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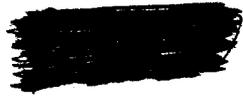


REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES

Analysis Of Travel Activities Of Certain Regulatory Agency Commissioners During 1971-75

In a review of travel practices and policies of regulatory agency commissioners, GAO found that they generally conformed to applicable laws and regulations.

In some cases commissioners attended or spoke at functions where private organizations paid part or all of the travel costs. As a general rule, unless the regulatory agency has legislative authority to accept gifts, the acceptance by the commissioners of official travel expenses paid by these private organizations were improper augmentations to agencies' appropriations.





COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-180224

The Honorable Warren G. Magnuson
Chairman, Committee on Commerce
United States Senate

Dear Mr. Chairman:

Pursuant to your request of June 17, 1976, we examined the questions (see app. 1) and supporting documents provided us concerning travel by certain commissioners of regulatory agencies for calendar years 1971 through 1975. Our response to the questions is summarized below and presented in more detail in the appendixes.

As requested by your office, except for the questions submitted to Commissioner Day, no other individual or agency named in this report were given a copy of or made aware of the precise questions raised by the Committee. Further, none was given the opportunity to read or comment on the data contained in this report, although such individuals or agencies may be adversely affected by public disclosure of this report. Since the Committee intends to request comments prior to any public disclosure we have not followed our usual policy of obtaining advance comments in this case.

PROPRIETY OF FREQUENT TRAVEL BY
COMMISSIONERS TO THEIR HOME STATES
TO ATTEND VARIOUS FUNCTIONS

The Committee was concerned that commissioners can approve their own travel. Appendix II provides our detailed comments on this subject. Authority to approve travel has in effect been delegated to commissioners by the heads of their agencies. Therefore, commissioners may appropriately be reimbursed for travel they approve as incidental to official business, however frequent and to whatever location the travel may be. What constitutes official travel is a question of fact for determination by their agencies.

Congress' intent to minimize travel is expressed in its January 1976 1/ request for the President, through the

1/Section 205 of the Supplemental Appropriations Act, 89 Stat. 826, 843.

Director of the Office of Management and Budget, to take steps to conserve the use of energy and to restrain the inflationary impact of Federal travel expenditures by reducing such expenditures.

The Office of Management and Budget's Bulletin No. 76-79, dated December 4, 1975, as revised by Supplement No. 1 dated January 26, 1976, provides general policy guidance for Federal agencies on the control and management of official travel. It states that the policy is to "authorize that amount of travel necessary to accomplish the purposes of the Government effectively--but not one bit more--and at minimum cost." The Bulletin requires agencies to:

"Establish procedures that will eliminate attendance and minimize participation by employees at conferences, meetings, and seminars when attendance is contingent upon travel at Government expense and not directly related to the accomplishment of the agency missions.* * * "

Questions to Commissioner Day,
Federal Maritime Commission

Generally, the Committee was concerned with (1) Commissioner James V. Day's travel, at the Government's expense, to attend functions in his home State at the Maine Maritime Academy and (2) a charter flight taken by the Commissioner from New York to Maine, while on official business, which was paid for by a private company.

On July 19, 1976, we asked Commissioner Day to respond formally to questions raised by the Committee. These questions, his responses of July 30, 1976, and August 5, 1976, and our detailed comments are in appendix III.

Because the Commissioner's trips to the Maine Maritime Academy are generally within the scope of his function as a Federal Maritime Commissioner, we found no legal basis for questioning the propriety of the travel. We did learn that

as an alternative Commissioner Day could have been directly reimbursed for the travel by the Academy since it is a tax-exempt organization. Nevertheless, whether or not specific trips to attend Academy functions constitute official travel is a question of fact for determination by the Maritime Commission.

Commissioner Day told us the charter flight was part of a trip to attend the launching of the containership "Export Freedom," and the charter flight costs were paid by either the shipbuilder or the shipping line.

We find nothing wrong in Maritime Commissioners attending such functions as allowed in their regulations. The Commission, however, does not have legislative authority to accept gifts. Therefore, accepting transportation to attend such functions, if not charged against the Commission's appropriations, is an improper augmentation to the Commission's funds. In a previous legal decision,^{1/} we held that expenses incurred incidental to official travel are chargeable to the agency's appropriations. In Commissioner Day's case, he was on official travel and the Government incurred the costs to New York and back; therefore, an appropriate part of the cost of the charter flight from New York to Maine and return should also have been charged to the Maritime Commission's appropriation.

