

## **Proposal That the President Accept Honorary Irish Citizenship**

Acceptance by the President of honorary Irish citizenship would fall within the spirit, if not the letter, of the Emoluments Clause of the Constitution.

The procedure which has developed under the constitutional provision and its implementing statute would permit the President to participate in the formal ceremonies, accept the written evidence of the award and have it deposited with the Department of State, subject to the subsequent consent of Congress.

Even if Congress does not enact consenting legislation, the President could probably have the document conferring honorary Irish citizenship delivered to him by the Department of State after he leaves the White House.

May 10, 1963

### **MEMORANDUM OPINION FOR THE SPECIAL ASSISTANT TO THE PRESIDENT\***

The Attorney General has asked me to respond to your memorandum of April 17, 1963, with respect to the legal aspects of the proposal that the President accept "honorary Irish citizenship." For the reasons set forth hereafter, I believe that acceptance by the President of honorary Irish citizenship would fall within the spirit, if not the letter, of Article I, Section 9, Clause 8, of the Constitution which requires that an individual who holds an office of profit or trust under the United States must obtain the consent of Congress in order to accept "any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State." Nevertheless, the procedure which has developed under the constitutional provision and under section 3 of the Act of January 3, 1881 (ch. 32, 21 Stat. 603, 604 (codified at 5 U.S.C. § 115)), a statute which implements the provision, would permit the President to participate in the formal ceremonies, accept the written evidence of the award and have it deposited with the Department of State, subject to the subsequent consent of Congress. Moreover, even if Congress should thereafter fail to enact consenting legislation, the President could probably have the document conferring honorary Irish citizenship delivered to him by the Department of State after he leaves the White House.

At the outset, it should be emphasized that what would be conferred upon the President would not be Irish citizenship but merely honorary Irish citizenship. Your memorandum of April 17, 1963 indicated that it was originally the intention that the grant be conferred pursuant to section 12 of the Irish Nationality and Citizenship Act, 1956. That act provides that "Irish citizenship" may be granted to individuals or the children or grandchildren of individuals who have "done signal

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\* Editor's Note: The Special Assistant to whom this memorandum was addressed was McGeorge Bundy, National Security Adviser to the President.

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honour or rendered distinguished service to” Ireland, but it makes it clear that once the grant is made the individual “shall . . . be an Irish citizen.” *Id.* § 12. Accordingly, action pursuant to this statute would impose upon the President whatever duties and obligations are ordinarily attached to Irish citizenship and would raise the serious problems attendant upon an undertaking by a President of fealty to another nation.

As a result of discussion of this problem with the Irish Ambassador, the Government of Ireland has drafted a special act, a copy of which is attached. The act would provide that “[t]he President [of Ireland] may by warrant confer on John Fitzgerald Kennedy, President of the United States of America, the title of honour of Honorary Citizen of Ireland.” In an Aide-Mémoire of April 30, 1963, which is also attached, the Irish ambassador states:

The Attorney General of Ireland has given opinion that the Bill as drafted would not confer citizenship with its attendant duties and obligations but only a title of honor.

I agree. In fact, the Department of Justice took a similar position when honorary United States citizenship was conferred upon Sir Winston Churchill. H.R. Rep. No. 88-57 (1963). Consequently, the problems which might have arisen as a result of dual citizenship are no longer presented.

However, the question still remains whether acceptance comes within the letter or spirit of Article I, Section 9, Clause 8, which provides:

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

This clause was adopted unanimously at the constitutional convention as a means of preserving the independence of foreign ministers and other officers of the United States from external influences. 3 *Papers of James Madison* 1408 (1841). It is virtually copied from a similar provision in Article VI of the Article of Confederation. The constitutional provision has been interpreted as being “particularly directed against every kind of influence by foreign governments upon officers of the United States, based on our historic policies as a nation.” *Gifts from Foreign Prince*, 24 Op. Att'y Gen. 116, 117 (1902) (emphasis in original); see also 2 Joseph Story, *Commentaries on the Constitution of the United States* § 1352 (Thomas M. Cooley ed., 4th ed. 1873).

