

Testimony of Kay Hensen

**U.S. Senate
Homeland Security and Governmental Affairs
Subcommittee on Financial and Contracting Oversight**

February 4, 2014

Good morning Chairman McCaskill, Ranking Member Johnson and Committee Members.

I am Kay Hensen, former National Guard Bureau Contracting Officer, and now the Corporate Compliance Officer of Docupak. I would like to take a brief moment to provide some background on my experience directly related to my current position at Docupak, where I am responsible for contract procedures, and ensuring compliance of applicable laws and regulations.

Before my employment with Docupak, I served for 27 years in the Military, attaining the rank of Lt. Colonel. During my tenure in the military I served various duties, including logistics, administration, contracting, contract policy, and supervisory positions. My last duty assignment was as the Supervisory Contracting Officer for the Montana National Guard.

After receiving my post-employment clearance from the Montana National Guard ethics counselor, I accepted a position at Docupak, conducting contract audits, reviewing and updating compliance requirements, and developing corporate policy guides for government purchasing.

I have more than a decade of experience in government procurement, from both a government and corporate perspective. My areas of expertise include Federal Acquisition Regulation (FAR), long-term contractual planning, proposal writing, compliance, negotiations, and budget forecasting. In addition, I have a Level III Certification in Contracting from the Defense Acquisition University.

I received my Bachelor of Science Degree in Sociology from Regents College, and a Masters in Business Administration from Touro University.

Today I am here to discuss my duties as a contracting officer for the National Guard Bureau as well as my current duties as the Docupak Compliance Officer.

Thank you for allowing me to participate in this hearing.

*Please see Attachment A

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DEPARTMENTS OF THE ARMY AND AIR FORCE

JOINT FORCE HEADQUARTERS - MONTANA

P.O. Box 4789

Ft. Harrison, Montana 59636-4789

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23 January 2008

MEMORANDUM FOR LTC Kay Hensen, Supervisory Contract Specialist, JFHQ-MT, P.O. Box 4789, Fort Harrison, MT 59636-4789

SUBJECT: Post Government Employment with Document and Packaging Brokers, Inc.

1. On or about 10 January 2008, you requested an opinion from my office regarding any restrictions which may apply to you concerning post-Government employment with Document and Packaging Brokers, Inc. (DOCUPAK). You indicated that you intend to retire in the very near future and have been offered a position with DOCUPAK soon thereafter. Based upon the information you submitted to me, and subject to the restrictions detailed below, there is no legal objection to your employment with DOCUPAK.
2. In our 10 January 2008 conversation, you have indicated that your new position would entail an in-depth review of DOCUPAK contract proposals to the Department of Defense, to include the National Guard Bureau. You are expected to provide extensive information on the government procurement process and regulations and assist in educating all parties involved on the contracting process.
3. Since 16 April 2006, you have been stationed at the Joint Forces Headquarters-Montana, and held the position of Supervisory Contract Specialist for the Montana National Guard. Your position at JFHQ-MT did not include any procurement or contracting interaction with DOCUPAK. Prior to being stationed at JFHQ-MT, you were a Contracting Officer for the National Guard Bureau. As a Contracting Officer, you purchased supplies, services and information management requirements for the National Guard. You were responsible for planning, coordinating, preparing and staffing contractual pre-award documents and files, technical research, evaluating bids and proposals, negotiating with contractors, and awarding contracts in support of ARNG customers. You were also responsible for contract management of assigned contracts, which consisted of contract placement and administration to include cost control, performance tracking, payment tracking and reconciliation of funding resources, negotiation of modifications, terminations and contract close-outs.
4. In June 2005, you awarded a contract to DOCUPAK, which had a maximum ceiling amount of \$200,000,000. The terms of the contract allowed the contract to run until June 2010, provided that the ceiling amount was not reached before that time. However, the ceiling amount was reached in FY 2007. A few delivery orders remain open, but no new awards can be made. A new and different contract was awarded, by a different contracting officer, in the November/December 2007 time frame.

5. According to information that you have provided, during the last twelve months of government service, you have not held any position or made decisions that would subject you to the post-Government restrictions of 41 U.S. Code §423, the Procurement Integrity Act.

a. **18 USC §207** - Generally, you are subject to the representational restrictions of 18 U.S. Code §207 (Encl.). This code provision prohibits you from “switching sides” and representing companies to the government in certain circumstances, but does not prohibit you from providing behind-the-scenes assistance to companies. The length of the restriction varies as set forth below.

(1) Title 18 U.S. Code §207 (a)(1) establishes a lifetime representation ban regarding parties and particular matters with which you were personally and substantially involved while a federal employee. You may not make with the intent to influence, any communication to, or appearance before, an employee of the United States on behalf of any other person in a particular matter that involved a specific party in which you participated personally and substantially as an officer, if the United States is a party or has a direct and substantial interest in the matter. The term “particular matter” includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. It is important to distinguish among particular matters. The statute does not apply to a broad category of programs when the specific elements may be treated as severable. As noted, the restriction requires that the matter must have involved a specific party or parties other than the United States at the time of the participation. Additionally, the term “particular matter involving a specific party or parties” is interpreted with regard to this requirement to generally not include policy matters such as legislation, the formulation of general policy, standards or objectives, or other action of general application. See 5 CFR §2637.201(c).

(2) Title 18 U.S. Code § 207(a)(2) sets out a two-year representational restriction that applies to those matters under your official responsibility during your last year of government service. The two-year ban in your case begins on the day after your retirement date. For the purposes of 18 U.S. Code § 207(a)(2), “official responsibility” is defined as the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action. The term “represent” means to make any communication to or appearance before an employee of the United States with the intent to influence that employee in connection with the same particular matter. The two-year representational restriction will apply if a particular matter was under your official responsibility and was actually pending during your last year of federal employment. In order for the prohibition to apply, the government must have a direct and substantial interest in the matter and at the time of the participation, specific parties other than the government must have been involved. The application and view of the term “particular matter involving a specific party or parties” is the same as described above under §207(a)(1).

(3) To determine what matters were under your “official responsibility” during your last year of work as a federal employee, we look at the position that you held during that time, in other words, your position at the JFHQ-MT. I am not aware of any person under your

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supervision being involved personally and substantially with a particular matter involving DOCUPAK during your last year as a federal employee. You should contact this office for further clarification if you determine that you had supervisory responsibility for a person who was personally and substantially involved in a particular matter involving DOCUPAK.

b. This opinion is based on information previously provided. Title 18 U.S. Code §207 is a Federal criminal statute and whether or not the statute applies to certain factual situations falls under the jurisdiction of the Department of Justice, not the National Guard Bureau, Department of the Army, or the Department of Defense. This memorandum is an advisory opinion of an agency ethics official and is not binding on the Department of Justice. Finally, note that issuing this ethics guidance to you does not establish an attorney-client relationship. Any communications or information provided between yourself and this office are not protected by the attorney-client privilege nor are they confidential.

If you need additional legal advice regarding post-Government employment, you may reach me at (406) 324-3325 or contact me via e-mail at beverly.schneider@us.army.mil.



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Encl.