MEMORANDUM FOR THE HONORABLE EGIL KROGH
Staff Assistant to the Counsel to the President

Closing of Government Offices in
Memory of Former President Eisenhower.

You have asked us to advise whether the provisions of
5 U.S.C. 6105 pose any obstacle to the President's order
closing all government offices on Monday, March 31, 1969,
the day of the state funeral of former President Eisenhower.
We believe that the statute is not applicable in these cir-
cumstances.

Section 6105 states: "An Executive department may not
be closed as a mark to the memory of a deceased former
official of the United States." It is derived from section
4 of the Act of March 3, 1893 (27 Stat. 715). The original
provision read: "The Executive departments of the Govern-
ment shall not be closed as a mark to the memory of any
deceased ex-official of the United States."

The 1893 enactment was a floor amendment to the Annual
Appropriation Act for the civilian expenses of the Govern-
ment. Hence, its legislative history is understandably
scanty. No reference is made to the section in the reports
that accompanied the legislation. See H.R. Rep. No. 2359,

The debates in Congress give no indication that the
measure was aimed at the situation of the death of a
former President, even though former President Hayes died
about two weeks before the matter was before the Congress.
Rather, the indications are that the Congress was concerned
about the amount of vacation time federal employees were
receiving as a result of annual leave, sick leave, holidays,
funerals and other occasions. Another section of the same
Act required all federal employees to work at least seven
hours every day except Sunday, subject to certain exceptions. It appears that the statute in question was aimed at preventing a proliferation of closings for the funerals of lesser officials.

In introducing the amendment, Representative Enloe stated:

"We have reached a point in our history where we have so many distinguished men in public life, and so many who have retired from public life, that, in addition to the thirty days' leave of absence given to Department employees by law, we have many other holidays given on account of the desire of the heads of Departments to pay respect to the memory of persons who held public office at the time of their deaths or who formerly held such office. It is time to put a limit on these Departments in such matters." 24 Cong. Rec. 1393 (February 9, 1893).

In addition to the above statement, there are further indications that Congress was concerned with the head of a department closing a department. In one of the few references to the section in the debates in Congress, Representative Dockery referred to the section as "the provision which forbids heads of Departments from closing the Departments on account of the death of any deceased ex-official of the United States." 24 Cong. Rec. 2467 (March 2, 1893).

Therefore, the legislative history indicates that the purpose of the section was to prevent the head of a department from closing a department to mark the death of a lesser official. There is no indication that its purpose was to prohibit closing the Executive branch in memory of a former President, action which would normally be taken by the President rather than by any individual department head.
Generally, statutes which refer to "officers" or "officials" of the United States are construed not to include the President unless there is a specific indication that Congress intended to cover the Chief Executive. This principal seems to be particularly applicable where the issue is whether an obscure statute applies to the special situation of national mourning that arises on the relatively infrequent occasion of the passing of a former President.

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