It will be noted that the proposed Irish statute describes what would be conferred upon the President as a “title of honour.” As such, it could be argued that what would be conferred falls within the literal language of the constitutional provision. Ambassador Kiernan has advised us that the bill could be redrafted to

omit the reference to a “title of honour.” However, I do not believe that the legal problem would be significantly modified if this should be done. The spirit of the provision clearly extends to any type of obligation to foreign countries, and the designation of what is conferred appears to be of little relevance.

Moreover, in analyzing Public Law 88-6 and Proclamation 3525 of April 9, 1963, which operated to confer honorary citizenship of the United States upon Sir Winston Churchill, this Department took the view that what would be conferred upon him would be “similar in effect to . . . a medal or decoration.” H.R. Rep. No. 88-57, at 4 (letter of Deputy Attorney General Katzenbach). The House Committee on the Judiciary stated that it “subscribes to the interpretation of the import of this legislation as outlined in the report rendered by the Department of Justice.” *Id.* at 5. And medals and decorations have always been regarded as coming within the constitutional provision,<sup>1</sup> although it has never been precisely articulated whether one of these constitutes a “present, Emolument, Office, or Title.” Thus, section 3 of the Act of January 31, 1881 provides:

[A]ny present, decoration, or other thing, which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by act of Congress.

5 U.S.C. § 115. The constitutional provision requires the consent of Congress to the acceptance of the enumerated honors and presents “of any kind whatever.” Since the statute is intended to implement this provision, the phrase “other thing” should probably be construed in a similarly inclusive manner. Accordingly, it could be reasonably contended that a warrant or other documentary evidence of honorary Irish citizenship that may be presented to the President is an “other thing” within the meaning of the statute.

Literally read, the statute precludes direct tender of a present or mark of honor to an officer of the United States; the tender is to be through the Department of State. However, on the ground that it avoids offense to other countries, a custom has developed under which officers of the United States may accept foreign honors tendered to them and subsequently have them deposited in the Department

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<sup>1</sup> See, e.g., Message of President Andrew Jackson to the Senate and House of Representatives, dated January 19, 1830, in 3 *Compilation of the Messages and Papers of the Presidents* 1029, 1030 (James D. Richardson ed., 1897), stating that the Constitution prevented him from accepting a medal tendered to him by the Republic of Colombia, and that he was placing it at the disposal of Congress. Congress did not grant its consent to acceptance. The House Committee on Foreign Affairs merely recommended that the medal be deposited with the Department of State. H.R. Rep. No. 21-170 (Feb. 9, 1830). See also 5 U.S.C. § 114 (prohibiting an officer of the United States from wearing a decoration without the consent of Congress).

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of State. This procedure has been treated as substantial compliance with the statute. If Congress subsequently enacts legislation consenting to acceptance (*see, e.g.*, Act of Aug. 3, 1956, Priv. L. No. 84-850, 70 Stat. A171), delivery is made to the recipient.<sup>2</sup> Therefore, if the President should accept the tender of honorary Irish citizenship, it would be appropriate for him to include in his acceptance remarks a statement that he is thereupon placing the warrant in the hands of the United States Ambassador to Ireland in accordance with United States law. If the President handled the matter in this way, it would be difficult for anyone to contend that his action was inconsistent with the constitutional provision or the statute.<sup>3</sup> In order to minimize possible congressional criticism in that regard, it might also be appropriate to advise the Chairmen of the House and Senate Foreign Relations Committees in advance that this procedure will be followed.

Two final points might be made. First, some Presidents have treated presents which they have received as gifts to the United States, rather than as personal gifts. They have therefore taken the view that acceptance is not subject to the constitutional provision. This view was apparently followed by President Lincoln, who received a "Diploma" from the Republic of San Marino declaring that "the President pro tempore of the United States of America" was a citizen of that Republic. Although Lincoln wrote the Regent Captains of San Marino thanking its Council for the honor that it had "conferred upon me" (4 *The Collected Works of Abraham Lincoln* 360 (Roy P. Basler ed., 1953)), he had the document deposited with the Department of State and it is now in the National Archives. The "Diploma" was conferred on the President of the United States "pro tempore," and it indicates that the action to authorize its issuance was taken while Buchanan was still President. The circumstances thus appear to have differed markedly from those here involved. It seems clear that Ireland proposes to confer honorary citizenship on President Kennedy personally, not on him as the President of the United States for the time being.