PROPRIETY OF OFFICIAL TRAVEL FOR
COMMISSIONERS TO ATTEND MEETINGS
IN WASHINGTON, D.C., FROM OUT OF
TOWN ON VACATION

The Committee's concern centered around a commissioner who, while on vacations out of town, traveled back to Washington, D.C., to attend official meetings. Official travel at Government expense was incurred for the trip to Washington, D.C., and then back to resume the vacation. Our detailed comments on this are in appendix IV.

^{1/}B-128527, March 7, 1967 (46 Comp. Gen. 689 (1967)).

The propriety of this travel was established by our legal decision 1/ that states:

Where an employee's annual leave is interrupted for temporary duty (i.e. official business) at his official duty station he may be reimbursed for his expenses for authorized travel from his place of leave to that station and return.

TRAVEL INSTANCES WHERE ALL OR PART
OF COMMISSIONERS' TRAVEL COSTS WERE
PAID BY PRIVATE ORGANIZATIONS

The Committee was concerned that a conflict of interest may have existed when part or all of the commissioners' travel expenses were paid by the sponsor of the function. We have no authority to issue formal opinions on conflict of interest questions concerning officers and employees of other agencies.2/ We did analyze the travel aspects and our detailed comments are included in appendix V.

In one case the Government paid the travel costs connected with an official trip and the sponsoring organization paid the hotel expenses. As discussed earlier, such reimbursement for any expenses incidental to official travel (either in cash or in kind) constitutes an improper augmentation of the agency's appropriation.

In a second case all expenses were paid by the sponsoring organization but it is not clear whether the commissioner attended the activities in her official capacity or during a leave of absence. If attended during a leave of absence no question on augmentation exists.

1/B-177106, December 26, 1972.

2/The basic provisions governing such questions are criminal statutes enforced by the Department of Justice, other statutes administered by individual agencies, and other statutory standards and requirements subject to implementation by other agencies concerned.

Commissioners of regulatory agencies, being Presidential appointees by and with the advice and consent of the Senate, are exempt from the provisions of the Annual and Sick Leave Act (5 U.S.C. 2061 (1)). Generally speaking, commissioners do not take annual leave within the ordinary meaning of the term in the Government. Rather they are generally considered to be on duty at all times, including periods of vacation, but at the same time having freedom to absent themselves from duty as they see fit. Therefore, reimbursements for these trips, if made during a leave of absence, would not augment the agency's appropriation.

In a third case the Government paid the travel costs and the sponsoring organization provided lodging. Therefore, the trips were official business. Unlike the first case mentioned, however, the costs of the lodging were not improper augmentations to the agency's appropriations because the agency, the Consumer Product Safety Commission, has the authority to accept gifts from private sources. In such a case accommodations furnished in kind are treated the same as a gift and may properly be accepted.

ANALYSIS OF TRAVEL ASPECTS OF THE
CONSUMER PRODUCT SAFETY COMMISSION'S
CONFLICT OF INTEREST REGULATION

Our analysis of the travel aspects of the Consumer Product Safety Commission's conflict of interest regulation (see app. VI) shows it is in accordance with the governing executive order and Civil Service Commission regulations.

SHOULD COMMISSIONERS PAY PART OF
THEIR TRAVEL COSTS WHEN PERSONAL
AS WELL AS OFFICIAL BUSINESS IS
INVOLVED?

As noted in appendix I, a commissioner of the Federal Communications Commission did not charge the Government the full costs connected with several official trips because the commissioner considered certain aspects of the trips to be of a personal nature. The Committee wanted to know if this should be a standard practice to be followed by all commissioners.

The governing General Services Administration regulation allows the Government to pay the total transportation costs for official business whether or not the traveler uses part of the trip for other reasons. In the case noted, the commissioner chose to pay part of the transportation expenses even though he was entitled to full reimbursement.

To make such a procedure standard practice could require legislative revisions as well as regulation changes. Questions of what is considered personal business, how business conducted after working hours should be treated, and what travel costs would be charged as official versus personal, etc., would present administrative complications to be resolved. We did not evaluate the merits of such a revision to current practices but would be willing to work with the Committee if such a proposed change in legislation is desired.

CONCLUSIONS

The commissioners' travels we examined generally conformed to applicable laws and regulations. However, acceptance of travel or accommodations from private sources by commissioners whose agencies do not have legislative authority to accept such gifts were improper augmentations to the agencies' appropriations.

