



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

November 5, 2010

Joseph P. Carson, PE  
10953 Twin Harbour Drive  
Knoxville, Tennessee 37934

Dear Mr. Carson:

This responds to your letters regarding statutory protections provided to TVA employees and the Office of Special Counsel's authority to investigate them. In your letters you particularly focused on the protections provided to federal employees against "Prohibited Personnel Practices" that are set forth at 5 U.S.C. § 2302.

The Tennessee Valley Authority (TVA) was created in 1933 as a government corporation wholly owned by the United States (16 U.S.C. § 831). Section 3 of the Tennessee Valley Authority Act provides that TVA employees may be appointed "without regard to the provisions of the civil service laws applicable to the employees and officers of the United States . . . ." Accordingly, TVA's personnel system is separate and distinct from the personnel system applicable to the rest of the federal government.

What this means is that many of the statutes, rules, and regulations applicable to federal employees generally are not applicable to TVA employees or are only applicable in part. The "Prohibited Personnel Practices" provisions are an excellent example of that.

Subsection (a)(2)(C)(i) of the "Prohibited Personnel Practices" law specifically exempts government corporations from the definition of those federal entities which are covered by it, except with regard to that law's specific "Whistleblower Protection Act" provisions. Congress provided this exemption in recognition of the fact that government corporations, like TVA, have their own personnel systems. Accordingly, when other parts of that law require action or inaction by an "agency" or an "agency head," or prohibit acts by federal employees with respect to personnel actions in an "agency," TVA, the TVA Board, and TVA employees are not covered by those other parts of the law. Thus, we do not agree with the premise that all twelve "Prohibited Personnel Practices" detailed in the statute apply to government corporations.

In your letter to Chairman Bottorff you express concern that the Office of Special Counsel and the Merit Systems Protection Board have erred in interpreting certain statutes which apply to their fulfilling their mission but which do not apply to TVA. TVA, of course, does not express an opinion about how the Office of Special Counsel

and the Merit Systems Protection Board may have implemented provisions of law which do not apply to TVA. With respect to making any change in the scope of the Office of Special Counsel's and the Merit Systems Protection Board's current regulatory authority over TVA, obviously that would be a matter for Congress to consider, as it would require a change in existing law.

You further express your opinion that the Merit Systems Protection Board's and the Office of Special Counsel's interpretations somehow render TVA unable to meet the requirements of 5 U.S.C. § 2302(c). Although, as we have stated, that provision of law is not applicable to TVA, we do adhere to the spirit of these provisions as evidenced by numerous TVA policies, practices, and procedures that are consistent with them. These include but are not limited to:

- TVA Standard Programs and Processes 11.8.4 - Expressing Concerns and Differing Views.
- TVA's Concerns Resolution Programs.
- Employee access to an Ombudsman.
- TVA's Policy on Prevention of Sexual Harassment in the Workplace.
- The TVA Code of Conduct.

In your letter to Director McBride, you state that "the Office of Special Counsel claims that it cannot receive disclosures from TVA or other government corporation employees." We are not aware of whether any such claim is based upon an official position taken by the Office of Special Counsel as an office, the personal opinion of an Office of Special Counsel employee, or a statement from some other source. For its part, TVA has consistently held the view that the Office of Special Counsel can address whistleblower complaints from TVA employees under subsection (b)(8) of the "Prohibited Personnel Practices" law. Moreover, under TVA's "No Fear Act" training program, which all TVA employees are required to complete at least once every two years, TVA specifically informs employees of their right to contact the Office of Special Counsel to make a complaint of whistleblower retaliation. Through that training program, we expressly inform TVA employees that if they have a complaint under the "Whistleblower Protection" provisions of law, they may contact TVA's Office of the Inspector General or the Office of Special Counsel, and the phone numbers and addresses of both points of contact are provided.

I hope this answers your questions and concerns in this area.

Sincerely,



Ralph E. Rodgers  
Acting General Counsel