

JUL 12 1976

MEMORANDUM FOR KENNETH A. LAZARUS

Re: Proposed Appointment of Chairman of the  
President's Committee on Science and  
Technology

By memorandum dated June 28, 1976, you requested our views regarding the possible appointment of an officer and stockholder of TRW, Inc., as Chairman of the President's Committee on Science and Technology. We are pleased to respond.

The President was directed to establish the Committee within the Executive Office of the President by section 301 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, P.L. 94-282, 90 Stat. 459, 468. Section 302(a) of the Act provides that the Committee shall consist of the Director of the Office of Science and Technology established under title II of the Act and of not less than eight nor more than fourteen other members appointed by the President not more than sixty days after the Director has assumed office. Section 302(c) provides that the President shall appoint one member of the Committee to serve as Chairman for such period as the President shall determine.

Members are entitled to receive compensation at a rate not to exceed the daily rate prescribed for level GS-18 of the General Schedule while serving on the Committee. § 302 (d). Also, the Committee is authorized to hire specialists, experts, and other employees to assist in carrying out its functions and to request the head of any Federal department, agency, or instrumentality to furnish necessary information and to detail employees to the Committee. § 305. In view

of these provisions, it seems clear that Committee members must be regarded as officers or employees of the United States for purposes of the Federal conflict of interest laws.

The principal conflict of interest law applicable here is 18 U.S.C. § 208(a), which, as you know, provides that an officer or employee of the United States may not participate personally or substantially in a particular matter in which, to his knowledge, he or an organization in which he is serving as an officer has a financial interest, unless he first obtains an appropriate exemption under 18 U.S.C. § 208(b). The issue, then, is the degree to which TRW will have a financial interest in particular matters coming before the Committee and its Chairman.

The principal function of the Committee will be to "survey, examine, and analyze the overall context of the Federal science, engineering, and technology effort including missions, goals, personnel, funding, organization, facilities, and activities in general, taking adequate account of the interests of individuals and groups that may be affected by Federal scientific, engineering, and technical programs . . ." § 302(b)(1).

It appears from the chart that you enclosed with your memorandum of June 28 that TRW's business is chiefly in the areas of electronics and computer-based services, spacecraft and propulsion products, energy products and services, car and truck products, and fastener tools and bearings. Presumably all of these lines of business can be affected by technological or scientific developments of one sort or another, and the policies and programs of the Federal Government with respect to science and technology, which the Committee will study, no doubt can have some impact on these businesses. But this fact alone would not require the disqualification or exemption of a member affiliated with TRW in all of the Committee's work. Use of the phrase "particular matter" in the conflict of interest laws serves "to emphasize that the restriction applies to a specific case or matter and not to a general area of activity." Hearings on Federal Conflict of Interest Legislation before a Subcommittee

of the House Judiciary Committee, 87th Cong., 1st Sess. 38 (1961). The prohibition in section 208(a) would therefore apply only with respect to relatively discrete and isolable aspects of the Committee's work, such as the evaluation of or recommendation of changes in a specific research program sponsored by a Federal agency. Moreover, we have taken the position in the past that a Federal employee does not have a "financial interest" in a particular matter coming before him unless there is a reasonable possibility that the resolution of the particular matter would have a "direct and predictable effect" on an organization in which he owns an interest or holds or is seeking a position. See our memorandum of April 12 regarding the Board for International Food and Agricultural Development, at p. 5; see also Federal Personnel Manual, Chapter 735, Appendix C, at p. C-4. Applying this principle in the present context, it is our opinion that a Committee member affiliated with TRW would have to recuse himself from the Committee's evaluation of and formulation of recommendations regarding those specific Federal programs and policies that will have a "direct and predictable effect" on TRW. This would apply to those specific programs under which TRW has procurement, research, or other contracts or is an identifiable competitor for such contracts. Certain subjects of the Committee's attention would be more likely to implicate TRW's interests in a direct manner than others. For example, because of the Federal domination in the area of space technology, it may be that most of the Committee's activities in that area would have a sufficiently close nexus to TRW, because of its substantial sales of spacecraft and propulsion products, as to require the disqualification or exemption of the proposed appointee. Similarly, this would apply to the Committee's review of specific agency regulations which have a substantive impact on businesses in which TRW engages, such as those in the energy field.

However, it does not appear that the types of situations just discussed and similar matters in which TRW would have a "financial interest" will constitute a significant portion of the Committee's work. Many of the Committee's activities will presumably focus on agency reorganization, internal procedural reforms, and the like which would be unlikely to have any tangible effect on TRW. See, e.g., §§ 303(a)(1), (3), (9) and (12). Other Committee work will have some relation to the

private sector but often in only a generalized manner or in such a way that its impact on TRW or any other individual firm would ordinarily be far too attenuated or speculative to give rise to difficulties under 18 U.S.C. § 208(a). See, e.g., §§ 303(a)(2), (4), (5), (8), (10), (11) and (13). As we have said, disqualification or exemption would only be required in instances in which the Committee's attention was focused on particular programs or policies in which TRW has an identifiable interest.

We have one final observation. It appears that the members of the Committee, including the Chairman, will be special Government employees as defined in 18 U.S.C. § 202 (a). If so, they would be exempt from the prohibition contained in 18 U.S.C. § 209(a) against the receipt of a supplementation of Federal salary. See 18 U.S.C. § 209(c). Moreover, a special Government employee is barred by 18 U.S.C. §§ 203 and 205 from representing his regular employers or others in a matter involving the United States only if he has participated personally or substantially as a special Government employee in the same matter or if it is pending in the department or agency of the Government in which he is serving -- in this case, the Executive Office of the President. In fact, Committee members would not be barred in the latter category of cases unless they had served in the Executive Office for more than sixty of the immediately preceding 365 consecutive days. See 18 U.S.C. §§ 203(c); 205, Paragraph 2. However, if the Chairman is appointed to serve for more than 130 days per year, he would be subject to the government-wide ban on representational activities contained in §§ 203(a) and 205, Paragraph 1.

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