Second, we are informed that it is the practice of the Protocol Office of the State Department, the custodian of gifts and other marks of honor deposited

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<sup>2</sup> Under 5 U.S.C. § 115a, the Secretary of State is directed to submit to each alternate Congress a list of retired personnel for whom the Department of State is holding decorations, medals or other marks of honor pursuant to 5 U.S.C. § 115. In a memorandum to department and agency heads, dated April 13, 1954, President Eisenhower directed that lists submitted to Congress pursuant to 5 U.S.C. § 115a be limited to retired personnel. Of course this direction has not prevented Congress from granting the required consent to incumbent officers. 70 Stat. A171.

<sup>3</sup> As a legal matter, the consent of Congress can be obtained either in advance or following receipt of anything covered by Article I, Section 9, Clause 8. We have, however, been able to locate only one statute in which it was clear that the consent had been granted in advance, Pub. Res. 34-3, 11 Stat. 152 (Aug. 30, 1856), and this did not involve a President. On the other hand, in the only instance in which we have been able to discover a grant of consent to a President, it followed receipt. Pub. Res. 54-39, 29 Stat. 759 (Apr. 2, 1896) (authorizing delivery to Benjamin Harrison of medals presented to him by Brazil and Spain during his term as President). The Harrison precedent would strengthen the view that the procedure suggested above is consistent with constitutional practice.

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pursuant to the 1881 Act, to deliver to a former officer who has severed any official relationship with the United States, upon his request and without referral to Congress, a gift or other mark of honor tendered to him during his incumbency and deposited under the Act. Accordingly, even if Congress should not act in this matter, the President could probably obtain the warrant when he no longer holds office.<sup>4</sup>

I assume that the President will independently appraise the policy considerations involved in acceptance of the foreign honor here involved. In this regard, he may wish to know that President Wilson refused all foreign decorations while in office.<sup>5</sup> On the other hand, it is clear that this attitude does not represent an established policy of the presidency, as evidenced by the incidents, referred to above, involving Presidents Jackson, Lincoln and Benjamin Harrison.

NORBERT A. SCHLEI  
*Assistant Attorney General*  
*Office of Legal Counsel*

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<sup>4</sup> While a former President is entitled to a monetary allowance of \$25,000 per year (Pub. L. No. 85-745, 72 Stat. 838 (codified at 3 U.S.C. § 102 note (1958))), he could hardly be considered to hold an "Office" within the meaning of the constitutional prohibition.

<sup>5</sup> Edith Bolling Wilson, *My Memoir* 343 (1st ed. 1938).

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ATTACHMENT 1

**President Kennedy Bill, 1963**

**Arrangement of Sections**

*Section*

1. Conferring of title of honour on President Kennedy.
2. Short title.

**Draft of Bill**

An Act to enable the title of honour of Honorary Citizen of Ireland to be conferred on John Fitzgerald Kennedy, President of the United States of America.

*BE IT ENACTED* by the Oireachtas as follows:

Conferring of title of honour on President Kennedy.      1. The President may by warrant confer on John Fitzgerald Kennedy, President of the United States of America, the title of honour of Honorary Citizen of Ireland.

Short title.      2. This Act may be cited as the President Kennedy Act, 1963.

ATTACHMENT 2

**Aide-Mémoire**

The Government of Ireland is prepared to promote special legislation to enable the title of Honorary Citizen of Ireland to be conferred on President Kennedy, instead of pursuing the idea of offering citizenship as a token of honor under Section 12 of the Irish Nationality and Citizenship Act, 1956. A draft bill has been prepared with this objective in mind. The text of the bill is conveyed herewith.

The Attorney General of Ireland has given opinion that the Bill as drafted would not confer citizenship with its attendant duties and obligations but only a title of honor.

An informal intimation is requested as to whether the title of honor of Honorary Citizen of Ireland, as contemplated in the draft bill, would be acceptable to President Kennedy.

April 10, 1963