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Office of the
Assistant Attorney General

Washington, D.C. 20530

29 MAY 1981

our 630 P.M.
5/29/81MEMORANDUM FOR EDWARD C. SCHMULTS
Deputy Attorney GeneralRe: Anti-Lobbying Laws

There are a number of overlapping statutes and appropriation riders that prohibit "lobbying" by federal officers, federal employees, and persons who receive federal money under grants and contracts. This memorandum describes very briefly and quite generally those prohibitions and summarizes the state of the law.

In General. In almost all cases, the relevant legislation takes the form of a restriction on the use of appropriated funds. It restricts, not lobbying per se, but the use of federal money to influence legislation, directly or indirectly. Some of the statutes apply to the Government at large, including the White House. Others are directed at particular programs or agencies.

Most of this legislation is drafted quite broadly. If construed literally, it would bring to a halt a large number of activities in which Executive officers have traditionally engaged. The legislation has not been interpreted broadly, however. It has been interpreted narrowly; and the Executive Branch and this Department have developed detailed guidelines that attempt to define appropriate conduct and to distinguish it from conduct that will be considered as violating the statute. These guidelines generally permit a wide range of contacts with the Congress itself and with interest groups engaged in lobbying the Congress. A copy of the guidelines now in use in the White House is attached (Attachment 1).

Criminal Law. Section 1913 of Title 18, a copy of which is attached (Attachment 2), is the oldest anti-lobbying statute, but there have been no prosecutions under it in the 62 years it has been on the books. The statute applies to all federal officers and employees. It is broad on its face, but this

Office and the Criminal Division have construed it as having only a very limited application -- primarily to cases in which officers or employees use federal funds to mount a "grass roots" campaign on behalf of pending or proposed legislation.

Appropriation Riders. There is a appropriation rider, inserted routinely in general and in specific appropriations, that prohibits the use of federal funds "for publicity or propaganda purposes designed to support or defeat legislation pending before Congress." This Office has construed this rider narrowly. In general, our view has been that federal officials are free to speak their minds to the press and to the public in all respects; what they must avoid is any effort to serve as their own press by generating their own propaganda for distribution via a variety of media or by shifting personnel resources into the field of public relations without congressional authorization.

Legislation for Particular Agencies or Corporations. In some instances Congress has inserted specific anti-lobbying restrictions into the organic legislation or appropriations for particular agencies, agency programs, or corporations. Typical examples are the restrictions found in the organic legislation governing the Legal Services Corporation, see 42 U.S.C. §§ 2996e (c), 2996f(a)(5), and in the annual appropriation for the Department of Health and Human Services (Attachment 3). Although the language and history of these restrictions may vary from case to case, there has been a tendency for the Comptroller General and agency counsel to assume that they should be construed in the same way that 18 U.S.C. § 1913 has been construed -- that is, as permitting a wide range of contact with Congress and interest groups, but as forbidding "grass roots" lobbying. See Attachment 4. In our view, the "correct" interpretation of these restrictions must be determined on a case by case basis.

A member of my staff, Miles Foy, has been working recently in the anti-lobbying field and is available to brief you in matters of detail if you need a briefing before your meeting on Wednesday.

Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel

Attachments

cc: Stanley E. Morris
Associate Deputy General