

June 2, 1977

**77-32 MEMORANDUM OPINION FOR THE
COUNSEL TO THE PRESIDENT**

**“Office under the United States”—National
Commission on Neighborhoods**

You have asked for our opinion concerning the question of whether service by a State official as a member of the National Commission on Neighborhoods would constitute holding an office under the authority of the United States. It is our opinion that it would not be so construed under the Federal Constitution. Article I, Section 6, Clause 2 provides in part that “no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.” The legislation establishing the agency itself includes as members two Members of the Senate and two Members of the House. Obviously, it was not intended that they must relinquish their congressional offices.

The practice of Presidents in appointing Members of Congress as commissioners to negotiate treaties and agreements with foreign governments is noted in Constitution of the United States of America, Revised and Annotated, 1972, p. 523: Such appointments “are ordinarily merely temporary and for special tasks, and hence do not fulfill the tests of ‘office’ in the strict sense.” The classic definition of an office in the constitutional sense is found in *United States v. Hartwell*, 6 Wall. 385, 393 (1867):

An office is a public station, or employment, conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument, and duties.

The Court determined that Hartwell, a clerk in the office of the Assistant Treasurer of the United States, was an officer, in part because “his duties were continuing and permanent, not occasional and temporary.”

Your attention is also invited to the discussion (in an 1899 House Judiciary Committee report (Rep. No. 2205, 55th Cong., 3rd Sess.)) of whether holding positions on certain commissions constituted holding office within the meaning of the Constitution.

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