

AUG 20 1974

Laurence H. Silberman
Deputy Attorney General

Robert G. Dixon, Jr.
Assistant Attorney General
Office of Legal Counsel

Whether Governor Rockefeller, if appointed as Vice President, is required to execute a blind trust in order to avoid possible violation of 18 U.S.C. 208

This responds to the above question presented to Mr. Ulman by Mr. Wilderotter orally. For reasons discussed hereafter, our answer is in the negative. The Vice President would, however, have to disqualify himself from participating as an officer in the executive branch in particular matters which have an effect on his personal financial interests or those of his wife or minor children, if any.

1. 18 U.S.C. 208(a), so far as relevant here, requires an officer or employee of the "executive" branch to refrain from participating personally and substantially in any particular governmental matter in which, "to his knowledge," he, his spouse, or minor child has a financial interest. If he does not do so, he is subject to criminal prosecution.

2. Prior to enactment of the conflict of interest law in 1962 (now 18 U.S.C. 202-209), a non-statutory procedure had been devised for President Eisenhower and other executive branch officeholders designed to obviate conflicts of interest problems arising from their substantial financial holdings. This was the so-called "Blind Trust." The appointee entering government service placed his holdings in a trust held by an independent trustee, the trust to terminate on the appointee's completion of his government service. The appointee was not informed as to the sale of assets deposited in the trust, or as to what new assets were purchased, nor did he have any power of control over the assets in the trust during its duration.

The view has been expressed by a leading authority on the conflict of interest law that the requirement of "knowledge for prosecution under section 208 . . . lends statutory sanction to

the [blind trust] procedure established for President Eisenhower and others to shield them from conflict of interest problems . . .
.. "*/

3. The conflict of interest statute, however does not by its terms apply to a President or Vice President. But the language of the bribery statute (18 U.S.C. 201), enacted at the same time as the conflict of interest statute, applies to "any person who has been nominated or appointed to be a public official." 18 U.S.C. 201(a). This language appears to be broad enough to apply to a Vice President nominated and appointed under the Twenty-Fifth Amendment. Absent any contrary evidence of congressional intent, we are inclined also to conclude that 18 U.S.C. 208 applies to the Vice President. It is arguable, however, that under the Constitution he is primarily in the legislative branch, and, therefore, 18 U.S.C. 208 is inapplicable. On the other hand, the Vice President also performs executive functions, which include participation in all Cabinet meetings and, by statute, membership in the National Security Council, among others. In addition, by Executive order, the Vice President is a member of the Domestic Council. On these occasions, he is serving as an officer of the executive branch.

4. However, even if the Vice President is regarded as subject to 18 U.S.C. 208, that section does not require him to put his financial holdings in a blind trust. Indeed section 208 makes no reference whatever to a blind trust. If he does not establish a blind trust, he would be obliged by section 208 to disqualify himself from participating personally and substantially in any particular matter in which, to his knowledge, he, his spouse, minor child or organization in which he is serving as officer, director, trustee, or partner has a financial interest. But it is doubtful but possible that any such matter would arise as to a Vice President.

*/ Roswell B. Perkins, The New Federal Conflict of Interest Laws, 76 Harv. L. Rev. 1113, 1134 (1963). See also, the Report of the Special Committee, Association of the Bar of the City of New York, Conflict of Interest and Federal Service (1960), pp. 249-50.