



U.S. Department of Justice
Office of Legal Counsel

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

28 FEB 1983

MEMORANDUM TO DAVID B. WALLER
SENIOR ASSOCIATE COUNSEL TO THE PRESIDENT

Re: Appointment of Member of President's
Family to Presidential Advisory
Committee on Private Sector Initiatives

Attached, as we discussed, is a memorandum dated February 18, 1977, prepared by this Office concerning whether the federal nepotism statute, 5 U.S.C. § 3110, prevented Mrs. Carter from being appointed to the President's Commission on Mental Health, a federal advisory commission established pursuant to Executive Order No. 11973 of February 17, 1977, 42 Fed. Reg. 10677 (February 23, 1977). The memorandum concluded that Mrs. Carter could not serve actively on the Commission, whether or not she received compensation for her services, although she could serve in an "honorary" capacity.

Also attached is a Memorandum for the Attorney General dated March 23, 1977, located subsequent to our telephone conversations, which addresses the question whether President Carter's son could volunteer his services as an assistant to a regular member of the White House staff. This memorandum referred to the February 18 memorandum in concluding that he could not, despite the fact that he would not be compensated. In support of this conclusion, it attached an undated Memorandum for the Attorney General entitled "Employment of relatives who will serve without compensation."

As we discussed, time constraints have not permitted us to reexamine the legal analysis and conclusions reached in these memoranda. We did examine the Executive Order, establishing the President's Commission on Mental Health, however, to determine whether that Commission differed significantly from the proposed Commission on Private Sector Initiatives. Our brief review convinces us that the two are not sufficiently different to provide a basis for distinguishing between them with respect to the applicability of section 3110.

Based on our discussions, we think the proposal to have a member of the President's family serve actively on the Commission on Private Sector Initiatives raises virtually the same problems raised by Mrs. Carter's proposed service on the President's Commission on Mental Health. Without sufficient time to reexamine the legal analysis contained in our earlier memoranda, we must adhere to the conclusion reached there that the President cannot, consistently with section 3110, appoint a relative as an active member of such a Commission, even if the relative serves without compensation.



Robert B. Shanks
Deputy Assistant Attorney General
Office of Legal Counsel

Enclosure