

July 10, 1974

MEMORANDUM FOR DUDLEY CHAPMAN  
Associate Counsel to the President

This responds to your memorandum of July 8 concerning a proposed waiver request pursuant to 18 U.S.C. 203(b)(1) by Mr. Alan Greenspan in connection with his nomination as Chairman of the Council of Economic Advisers. The initial question is whether the functions of the Council of Economic Advisers include the consideration of "particular matters" so as to bring into play the prohibitions of 18 U.S.C. 203(a). According to the U.S. Government Organization Manual, the activities of the Council are as follows:

"The Council analyzes the national economy and its various segments; advises the President on economic developments; appraises the economic programs and policies of the Federal Government; recommends to the President policies for economic growth and stability; and assists in the preparation of the economic reports of the President to the Congress."

It is doubtful on the basis of the description of the activities of the Council that it ever undertakes the consideration of particular matters covered by section 203(a). However, it is conceivable that it might do so.

Assuming that such a particular matter might come before the Council, we must next inquire whether Mr. Greenspan would be disqualified from participating personally and substantially in such a matter because "to his knowledge, he, his spouse, minor child, partner [or] organization in which he is serving as officer, director, trustee, partner,

or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest" in the matter. The possible financial interest that is involved arises from Mr. Greenspan's ownership of virtually all of the stock of Townshead-Greenspan & Co., Inc., and his arrangement for a return to the firm which is engaged in providing consulting services in the general field of economics. Your memorandum notes that the need for a waiver "stems primarily from the impact of national economic policy on corporations which are clients of Mr. Greenspan's firm."

It is possible that some of the firm's corporate clients may receive financial benefits in an indirect way from activities of the Council of Economic Advisers in which Mr. Greenspan as its Chairman would participate.

It is also possible that the financial benefits of those clients could result in financial benefits to the firm, through additional fees for its consulting services.

But presumably the firm's corporate clients would not benefit in any preferential manner as compared to other similar corporations that are not clients of Mr. Greenspan's firm. In this situation an ad hoc waiver for Mr. Greenspan would not as a matter of law be beyond the authority provided by section 203(b)(1). That provision authorizes an ad hoc waiver by the appointing official where he determines that the financial interest involved "is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee." In this connection your attention is invited to the Presidential memorandum of May 2, 1963, entitled "Preventing Conflicts of Interest on the Part of Special Government Employees" (28 Fed. Reg. 4539), and now set out in pertinent part in Chapter 735, Appendix G, of the Federal Personnel Manual. As to section 203, the memorandum (which in this respect is also applicable to regular employees) states:

18 U.S.C. 208. This section bears on the activities of Government personnel, including special Government employees, in the course of their official duties. In general, it prevents a Government employee from participating as such in a particular matter in which, to his knowledge, he, his spouse, minor child, partner, or a profit or nonprofit enterprise with which he is connected, has a financial interest. The section, however, permits an employee's agency to grant him an ad hoc exemption if the interest is not so substantial as to affect the integrity of his services. Insignificant interests also may be waived by a general rule or regulation. Whether an agency should issue a general rule or regulation and, if it does so, what standards it should set are questions which should be resolved by each agency in the context of its particular responsibilities and activities.

The matters in which special Government employees are disqualified by section 208 are not limited to those involving a specific party or parties in which the United States is a party or has an interest, as in sections 203, 205, and 207. Section 208 therefore undoubtedly extends to matters in addition to contracts, grants, judicial and quasi-judicial proceedings, and other matters of an adversary nature. Accordingly, a special Government employee should, in general, be disqualified from participating as such in a matter of any type when its outcome will have a direct and predictable effect upon the financial interests covered by the section. The power of exemption, however, may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may, of course, be exercised also where the financial interests involved are minimal in value.

The memorandum was a contemporaneous construction of the meaning of the revised conflict of interest statutes, has been consistently followed by the Executive, and has not been objected to by the Congress.

With respect to the present draft of the letter much of it seems to deal with matters that are designed to obviate any suggestions of an appearance of conflict but that do not deal directly with the question of a statutory conflict under 18 U.S.C. 203, although they do tend to minimize "the substantiality" of the financial interest involved. So long as Mr. Greenspan retains a stock interest in his firm and has an arrangement concerning his prospective employment by the firm the impact of that section is applicable whether or not the firm has present contractual or financial connections with the federal government or any of its agencies, he resigns as an officer or director of the firms, places his stock in a voting trust, and does not share in the profits, etc.

I would suggest redrafting the last paragraph along the following lines:

"Because of my retention of the stock interest I have in Townsend-Greenspan and Company, Inc., and my prospective return to the firm, I am advised by counsel to request from you a waiver pursuant to 18 U.S.C. 203(b)(1) with respect to any possible conflict that might be inferred under 18 U.S.C. 203(a) in the sense that such stock could represent a financial interest covered by that provision and the firm itself might have such a financial interest. I believe that under the arrangements described above, those financial interests are clearly not so substantial as to be deemed likely to

affect the integrity of the services which  
the Government may expect from me as Chairman  
of the Council of Economic Advisers."

Leon Ulman  
Deputy Assistant Attorney General  
Office of Legal Counsel