Improper augmentation of appropriations can be administratively circumvented merely by the commissioner stating he is on a leave of absence. In these cases, if the private organization provides all the costs connected with the travel, no augmentation results. Because commissioners do not come under applicable Government leave laws which would limit their amount of leave, their determination that they are on a leave of absence during such travel would impose no hardships on any future leave they might have planned.

Since commissioners have been delegated authority, by their respective agency heads to approve their own travel,

B-180224

the heads of the agencies are responsible for being sure that such travel is in accordance with congressional intent and Office of Management and Budget guidance on minimizing travel.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James A. Platt". The signature is written in a cursive style with a large initial "J" and a distinct "A".

Comptroller General
of the United States

C O N T E N T S

APPENDIX

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SENATE COMMITTEE ON COMMERCE QUESTIONS
ON TRAVEL PRACTICES AND POLICIES OF CERTAIN
REGULATORY AGENCY COMMISSIONERS DURING 1971-75

QUESTION CONCERNING A COMMISSIONER
WHO DID NOT CHARGE THE GOVERNMENT THE
FULL COSTS OF HIS OFFICIAL TRAVEL

1. Commissioner Benjamin L. Hooks, of the Federal Communications Commission, in several cases did not charge the Government the full travel costs because of what the Commissioner considered the personal aspects of the trips. Should this be standard practice for all commissioners?

QUESTIONS CONCERNING TRAVEL TO
COMMISSIONERS' HOME STATES
(DETAILS IN APP. II)

Commissioner James H. Quello,
Federal Communications Commission

1. Although shown as official travel, was it appropriate for 11 of the Commissioner's 28 trips, about 39 percent, to be to the Commissioner's home State?

Commissioner Charlotte T. Reid,
Federal Communications Commission

2. Although shown as official travel, was it appropriate for 23 of the Commissioner's 53 trips, about 43 percent, to be to the Commissioner's home State?

Commissioner Charles L. Clapp,
Interstate Commerce Commission

3. Although shown as official travel, was it appropriate for 6 of the Commissioner's 15 trips, or 40 percent, to be to the Commissioner's home State?

Commissioner James V. Day,
Federal Maritime Commission
(Details in app. III)

1. What was the basis for the Commissioner designating about 15 trips to the Maine Maritime Academy as official travel?
2. Since members of the Board of Visitors of the Maine Maritime Academy are permitted to bill the Academy for travel expenses, why was it decided to have the Government pay for the above trips rather than the Academy?
3. The Commissioner's travel on January 15, 1972, indicates a round trip charter flight trip between New York and Maine. Who paid for this trip; if payer was other than the Government, what was the justification for accepting such payment?
4. Listed below are several items not readily reconcilable between what the Commissioner reported to the Committee and what was shown on the Commissioner's travel vouchers. Why was this?

<u>Date of trip</u>	<u>Item</u>
April 30 to May 4, 1971	Report to Committee shows no per diem or other expenses but voucher shows \$77.95.
June 4-8, 1971	Report shows \$106.25 per diem but voucher shows \$118.75.
June 1-7, 1972	Report shows \$145.70 per diem and \$38.77 for other expenses; but voucher shows \$221.95 and \$57.22 respectively.
Sept. 9-12, 1973	Report did not show rental car costs which were included on the vouchers.
Feb. 28 to Mar. 2, 1974	
Apr. 26-28, 1974	
Aug. 2-4, 1974	
Nov. 14-16, 1974	
May 23-24, 1975	
Oct. 23-25, 1975	

4. 11/29/73 to 11/30/73: Travel to New York to speak at American Apparel Manufacturers Association.

Paid by U.S. Government: transportation \$69.27
 other 25.50
\$94.77

Hotel was "provided other than by government" for an unknown value.

5. 5/20/75 to 5/22/75: Travel to Ft. Lauderdale, Florida, to speak at National Retail Merchants Association.

Paid by U.S. Government: transportation \$236.73
 other 13.00
\$249.73

Hotel was "provided other than by government" for a value of \$52.00.

Commissioner Charlotte T. Reid
Federal Communications Commission

1. 6/28/72 to 6/29/72: Travel to Williamsburg, Virginia to attend meeting of Maryland/D.C./Delaware Association of Broadcasters.

