



U.S. Department of Justice

United States Attorney
District of New Jersey
Civil Division

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Via Fax and 1st Class

June 9, 2003

Cheryl Helmsley, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Supplement to

Re: Advisory Opinion Request 2003-17

AOR 2003-17

Dear Ms. Helmsley:

As per your request, please find enclosed a copy of the plea agreement into which Mr. Treffinger entered on May 29, 2003. You also asked whether as a result of entering into this agreement, Mr. Treffinger could be considered a "convicted" felon. My counterparts in the criminal division have confirmed that a Judgement of Conviction is entered against a defendant at sentencing, which in Mr. Treffinger's case is scheduled for September 10, 2003. Until then, pursuant to his plea, Mr. Treffinger may be considered an admitted, rather than a convicted felon.

Please don't hesitate to contact me at (973)645-2873 should you have any further questions regarding this matter.

Very truly yours,

CHRISTOPHER J. CHRISTIE
United States Attorney


By: CAROLINE A. SADLOWSKI
Assistant U.S. Attorney

encl.

cc: Karin Riecker, Esq., w/ encl. via 1st Class
Craig Donsanto, Esq., w/encl. via 1st Class



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970 Broad Street, Suite 700
Newark, NJ 07102

973/645-2700

pac/spros

May 29, 2003

Henry E. Klingeman, Esq.
Klingeman Turano LLC
230 Main Street, 2nd Floor
Madison, NJ 07940

Re: Plea Agreement with James W. Treffinger

Dear Mr. Klingeman:

This letter sets forth the full and complete agreement between your client, James W. Treffinger ("Treffinger"), and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Treffinger to Counts 7 and 14 of Indictment Cr. No. 02-795 (JWB). Count Seven of the Indictment charges that Treffinger conspired to corruptly persuade and engage in misleading conduct toward others with the intent to hinder the communication of information to federal law enforcement relating to the commission of federal offenses, contrary to Title 18 U.S.C. § 1512, in violation of 18 U.S.C. § 371. Count 14 charges that he used the mails to execute a scheme to defraud the citizens of Essex County of money and property in violation of 18 U.S.C. § 1341 in connection with his use of two Essex County employees to provide support for his campaign for United States Senate for the calendar year 2000 Republican primary and the campaign of another candidate. If Treffinger enters a guilty plea and is sentenced on these charges, and otherwise fully complies with all of the terms of this agreement, this Office will dismiss Counts 1 through 6, 8 through 13, and 15 through 20 of the Indictment and this Office will not initiate any further criminal charges against Treffinger pertaining to the allegations contained in the Indictment and allegations known to this office as of the date of this agreement. In the event that the judgment of conviction entered as a result of this guilty

plea does not remain in full force and effect, the dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Treffinger may be commenced against him, notwithstanding the expiration of the limitations period after Treffinger signs the agreement. Treffinger agrees to waive any statute of limitations with respect to any crime that would otherwise expire after Treffinger signs the agreement.

Sentence and Other Penalties

The violations of Title 18 U.S.C. § 371 and Title 18 U.S.C. § 1341 to which James Treffinger agrees to plead guilty carry a statutory maximum prison sentence of 5 years and a statutory maximum fine equal to the greatest of: (1) \$250,000, (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon Treffinger is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742 and the United States Sentencing Guidelines. The sentencing judge may impose the maximum term of imprisonment and maximum fine that are consistent with the Sentencing Reform Act and the Sentencing Guidelines, up to and including the statutory maximum term of imprisonment and the maximum statutory fine. The United States Sentencing Guidelines may impose a minimum term of imprisonment and/or fine, and may authorize departure from the minimum and maximum penalties under certain circumstances. This Office cannot and does not make any representation or promise as to what guideline range will be found applicable to Treffinger, or as to what sentence Treffinger ultimately will receive.

