

Office of Senate Legal Counsel

Matthew E. Glassman
Analyst on the Congress

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Legislative Series

Legislative Drafter's Deskbook *A Practical Guide*

By Tobias A. Dorsey

Background and History

The Office of Senate Legal Counsel was established by Title VII of the Ethics in Government Act of 1978.¹ The original legislation would have created an Office of Congressional Legal Counsel to serve both the House and Senate, but House conferees objected to a joint office, since they perceived the House and Senate to have somewhat different legal concerns.²

Although the idea of distinct legal counsel for Congress had been debated for several decades, events in the 1970s encouraged Members to take action. Extensive hearings held by the Senate Subcommittee on Separation of Powers of the Judiciary Committee, coupled with Congress's involvement in the Watergate investigations, indicated that there were potential conflicts of interest in using the Department of Justice as legal counsel to Congress.³ In addition, individual Member experiences with private legal counsel had sometimes proven unsatisfactory; observers agreed that there was a need for specialized experts dedicated to the legal issues involving Congress.⁴

Structure and Function

The office is led by the Senate Legal Counsel and deputy counsel, who are appointed by the President pro tempore of the Senate from among recommendations submitted by the majority and minority leaders of the Senate.⁵ The professional staff includes a deputy general counsel, three attorneys, and a support staff. The office is responsible to the Joint Leadership Group, and operates as a non-partisan office serving the Senate as an institution.

The office provides legal assistance and representation to Senators, committees, officers, and employees of the Senate on matters pertaining to their official duties. The statutory duties of the office include

- defensive legal representation of the Senate, its committees, Members, officers, and employees;⁶
- representation in legal proceedings to aid investigations by Senate committees;⁷

¹ P.L. 95-521, 92 Stat. 1824, 1875 (1978), 2 U.S.C. §288.

² Rebecca May Salokar, "Legal Counsel for Congress: Protecting Institutional Interests," *Congress and the Presidency*, vol. 20, no. 2 (Autumn 1993), p. 137.

³ U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Separation of Powers, *Representation of Congress and Congressional Interests in Court*, hearings, 94th Cong., 2nd sess., December 12, 1975, and February 19, 1976 (Washington: GPO, 1976).

⁴ "Legal Counsel for Congress: Protecting Institutional Interests," p. 137.

⁵ 2 U.S.C. §288.

⁶ 2 U.S.C. §288c. For further discussion, see U.S. Congress, Senate, *Riddick's Senate Procedure: Precedents and Practice*, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO, 1992), pp. 1236-1247.

⁷ 2 U.S.C. §288d.

- representation of the Senate itself in litigation, in cases in which the Senate is a party and also as *amicus curiae* when the Senate has an institutional interest;⁸ and
- providing legal advice and assistance to Members regarding confidentiality of constituent information, Privacy Act concerns, and tax exemptions.⁹

The office also provides legal advice to Senators, committees, officers, and staff regarding privileges, such as Speech and Debate, executive, Fifth Amendment, and attorney-client; legal questions arising from constituent service; tax exemptions; interpretation and application of committee rules of procedure; and interactions with the executive branch.

The office also provides legal advice on office management and employment issues. Issues arising under the Congressional Accountability Act, however, are chiefly handled by the Senate Chief Counsel for Employment.

Contact Information

The Office of Senate Legal Counsel is located in Room 642, Hart Senate Office Building. Requests for assistance may be made in person, in writing, by telephone (4-4435), or by fax (4-3391). Additional information on the office's policies, procedures, and services is available from the office's website at <http://webster.senate.gov/other/legal/home.html>.

Author Contact Information

Matthew E. Glassman
Analyst on the Congress
mglassman@crs.loc.gov, 7-3467

⁸ 2 U.S.C. §288e.

⁹ 2 U.S.C. §288g.