

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 11, 1975

David Reich, Esq.
Ethics Counselor
Office of the General Counsel
United States Civil Service Commission
1900 E Street, N.W.
Washington, D.C. 20415

Dear Dave:

You called me last Friday to discuss that portion of Section 4(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78d, which provides that no SEC Commissioner shall

“ . . . participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title.”

You indicated that you were examining statements of financial interests filed with the Civil Service Commission by presidential appointees, including SEC Commissioners, and that this provision had been pointed out to you. Because you believed that the quoted portion of Section 4(a) might be construed to prohibit all securities purchases, you inquired whether the scope of this section had ever been considered.

After checking with Commissioner Philip A. Loomis, Jr., who was, before his appointment to the Commission, its long-time General Counsel, and with Albert Fontes, Director of Personnel, I informed you that none of us could recall any written opinion on this subject, but that we would undertake to search our files and send to you a copy of any relevant document which might be found. Mr. Fontes did find an opinion dated May 6, 1957, in a memorandum to the General Counsel from Ellwood L. Englander, who was for many years this Commission's Ethics Counselor. This opinion concluded that Section 4(a) did not intend to prevent an SEC Commissioner from purchasing and holding securities, but that the applicable restrictions were found in Rule 3 of the Commission's Conduct Regulation [17 CFR 200.735-5], which applies to commissioners as well as to employees, and “other considerations of propriety or ethics in an individual case” (Memorandum, p. 2). The intent of Section 4(a) seems to have been to prohibit commissioners from engaging in types of stock-market operations which are subject to regulation, such as being a broker or dealer in securities.

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That memorandum is, of course, a confirmation of the collective view of Messrs. Loomis and Fontes and myself, as we discussed on Friday. I also had noted during our discussion, that the Senate Committee, at least in recent years, when considering nominees to the SEC, has made some general inquiry into the securities holdings of the nominees and whether such holdings comported with the Commission's Conduct Regulation.

I am enclosing a copy of the May 6, 1957, memorandum as well as a copy of a memorandum dated January 30, 1957, from the General Counsel to the Executive Director, which touches tangentially on the quoted provisions of Section 4(a).

Sincerely yours,

Paul Gonson
Associate General Counsel

Enclosures

Copies to: Commissioner Loomis
Mr. Fontes