Further, in addition to imposing any other penalty on Treffinger, the sentencing judge: (1) will order Treffinger to pay an assessment of \$100 per count pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) shall order Treffinger to pay restitution pursuant to 18 U.S.C. § 3663A; (3) may order Treffinger, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; and (4) pursuant to 18 U.S.C. § 3583 and § 5D1.2 of the Sentencing Guidelines, may require Treffinger to serve a term of supervised release of at least two years and up to three years per count, which will begin at the expiration of any term of imprisonment imposed. Should Treffinger be placed on a term of supervised release and

subsequently violate any of the conditions of supervised release before the expiration of its term, Treffinger may be sentenced to not more than two years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

In addition, Treffinger agrees to make full restitution for all losses resulting from the offenses of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying that offense.

Rights of this Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Treffinger by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Treffinger's activities and relevant conduct with respect to this case.

Stipulations

This Office and Treffinger agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Treffinger from any other portion of this agreement, including any other

stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Treffinger waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentencing court's determination or imposition of the offense level or its acceptance of any of the stipulations on Schedule A. Otherwise, this Office specifically reserves the right to file, oppose, or take any position in any appeal, collateral attack, or proceeding involving post-sentencing motions or writs.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Treffinger. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil proceeding against Treffinger.

This agreement constitutes the full and complete agreement between Treffinger and this Office and supersedes any previous agreement between them. No additional promises, agreements, or conditions have been entered into other than those set forth in this letter, and none will be entered into unless in writing and signed by the parties.

This agreement is subject to the approval of the United States Department of Justice, Public Integrity Section.

Very truly yours,

CHRISTOPHER J. CHRISTIE
United States Attorney



By: PERRY A. CARBONE
Assistant United States
Attorney

APPROVED:



JAMES B. NOBILE
Chief, Special Prosecutions Division

I have received this letter from my attorney, Henry E. Klingeman, Esquire, I have read it, and I understand it fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the full agreement between the parties. There have been no additional promises or representations made to me by any officials or employees of the United States Government or by my attorney in connection with this matter.

AGREED AND ACCEPTED:


James W. Treffinger

Date: May 27, 2003


Henry E. Klingeman, Esq.,
(Counsel for James W. Treffinger)

Date: 5/29/03

PLEA AGREEMENT WITH JAMES W. TREFFINGER

Schedule A

This Office and James Treffinger agree to stipulate at sentencing to the statements set forth below, subject to the conditions in the attached plea agreement.

Count 7

1. Regarding Count 7 of the Indictment, the applicable guideline is U.S.S.G. § 2J1.2. This guideline carries a base offense level of 12.

Count 14

2. Regarding Count 14 of the Indictment, the following sentencing guideline calculations apply:

- a. The applicable guideline is § 2B1.1. This guideline carries a Base Offense Level of 6.
- b. Specific Offense Characteristic § 2B1.1(b)(1) applies. This Specific Offense Characteristic results in an increase of 4 levels, as the loss exceeded \$10,000, but was not more than \$30,000. See U.S.S.G. § 2B1.1(b)(1)(C).
- c. The offense involved the abuse of a position of public trust. Therefore, 2 levels are added pursuant to § 3B1.3.
- d. The total offense level with regard to Count 14 of the Indictment is 12.

3. Pursuant to the grouping rules set forth in U.S.S.G. §§ 3D1.1 to 3D1.5, Count 7 and Count 14 of the Indictment constitute two groups. The group pertaining to Count 7 of the Indictment (level 12) counts for 1 unit. Because the offense level for the group pertaining to Count 14 of the Indictment is equally serious (level 12) the group pertaining to Count 14 counts for 1 unit pursuant to U.S.S.G. § 3D1.4(a). Because there is a total of 2 units, 2 levels are added. U.S.S.G. § 3D1.4.

4. As of the date of this agreement, the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility

is appropriate if Treffinger's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

5. In accordance with the above, the total offense level is 12.

6. The parties agree that the total restitution to be ordered should be \$29,471.

7. Treffinger knows that he has, and voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentencing court's determination or imposition of the offense level, if the total offense level determined by the court is equal to or less than 12. The United States will not file any appeal, motion, or writ that challenges the sentencing court's determination or imposition of the offense level, if the total offense level determined by the court is equal to or greater than 12. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so. To the extent that any appeal, collateral attack, writ, or motion is barred by this paragraph, the parties agree that it should be dismissed.

8. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.