Transportation provided by member of Association (Commissioner drove with the member). Value: \$30.00

2. 10/4/73 to 10/5/73: Travel to Columbus, Ohio to speak "for Congressman Ralph Regula."

Nothing was charged to the U.S. Government; transportation and lodging were "provided other than by the government" for a value of \$88.00. Was she on official business or annual leave?

3. 10/21/73 to 10/22/73: Travel to Aurora and Barrington, Illinois to speak for the Republican Women's Club of Aurora.

Transportation "provided other than by government" for a value of \$141.00. Was she on official business or annual leave?

4. 12/6/73 to 12/7/73: Travel to Boca Raton, Florida to speak for the National Home Study Institute.

Transportation "provided other than by government" for a value of \$150.00.

5. 1/3/74 to 1/8/74: Travel to Arizona to speak for the Distilled Spirits Council of U.S., Inc.

Transportation "provided other than by government" for a value of \$440.73.

6. 2/2/74 to 2/3/74: Travel to Milwaukee, Wisconsin to speak for the American Association of University Women.

Transportation "provided other than by government" for a value of \$203.47.

Commissioner Richard Simpson,
Consumer Product Safety Commission

1. 11/11/74 to 11/12/74: Speaking engagement in Milwaukee, Wisconsin, at a seminar sponsored by Wisconsin manufacturers Association.

Paid by U.S. Government:	transportation	\$120.74
	per diem	13.75
		<u>\$134.49</u>

Lodgings were "provided other than by government" for an unknown value.

2. 6/17/75 to 6/18/75: Visited the safety facilities at RCA in Indianapolis.

Paid by U.S. Government:	transportation	\$156.73
	per diem	17.50
		<u>\$174.23</u>

Lodgings were "provided other than by government" for an unknown value.

3. 9/26/75 to 10/3/75: Participated in seminar in Tokyo, Japan, sponsored by SANKEI SHIMBUN News Media on Consumer Protection.

Paid by U.S. Government: transportation \$2,119.54.

No per diem or other expenses were claimed. Items "provided other than by government": trains from Tokyo to Kyoto, Osaka, and meals and lodgings (value unknown).

ANALYSIS OF CONFLICT OF INTEREST
REGULATION (DETAILS IN APP. VI)

1. The Committee wanted GAO to analyze the travel aspects of the Consumer Product Safety Commission's conflict of interest regulation.

PROPRIETY OF FREQUENT TRAVEL
BY COMMISSIONERS TO THEIR HOME
STATES TO ATTEND VARIOUS FUNCTIONS

QUESTION

May commissioners properly charge the Government for the expenses of frequent travel between Washington, D.C. and their home State to attend various functions in their official capacity considering that they approve their own travel authorizations?

GAO's COMMENT

Reimbursement of an officer or employee's travel expenses is generally authorized under Chapter 1 of Federal Travel Regulations (FPMR 101-7) as follows:^{1/}

"1-1.3. General rules.

* * * * *

"b. Reimbursable expenses. Traveling expenses which will be reimbursed are confined to those expenses essential to the transacting of the official business."

* * * * *

"1-1.4. Authority for travel. Except as otherwise provided by law, all travel shall be either authorized or approved by the head of the agency or by an official to whom such authority has been delegated. Ordinarily, an

^{1/} Nearly all of the commissions covered by this report have specific statutory authority for the payment of travel expenses of officers and employees which are substantially identical to the provisions of the Federal Travel Regulations. (See pps. 9 & 10).

authorization shall be issued prior to the incurrence of the expenses. The authorization shall be as specific as possible in the circumstances as to the travel to be performed." (Underscore added.)

On the basis of the foregoing provisions officers and employees may properly be reimbursed for their traveling expenses if the travel was authorized or approved by a competent authority and was in fact incident to official business, however frequent and to whatever location the travel may be. Further, the chairman of each commission is a "head of an agency" within the meaning of the cited provisions, and it appears the chairmen have in effect delegated their authority to their fellow commissioners to authorize or approve their own travel by virtue of a long continued practice without legal objection. While we can understand the Committee's concern for this situation, we are not in the position to raise a legal objection without a specific factual setting clearly showing an abuse of a authority (e.g., a trip for purely personal reasons).

