MAR 2 0 1969

The Honorable
John D. Ehrlichman
Counsel to the President
The White House
Washington, D. C.

Dear John:

I respond hereby to your inquiry of February 19, 1969, relating to possible delegation by the President of his authority to sign documents. It is my understanding that the inquiry is concerned primarily with delegation of authority to members of the White House staff to physically sign documents, rather than delegation of the decision-making power of the President exercised in connection with the various types of documents included on the list transmitted with your letter.

You are, I know, as aware as I am that under existing law it would not be proper for the President to delegate decision-making authority to members of the White House staff. The statutory authority of the President to delegate functions vested in him by law (3 U.S.C. 301) is limited to a delegation to officials in the Executive branch who are appointed by and with the advice and consent of the Senate. The assistants to the President are not so appointed. See 3 U.S.C. 105-106.

Your office, rather than ours, has the information necessary to decide whether the delegation of only the act of signing of particular types of documents would materially reduce the administrative burdens on the President, where he retains the decision-making function involved.

I am enclosing a memorandum, prepared in this Office, on the subject of delegation of the President's authority to sign documents. The memorandum concludes that, with the exception of signing bills passed by Congress, there is no legal impediment to the delegation of the act of signing and that the question of which documents the President should personally sign is largely one of propriety rather than of law. Again you, rather than our office, are best able to distinguish between documents which should be personally signed by the President as a matter of policy, and documents which might properly be signed by mechanical means or by someone else at the direction of the President.

In the event you should find that it would be desirable to delegate particular decision-making functions as well as the act of signing, with respect to certain of the documents now signed by the President, in order to save his time, we would be glad, in conjunction with Mr. Hopkins and the Bureau of the Budget, to look into the matter in order to ascertain which of such functions are legally delegable and might appropriately be delegated from a policy standpoint. In such cases, the proper procedure for delegation would be to issue an Executive order for publication in the Federal Register, 3 U.S.C. 301.

Sincerely,

William H. Rehnquist
Assistant Attorney General
Office of Legal Counsel

MEMORANDUM

Re: Delegation of the President's Authority to Physically Sign Documents

This memorandum is concerned with the question of which documents might be physically signed by delegates of the President rather than by the President personally, where the decision-making function involved with respect to the document is retained by the President.

1. The President's signature on documents is generally not legally necessary in order to show his decision or approval of the action involved. His decision may be indicated by other means such as by a signature of another official noting that he has signed the document "by direction of the President".

In Runkle v. United States, 122 U.S. 543, involving a statutory requirement of confirmation or disapproval by the President of dismissal from the Army, the Supreme Court held that there was insufficient indication of Presidential approval. However, the Court noted that it was not deciding what the precise form of such approval should be or whether the President's signature must be affixed (122 U.S., at 561). In United States v. Fletcher,

148 U.S. 84, the Runkle decision was limited, and it was held that where the President's personal judgment is required, it is sufficiently evidenced by a recital in the order of the Secretary of War showing that the paper had been submitted to the President. The Court stated that "we have held that while the action required of the President in respect of the proceedings and sentences of courts-martial is judicial, yet that such action need not be evidenced under his own hand." (148 U.S., at 88). See also, Wilcox v. Jackson, 13 Pet. 498.

There is no reference to signature in the listing of Presidential responsibilities in sections 2 and 3 of Article II of the Constitution. On the other hand, Article I, section 7, clause 2, states that if the President approves a bill passed by Congress "he shall sign it." This is the only express requirement in the Constitution for the signature of the President. Thus, the requirement for the President's signature as well as his decision approving a bill would appear to be non-delegable. Although some statutes refer to the President's signature on documents

(see e.g., 5 U.S.C. 2902, relating to commissions of various officers of the United States), there does not appear to be any statute limiting the President's authority to delegate the simple act of signing.

Moreover, the act of signing of a document can be delegated without regard to the delegability of the decision-making function involved. This view is supported by an 1855 opinion of Attorney General Cushing dealing with delegation of Presidential power, which makes a distinction between the President's substantive determination and his attestation thereof. 7 Op. A.G. 453, 472-473. As to the issuance of proclamations, the opinion states that

> "[t]he responsible executive act is the thing proclaimed, * * * the actual signature of the proclamation by the President is nothing but attestation."

With respect to commissions of officers of the United States:

> "[t]he signature of commissions by the President is attestation and nothing else, for the parchment commission is but the evidence of appointment, and not the appointment."

The opinion states further:

> "* * * the lawful will of the President may be announced, and an act in the authority of the President performed, not merely by a Head of Department, but, in the second or other degree of delegation, by some officer subordinate to such head."

