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- 4 Authority to print posters and  
fliers designed to encourage voting

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In order to encourage greater public participation in this year's elections, the suggestion has been made that the Administration place posters in Post Offices advising citizens of the dates for registration and election and encouraging them to register and vote. Similarly, it is intended to make available in Post Offices fliers containing more detailed information as to registration and voting procedures. The project would involve the printing of about 100,000 colored posters and of some 25,000,000 black and white fliers. The printing cost, if the job is done at the Government Printing Office, is estimated to be about \$22,750--\$4,000 for the posters and \$18,750 for the fliers (75 cents per 1,000). There might be a need for additional posters and fliers, which could bring the cost to \$30,000.

The Post Office Department is willing to cooperate in this program. It believes, however, that it lacks the authority to spend any Post Office funds for the printing of the posters and fliers. It therefore believes that its participation in the program will have to be limited to the placing of the posters on Post Office bulletin boards and to making the fliers available to the public in post offices throughout the country. It is our understanding from correspondence with the Post Office Department that it is willing to perform those functions regardless whether the posters and fliers are furnished from another government agency, or from private sources, and will do so without cost to the donor (Tab A). We assume that the statement made by the Post Office Department in its May 10 letter that it would perform those functions "without cost" indicates that it would bear the cost of transporting the posters and fliers to the individual post offices throughout the country.

We have conferred with representatives of the Post Office Department, with the Bureau of Prisons, and with Mr. Andretta

regarding the possibility of obtaining from governmental funds the amount necessary to defray the printing expense involved. We have also explored other possible avenues. Unfortunately, we have been unable to discover any authority to use appropriated funds for the purpose of printing the posters and fliers.

The federal statutes governing printing reflect an attitude adverse to the conduct of a publicity campaign by the Executive branch in the absence of express statutory authorization. Pursuant to 44 U.S.C. 111, all printing for the Executive branch is to be performed primarily at the Government Printing Office; the statute permits, in addition, printing at field printing plants operated by the several Executive departments. This basic statutory directive is implemented by 44 U.S.C. 116, 117, 213, 219 and 219a, which provide in substance that no printing shall be done at the Government Printing Office unless authorized by law (44 U.S.C. 116); that a departmental request for printing shall certify that the work is necessary for public service (44 U.S.C. 117); that no printing shall be done for the Executive departments in excess of their appropriation (44 U.S.C. 213); that no head of an Executive department shall cause to be printed, and the Public Printer shall not print, any document or matter "except that which is authorized by law and necessary for the public business" (44 U.S.C. 219); and that no document unrelated to the ordinary business transactions of the Executive departments shall be printed on their requisition unless expressly authorized by Congress (44 U.S.C. 219a). In contrast, 44 U.S.C. 211 provides that the "Public Printer shall execute such printing and binding for the President as he shall order and make requisitions for."

The statutory authority of the Executive branch in the field of voting is limited to a few specific areas. Under the Federal Voting Assistance Act of 1955, 69 Stat. 584, 5 U.S.C. 2171-2196, the Executive branch has the responsibility to disseminate voting information with respect to certain absentee voters in the military, federal, and maritime services. Under 8 U.S.C. 1443(b), the Attorney General is authorized to promote the instruction and training in citizenship responsibilities of applicants for naturalization. Under the Civil Rights Act, 42 U.S.C. 1971, the Attorney General can resort to the courts in order to aid those whose voting rights have been interfered with; this Office has concluded recently that these responsibilities would not seem "to include a duty to inform prospective



voters generally regarding registration procedures under state law" (see Office of Legal Counsel memorandum of November 24, 1961, to the Deputy Attorney General, subject: Printing of Pamphlet relating to Voting (Tab B)). Similarly, 36 U.S.C. 153, 154, and 159, which provide for the celebration of Citizenship Day and Constitution Week, do not contain any provision which would authorize the Executive branch of the Federal Government to provide for any information or instructions relating to civic responsibilities or to the exercise of the elective franchise.

In these circumstances, it would appear that the Post Office Department is correct in its statement that it has no authority to print posters and fliers relating to voter registration and elections. The Post Office Appropriation Act does not appear to contain any authorization to spend any funds for these purposes. In addition, to our knowledge, no other department or agency in the Executive branch has the authority or the necessary appropriations to incur the expenses of printing.

As far as this Department is concerned, the Administrative Division has advised me that no appropriations are available for this purpose (Tab C). While the Department of Justice Appropriation Act contains a general provision to the effect that appropriated funds can be used to defray "emergency and miscellaneous expenses" upon the approval of the Attorney General or the Administrative Assistant Attorney General, Mr. Andretta states that this authority is confined to functions imposed upon the Department of Justice by law and would not be available for the proposed project.