The Office of Management and Budget (OMB), however, has announced a policy of restraining travel which is not absolutely essential. Its Bulletin No. 76-9 dated December 4, 1975, revised by Supplement No. 1 dated January 26, 1976, contains instructions to executive agencies and departments on the control and management of official travel:

"2. Policy. It is Administration policy that agencies should authorize that amount of travel necessary to accomplish the purposes of the Government effectively -- but not one bit more -- and at minimum cost. This policy is applicable to travel of contractors and other personnel whose travel expenses are directly reflected in costs paid by the Government.

"The head of each agency will communicate this policy promptly throughout all operating and staff units of his agency, and place in effect a stringent and austere plan to eliminate travel not absolutely essential and to minimize travel costs.

"3. Guidelines. The agency plan to restrict travel will include, but not be limited to, the following guidelines:"

* * * * *

"e. Screen all specific travel authorizations to limit trips, numbers of individuals traveling, points to be visited, itineraries, and durations to those that are essential to the performance of agency missions.

"f. Establish procedures that will eliminate attendance and minimize participation by employees at conferences, meetings, and seminars when attendance is contingent upon travel at Government expense and not directly related to the accomplishment of the agency missions. (Official travel performed at non-government expense will be accomplished in accordance with agency conflict of interest regulations.)" (Underscore added.)

Also the Congress passed a resolution in January 1976 expressing the sense of the Congress that the President, through the Director of the Office of Management and Budget, take steps to conserve the use of energy and to restrain the inflationary impact of Federal travel expenditures by reducing such expenditures. (§205 of the Supplemental Appropriations Act, 89 Stat. 826, 843).

Statutory authorizations for reimbursement of travel expenses

Interstate Commerce Commission: (48 U.S.C. 18(2))

"(2) All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners, or by their employees under their orders, in making any investigations, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the commission."

Federal Communications Commission: (47 U.S.C. 154(g))

" * * * All expenditures of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees, under their orders, in making any investigation or upon any official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission or by such other member or officer thereof as may be designated by the Commission for that purpose."

Federal Trade Commission: (15 U.S.C. 42)

* * * * *

"All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission."

* * * * *

6. Federal Maritime Commission: (46 U.S.C. 1111(f))

"(f) Each member, any employee of the Federal Maritime Commission or the Secretary of Commerce, and any person detailed to the Commission or Secretary from any other agency of the Government shall receive necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from his official station upon official business of the Commission or Secretary. * * * Expenditures by the Commission or Secretary shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission or Secretary or a designated employee thereof."

QUESTIONS TO COMMISSIONER DAY,
FEDERAL MARITIME COMMISSION

We submitted the following questions to Commissioner James V. Day on July 19, 1976. His response was received on July 30, 1976 with a supplemental note on August 5, 1976.

QUESTION 1

While serving on the Maine Maritime Academy's Board of Visitors, you made about 15 trips to Maine to meet with the Board. Since the Maine Maritime Academy is not within the regulatory jurisdiction of the Federal Maritime Commission, what was the basis for your designating these as official Government trips?

Commissioner Day's response

"The Commission regulates the services, practices and agreements of common carriers by water in the foreign and domestic off-shore commerce of the United States.

"The Maritime Academy is an accredited institution maintained by the State of Maine with the aid of the federal government. The mission of the Academy is to instruct U.S. Maritime Service cadets thereby providing trained maritime officers and potential leaders for maritime carrier companies. The curriculum includes focusing upon the overall problems of the marine transportation industry (including governmental relations and regulation). In addition, a number of representatives from the maritime industry are visiting lecturers on trends, developments, and problems of the industry, and/or serve on the Academy's Boards rendering advice on such maritime matters.

"In my official capacity as a Federal Maritime Commissioner I have continuing contacts with, and overall knowledge of, the maritime industry. It has always been my sincere purpose to enhance our merchant marine by advising, and maintaining a dialogue with, the Academy on government's role relative to the government-regulated maritime industry. In addition, such dialogue with the Academy was viewed by our Commission General Counsel James Pimper as consistent

with the Commission's mission. I would additionally note the Commission's regulation encouraging engagement in teaching and the affairs of educational organizations. (Please note Title 46, Part 500, §500.735.12(c) and (d)(2)). By analogy, the Commission does not regulate other educational institutions yet it has been long thought in the public interest for Commissioners to travel, meet with, and address these and similar groups with an interest in maritime matters."

