORANDUM FOR KEVIN D. ROONEY  
Assistant Attorney General for Administration

Re: Designation of Assistant Attorney General for Administration.

This responds to your request of January 6, 1981, for our opinion whether your position of Assistant Attorney General for Administration should be designated in the Senior Executive Service as general or career reserved. You have also asked whether a new appointment to your position would require Presidential approval. In your memorandum, you indicate that the Office of Personnel Management has already opined that your position should be designated career reserved and that Presidential approval of a new appointment to your position would be required. We concur in the Office of Personnel Management's opinion.

We believe the resolution of your first question is governed by Section 402(a) of the Civil Service Reform Act of 1978, 5 U.S.C. 3132(b)(3), which provides:

Notwithstanding the provision of any other law, any position to be designated as a Senior Executive Service position (except a position in the Executive Office of the President) which --

- (A) is under the Executive Schedule, or for which the rate of basic pay is determined by reference to the Executive Schedule, and
- (B) on the day before the date of the enactment of the Civil Service Reform Act of 1978 was specifically required under 2102 of this title or otherwise required by law to be in the competitive service, shall be designated as a career reserved position if the position entails direct responsibility to the public for the management or operation of particular government programs or functions.

Your position is one under the Executive Schedule, 5 U.S.C. 5316(26), and, prior to the enactment of the Civil Service Reform Act, was specifically required by 28 U.S.C. § 507(b) 1/ to be in the competitive service. Therefore, because it presumably entails direct responsibility to the public for the management or operation of particular government programs or functions, it must be designated as career reserved.

We also believe that any new appointment to the position you now hold must be approved by the President. Such approval is specifically required by 28 U.S.C. § 507(a) 2/ and there is nothing in the Civil Service Reform Act that purports to eliminate that requirement. Indeed, section 904 of the Act, 5 U.S.C. § 1101 note, makes it clear that, unless the Act expressly provides otherwise, "no provision of [the] Act shall be construed to (1) limit, control, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act. . . ."

Leon Ulman  
Deputy Assistant Attorney General  
Office of Legal Counsel

1/ "The position of Assistant Attorney General for Administration is in the competitive service." 28 U.S.C. 507(b).

2/ "The Attorney General shall appoint, with the approval of the President, an Assistant Attorney General for Administration, who shall perform such duties as the Attorney General may prescribe." 28 U.S.C. 507(a) (emphasis added).