It had also occurred to me that this Department could do the printing of the posters and fliers as a part of the vocational training program of Federal Prison Industries, 18 U.S.C. 4122(c). The Bureau of Prisons, however, has pointed out to me that this would not be feasible (Tab D). Section 20 of the Government Printing and Binding Regulations, published by the Joint Congressional Committee on Printing, provides that no color printing which involves an additional expenditure of more than \$500 for printing may be done without prior approval of the Joint Committee on Printing. The cost of printing 100,000 colored posters would far exceed this amount. The printing of 25,000,000 black and white fliers certainly would go beyond the scope of a mere training exercise. It also

would seem to violate section 28 of the Printing and Binding Regulations, which provides:

10 "No printing, binding, or blank-book work shall be done at the Government Printing Office or at any other printing or binding office, plant, or school of the Government unless authorized by law. (See sec. 116, title 44, U.S.C.) All printed matter issued shall be devoted to the work which the branch or officer of the Government issuing the same is required by law to undertake, and shall not contain matter which is unnecessary in the transaction of the public business or matter relating to work which any other branch of the Government service is authorized to perform. (See secs. 219 and 219a, title 44, U.S.C.)"

It appears therefore that this Department lacks the authority and funds to engage in a project of the envisaged magnitude.

Another possibility which has been suggested (see Tab B) would be to have the fliers printed and distributed by the Civil Rights Commission with a coupon attached to the flier asking the recipient to report any illegal or improper procedures which he encountered in attempting to register. Thus, the informational aspect of the flier would become merely an adjunct to the investigatory activities in which the Commission is authorized to engage. This idea might be worth considering if distribution of the flier were to be limited to areas in which the Commission was planning to conduct an investigation, but it seems to us unwise for both legal and policy reasons to use the Commission's investigatory function as a pretext for nationwide distribution of the flier. Moreover, at this time the question appears to be academic, since we have been advised that the Commission does not have the necessary funds available.

In view of 44 U.S.C. 211 (supra), which gives to the President an authority to direct printing which is broader than the one possessed by the departments and agencies, I have investigated the possibility of having the printing done through the President's Office. The only pertinent appropriation would seem to be the President's emergency fund to



provide in the President's "discretion for emergencies affecting the national interest, security, or defense which may arise at home or abroad during the current fiscal year." General Government Matters, etc., Appropriation Act, 1962, 75 Stat. 268, 270. While it might be argued that the failure of voters to participate in elections is contrary to the national interest, it does not appear to constitute the type of emergency for which the President's emergency fund was created. Moreover, this particular emergency, if it should be one, has been with us for a long time and has not arisen during the current fiscal year, as required by the statutory language. In any event, this question, too, is academic because, according to the Post Office Department, no White House funds appear to be available at the present time.

In these circumstances, the suggestion has been made that, in the absence of appropriations for the printing, the sums required for that purpose might be donated to a government department from nonpartisan or bipartisan sources, such as the National Committees of the two political parties, or some other private source. The donation of money, however, would not solve the problem. First, it is doubtful whether the donated funds could be spent without an appropriation or other Congressional direction. 10 Comp. Gen. 395, 398; 30 Op. A.G. 527, 528. Moreover, the acceptance of the gift of the funds still would not relieve the agency from the limitations contained in the several provisions which limit printing at the Government Printing Office and other printing establishments of the Government to matters which are authorized by law and necessary for the transaction of the public business. (Cf. 44 U.S.C. 116, 219, 219a, and section 28 of the Government Printing and Binding Regulations, discussed above.)

Therefore, the willingness of the Post Office Department to receive posters and fliers from private donors and to make them available to the public without charge to the donors acquires considerable significance. In the event it becomes difficult to agree on a printed text with outside sources, or that some donors might prefer to donate money rather than be involved in the printing technicalities, it may be possible to utilize the National Conference on Citizenship (36 U.S.C. 431-447) as an intermediary. That federally chartered corporation has the power to acquire by gift any property necessary for attaining the objects of the corporation (36 U.S.C. 434(6)).

The objects of the corporation include "to assist in the development of more dynamic procedures for making citizenship more effective" (36 U.S.C. 433(2)). The encouragement of registration and voting would seem to come within that object. It therefore might be appropriate to inquire whether the Conference would be willing to accept cash gifts, to undertake the printing of the posters and fliers, and to turn them over to the Post Office Department.