GAO's comment

We have no legal objection to Commissioner Day designating his trips to the Maine Maritime Academy as official business. The primary criterion for determining whether an officer or employee (in this case a member of a regulatory commission) is engaged in official business is the nature of the activity concerned. Whether a particular activity constitutes official business is a question of fact primarily for determination by the agency. Accordingly, if the activity is reasonably related to the functions of an individual's office we will not question, on legal grounds, an agency's determination that the activity amounts to official business. The fact the private organization involved is not within the agency's regulatory jurisdiction does not compel a determination that the questioned activity was unrelated to the individual's functions.

In view of the similar interests of the Federal Maritime Commission and the Maine Maritime Academy and the reasons stated by Commissioner Day for traveling to the Academy, we will not question his determination, evidently supported by the Commission's General Counsel, that the trips constituted official business.

QUESTION 2

Since members of the Board are permitted to bill the Academy for their travel expenses, why was it decided to have the Government pay for your trips rather than the Academy?

Commissioner Day's response

"Until just recently I did not know that the State of Maine Maritime Academy could pay for such expenses and, further there appeared no question that such expenses were a legitimate and worthy federal expenditure."

GAO's comment

We do not legally object to the Government paying Commissioner Day's traveling expenses on the basis that the expenses were incurred for official business reasons, to attend meetings of the Maine Maritime Academy's Board of Visitors. The Commissioner could have requested reimbursement from the Academy under the authority of 5 U.S.C. 4111:

"(a) To the extent authorized by regulations of the President, contributions and awards incident to training in non-Government facilities, and payment of travel, subsistence, and other expenses incident to attendance at meetings, may be made to and accepted by an employee, without regard to section 209 of title 18, if the contributions, awards, and payments are made by an organization determined by the Secretary of the Treasury to be an organization described by section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26. (Underscore added.)1/

We interpreted the above provision as authorizing Federal employees (including commissioners) to accept direct reimbursement by tax-exempt organizations for traveling expenses incident to attendance at meetings. See 49 Comp. Gen. 572 (1970); B-171751, February 11, 1971; B-128527, April 20, 1976.

1/ The Internal Revenue Service has informally told us that the Maine Maritime Academy is a tax-exempt organization within the meaning of 26 U.S.C. 501(c)(3).

QUESTION 3

Your travel on January 15, 1972 (travel authorization No. 05-3), indicates that you flew round trip between New York and Maine on a chartered flight. The Committee would like to know who paid for this flight; if payer was other than the Government, what the justification was for accepting such payment?

Commissioner Day's response

"The subject trip was at the invitation of the Bath Iron Works Corporation (the shipbuilder) to attend the launching of the containership 'Export Freedom' built for American Export Isbrandtsen Lines, Inc. I was a program speaker at the occasion.

"The file contains no record and I have no personal recollection of what entity paid for the charter flight. I assume the flight was paid for by the Bath Iron Works Corporation or American Export Isbrandtsen Lines, Inc.

"Attendance at ship launchings is a traditional part of the Commission's ceremonial activities, and in fact, is expressly contemplated under the Commission's regulations. Whenever a ship is launched, it is customary for the shipbuilder or the shipping line to sponsor a launching ceremony and in that connection to invite high level representatives of the government and industry to that ceremony. Frequently, I believe an aircraft is chartered to transport these dignitaries to and from the launching site. Accordingly, a chartered flight is booked for the invitees as a group rather than for the convenience of any particular individual within that group. Thus, the decision to provide the chartered flight which is the object of your inquiry, was in no way made on the basis of my acceptance to participate in the ship launching ceremony of the Bath Iron Works. In fact, this flight originated in New York City rather than Wash. D.C.; presumably because the majority of the invitees were located in that city. Space on such flights has been made available to Commissioners participating in ship launching ceremonies during the many years of my tenure at the Federal Maritime Commission and acceptance

of such accommodation has consistently been viewed as being in the same nature as acceptance of accommodations and meals during attendance at such ceremonies. In short, I have never viewed acceptance of a ride on an aircraft chartered to transport guests to a launching ceremony as a reimbursement or donation to the United States or to myself personally. Moreover, I recall question was raised in the early 1960s and that the Commission fully concurred that there was no impediment to the acceptance of such transportation by Commissioners. You will note that the Commission's regulations expressly contemplate participation in ship launchings and acceptance of accommodations and travel expenses in connection therewith. (Please note Title 46, Part 500, §500.755-11(b) (5) and (e))."

