

5 FEB 1981

MEMORANDUM FOR FRED FIELDING
Counsel to the President

Re: Policy of the Carter Administration Regarding
the Protection of the President's Name, Picture,
and Seal

This responds to Mr. Bolton's telephone inquiry of January 27, 1981, concerning the policy of the Carter Administration regarding the protection of the President's name, picture, and seal.

This Office is not aware of the pertinent policies of the previous Administration. We therefor must limit our response to relevant advice we have given to the White House and in particular to the Counsel to the President.

Our advice has generally fallen into two areas: first, the enforcement of 18 U.S.C. § 713 which protects the seal of the President, and its implementing Executive Order No. 11649, as amended by Executive Order No. 11916, 18 U.S.C. § 713, note; and, second, the use of the President's name or likeness for promotional or deceptive purposes.

As regards the protection of the President's seal, we have cautioned your Office orally to be extremely careful in seeking to enforce § 713 by criminal or injunctive proceedings. Our files, in particular the antecedents of Executive Order No. 11916 and the documents supporting it, show that Presidents themselves have frequently given Presidential seals or facsimiles thereof to individuals for unauthorized purposes, or have tolerated technical violations of the statute or the Executive orders because prosecutions, especially of "respectable violators," would be too difficult or undesirable as a matter of policy. In those circumstances, the institution of criminal or injunctive proceedings against less favored persons could raise embarrassing implications of favoritism, retaliation or intimidation. This consideration, of course, would not apply to the use of the seal for deceptive purposes.

See, in this context, the attached memoranda from Assistant Attorney General Scalia to Associate Counsel Chapman, dated September 30, 1974; from Counsel to the President Buchen to Director Lynn, OMB, dated August 22, 1975; and from General Counsel Nichols, OMB, to Attorney General Levi, dated May 11, 1976.

As regards the second topic, we have advised the White House generally that no federal law restricts the use of the President's name or likeness as such. This would mean, e.g., that the use of the President's picture on souvenir items could not be prevented. On the other hand, remedies under the Federal Trade Commission Act and under State laws are available where the President's name or picture are used so as to imply that the President endorses, profits from, or is connected with; a product or that the communication involved is of an official nature. See attached memoranda from Assistant Attorney General Harmon to Associate Counsel Huron, dated May 3, 1977; and from Assistant Attorney General Katzenbach to Assistant Special Counsel to the President White, dated July 26, 1961.

We do not know whether and to what extent the recommendations made by this Office were followed.

Larry L. Simms
Acting Assistant Attorney General
Office of Legal Counsel

Attachments