

November 14, 1972

MEMORANDUM FOR THE HONORABLE JOHN W. DEAN, III
Counsel to the President

Re: Applicability to President of Restriction
on Employment of Relatives.

Under 5 U.S.C. 3110, no federal official (expressly including the President) may appoint or employ any of a broadly defined class of relatives in a "civilian position" in the agency in which the appointing official is serving "or over which he exercises jurisdiction of control." A question has been raised as to whether this 1967 enactment would bar the President from appointing an individual therein defined as a relative to permanent or temporary employment as a member of the White House staff.

The legislative history of 5 U.S.C. 3110, which is discussed in more detail in the memorandum of October 15, 1968, which is enclosed, does not contain a detailed discussion of the applicability of this provision to the Office of the President. It is arguable that the section is an unconstitutional restriction on the President's appointive authority, especially if construed to limit his discretion in appointing members of his Cabinet or other high officials, acting under his constitutional authority to appoint "officers of the United States" with or without Senate confirmation. Article II, section 2. The language of 5 U.S.C. 3110, however, extends to any appointment to a "civilian position" over which the President exercises jurisdiction or control. Whatever its constitutionality may be as applied to an appointment by the President of a relative

to a Cabinet or other high-level position, it seems clearly applicable to subordinate positions on the White House staff, which fall within the category of "inferior officers" subject to Congressional control.

I am enclosing several memoranda which the Office of Legal Counsel has prepared on this subject. If I can be of further assistance, please let me know.

Roger C. Cramton
Assistant Attorney General
Office of Legal Counsel