

# United States Senate

SELECT COMMITTEE ON ETHICS

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December 12, 2002

Alberto Gonzales  
Counsel to the President  
The White House  
Washington, D.C. 20502

Re: National Commission on Terrorist  
Attacks Upon the United States

Dear Mr. Gonzales:

Section 601 of the Intelligence Authorization Act for Fiscal Year 2003 provides that "[t]here is established in the legislative branch the National Commission on Terrorist Attacks Upon the United States" (Commission). Recently, members of the staff of this Committee have had discussions with attorneys in your office concerning the Commission. During those discussions, your office raised an issue regarding a commissioner's obligation under the Ethics in Government Act (EIG), 5 U.S.C. § 101 et seq., to file a financial disclosure report. This letter is written to advise you that the Committee has concluded that the determination of whether a commissioner is a filing individual under the EIG is within the jurisdiction of this Committee.

As you know, the EIG requires certain federal government officials and employees to file a financial disclosure report with their appropriate agency ethics official. Sub-section 103(h)(1)(A)(ii)(II) of this statute provides that reports shall be filed with the Secretary of the Senate in the case of an "officer or employee of the Congress," as that term is described in sub-section 101(f)(10), who is employed by a commission established in the legislative branch in an even numbered calendar year. Thus, officers and employees of the Commission deemed to be filing individuals must file their reports with the Secretary of the Senate.<sup>1</sup>

Sub-section 111(2) provides that the provisions of this title shall be administered by the Committee with regard to officers and employees described in paragraphs (9) and (10) of section 101(f) which, by reference, incorporate sub-section 109(13). Sub-section 109(13)(B)(i) provides that an "officer or employee of the Congress" means, in addition to certain officers and employees whose salary is disbursed by the Secretary of the Senate, each *officer or employee of the legislative branch* who, for at least 60 days, occupies a position for which the rate of basic

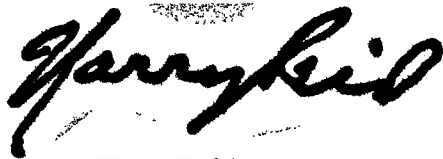
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<sup>1</sup> Sub-section 603(b) of the Act, which became law on November 27, 2002, provides that all members of the Commission shall be appointed on or before December 15, 2002. Consequently, the Commission was established in an even numbered calendar year and the law did not specify another filing arrangement.


pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule. Sub-section 109(11)(I) defines the term "legislative branch" to include, among other things, "any other agency, entity, office *or commission established in the legislative branch.*" Thus, officers and employees of the Commission, deemed under sub-section 109(11)(I) to be officers and employees of the legislative branch, fall within the definition of "officer or employee of the Congress" under sub-section 109(13)(B)(i) and the Committee's jurisdiction as defined in sub-section 111(2). This conclusion is consistent with the opinions of the Office of Legal Counsel in the U.S. Department of Justice. See 13 Op. O.L.C. 285 (1989), Commission on Railroad Retirement Reform and U.S. Department of Justice, Office of Legal Counsel, Memorandum for Samuel Morris, Acting General Counsel, General Services Administration, January 26, 1999, *re* National Gambling Impact Study Commission.

In sum, the clear language of the EIG confers upon the Committee the jurisdiction to determine whether an officer or employee of the Commission must file a financial disclosure report. Having made this determination, the Committee intends to exercise its authority to determine whether and under what circumstances commissioners must file financial disclosure reports.

Sincerely,



Harry Reid  
Chairman



Pat Roberts  
Vice Chairman