Article II, section 3 of the Constitution provides that the President "shall commission all the Officers of the United States." Although the decision to commission cannot be delegated the commissions themselves need not be signed by the President personally but may be executed by a subordinate officer in the name of the President and at his direction. 22 Op. A.G. 82 (1898). The opinion states (page 84):

> "* * * the commission ought, upon its face, to indicate that it is the commission of the President. * * * The actual sign manual of the President is not necessary. * * * many things may be done by the head of the Department without the actual signature of the President, which, when done, are the acts of the President himself; but in such instances it is proper that the instrument, whether it be a commission or other document, should declare the act to be an act of the President, performed by the head of the Department as his representative."

2. Section 301 of Title 3, United States Code, authorizes the President to delegate functions to the head of any department or agency in the executive branch or to officials appointed by and with the advice and consent of the Senate. Such delegations are to be in writing and published in the Federal Register. Section 302 provides that this authority

> "shall not be deemed to limit or derogate from any existing or inherent right of the President to delegate the performance of functions vested in him by law, and nothing herein shall be deemed to require express authorization in any case in which such an official would be presumed in law to have acted by authority or direction of the President."

Section 303 defines "function" as embracing "any duty, power, responsibility, authority, or discretion."

The question arises whether these provisions apply where only the act of signing is delegated and not the decision-making function. The legislative history of these provisions does not provide a clear answer. See H. Rept. No. 1139 (1949); S. Rept. No. 1867 (1950), 81st Cong. There was some discussion during the debate in the House of the burdens imposed on the President by

administrative details and several references to the manual labor involved in signing his name over and over again. 95 Cong. Rec. 11391, 11393-4 (1949). An amendment to section 303 limiting the definition of "function" to "any routine administrative duty" was defeated. 95 Cong. Rec. 11397.

Even where there is a specific statutory reference to the President's signing a document, the practice has apparently been not to formally delegate the authority to sign documents in behalf of the President by publication in the Federal Register. For example, 5 U.S.C. 2902, relating to commissions of civil, military, and judicial officers of the United States, states that the appropriate seal may not be affixed to the commission before the commission has been signed by the President. As Mr. Hopkins pointed out in his memorandum dated February 11, 1969, to Mr. Ehrlichman, the signing of commissions of military officers and postmasters, (and during the Eisenhower Administration, U.S. marshals) has been delegated.

When a subordinate signs a document in behalf of the President and this fact is shown on the face of the document, it is obvious that the official "would be presumed in law to have acted by authority or direction of the President" and express authorization would therefore not appear to be required under the language of 3 U.S.C. 302.

3. Where the President's signature is to appear on a document, the signature generally may be affixed by any means, such as by someone else being authorized to sign the President's name or by the use of a mechanical signature device.

In an 1824 opinion by Attorney General Wirt, the question was raised as to whether a copperplate impression of the Secretary of the Treasury's name would satisfy the legal requirement that certain public documents be signed by the Secretary. (1 Op. A.G. 670). The opinion states:

> "The adoption and acknowledgement of the signature, though written by another, makes it a man's own. * * *
>
> "* * * as to the method of signing, that is left entirely to himself. He may write his name in full, or he may write his initials; or he may print his initials

> with a pen: that pen may be made of a goose quill, or of metal; and I see no legal objection to its being made in the form of a stamp or copperplate. It is still his act; it flows from his assent, and is the evidence of that assent. * * * the word signing does not * * * necessarily imply * * * the use of pen and ink, held and guided by the hand of the Secretary himself * * *." 1 Op. A.G. 672-3.

This view has been followed in subsequent opinions. See 31 Op. A.G. 146 (1917); 31 Op. A.G. 349 (1918). See also, 80 C.J. S., Signatures, §§ 6, 7.

Section 1 of Title 1, United States Code, defines "signature" as including a mark "when the person making the same intended it as such."

If the President's hands only were to become disabled so that he could not personally sign his name, obviously some other means for affixing his signature would have to be used. Otherwise, no legislation could be approved because of the signing requirement of Article I, section 7 of the Constitution.

Where the law specifies the method of signing that method generally must be followed. The Executive order relating to preparation, presentation, filing, and publication of orders and proclamations refers to signing

of the order or proclamation by the President. Executive Order No. 11030 of June 19, 1962, as amended by Executive Order No. 11354 of July 1, 1967; 1 CFR 7.3(a). The concluding paragraph prescribed for proclamations includes the language "IN WITNESS WHEREOF, I have hereunto set my hand * * *," which seems to contemplate personal signature by the President. 1 CFR 7.1(g). This provision is, of course, subject to revocation by the President. However, even if Congress purported to require the President to physically sign proclamations it is doubtful that such a requirement could be made to apply if the President were unable to sign because of physical disability.

The question of whether the President should manually sign his name to a document is primarily one of propriety rather than of law, and it is within the President's discretion to determine which documents he wishes to personally sign and those with respect to which he wishes to delegate the signing to someone else in his behalf or have his own signature written or affixed by means other than his own hand.