Commissioner Day's response was supplemented by a memorandum dated August 5, 1976, as follows:

"A. Pertinent regulation:

'(5) Under this section, Commission employees may participate in keel layings, christenings, and ship launchings and accept meals, accommodations, and entertainment related thereto when the invitation to such an event is addressed to the Commission and the Chairman of the Commission approves the acceptance of the invitation. 'Title 46, Part 500, §500.735-11(b)(5) - the controlling subsection.

"B. This regulation section (§500.735-11(b)(5)) authorizes acceptance of accommodations (e.g., flight accommodations) relative to ship launchings. [Further, while the "reimbursement for travel" section (§500.735-11(e)) is not directly applicable (note "C." below), it reflects a policy envisioning acceptance of "travel" accommodations by Commission personnel.] See FMC memos of 8/5/76 attached.

"C. Facts resume - As generally noted in initial response (7/30/76).

"(1) Commissioner Day was furnished transportation in kind which was not special for him. Flight originated in New York (not Washington, D.C.). Undoubtedly flight would have gone without him (transport of other guests from New York).

"(2) Commissioner Day did not incur any expense. He was, likewise, not reimbursed for incurred expense. He was not given an air transportation ticket. The transportation furnished to Commissioner Day was of intangible value (not special flight for him, flight would have operated without him). (Hence, the 'reimbursement for travel' provision of Title 46 Part 500, §500.735-11(e) is not applicable.)"

GAO's comment

According to Commissioner Day's response and the pertinent travel order, he attended the launching of the containership Export Freedom on January 15, 1972, in his official capacity as a commissioner. Further, we understand that Commissioner Day's transportation from New York City to and from Maine was provided by means of a chartered flight paid for by a private source (i.e., either Bath Iron Works Corporation or American Export Isbrandtsen Lines, Inc.). Commissioner Day is of the opinion that this means of transportation was properly authorized under §500.735-11(b)(5) and not prohibited by paragraph (e) thereof.

The governing regulations state in relevant part (46 C.F.R. §500.735-11):

"§500.735-11 Gifts, entertainment, and favors.

"(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who;

"(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

"(2) Conducts operations or activities that are regulated by the Commission; or

"(3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

"(b) Exceptions to paragraph (a) of this section are as follows:"

* * * * *

"(5) Under this section, Commission employees may participate in keel layings, Christenings, and ship launchings and accept meals, accommodations, and entertainment related thereto when the invitation to such an event is addressed to the Commission and the Chairman of the Commission approved the acceptance of the invitation."

* * * * *

"(e) Neither this section nor §500.735-12 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967."
(Underscore added.)

Paragraph (e) above specifically disallows an employee from being reimbursed by a private source for travel on official business when reimbursement is proscribed by our decision in B-128527 dated March 7, 1967 (46 Comp. Gen. 689 (1967)). In that decision we held that any employee's expenses incurred incident to official travel are chargeable to the agency's appropriations. Without statutory authority for the agency to accept gifts or donations from private sources, reimbursement for expenses incident to the employee's official travel (either in cash or in kind) would constitute an improper augmentation of the agency's appropriations. We have found no statutory authority under which the Federal Maritime Commission may accept gifts or donations from a private source.

Commissioner Day points to §500.735-11(b)(5), which states that employees may participate in ship launchings and accept meals, accommodations, and entertainment related thereto, as authority to use the chartered flight. He

contends the term "accommodations" includes an employee's travel accommodations provided by a private source to and from the place of the ship launching. In support of this position Commissioner Day has furnished us copies of internal memoranda of the Federal Maritime Commission indicating §500-735-11 (b)(5) was included within its regulations when they were first published in 1966 in contemplation of a similar provision contained in the Civil Aeronautics Board's conflicts of interest regulations.^{1/} It is also pointed out that the regulation was adopted with the specific advice and approval of the Civil Service Commission. The underlying purpose of §500-735-11(b)(5) was to further public relations.^{2/}

In our decision 37 Comp. Gen. 776 (1958) we addressed the question whether participation in affairs contemplated by the referenced Civil Aeronautic Board's regulations (e.g., inaugural flights of air carriers) constituted an improper augmentation of funds and did not raise legal obligation thereto. The Board contended that it had been a long time custom for air carriers to conduct ceremonial flights celebrating the inauguration of new service and to invite high-level Government officials to participate in such flights. With respect to the question whether such travel constituted an improper augmentation the Board argued:

1/ 14 C.F.R. §370.735-22(c)(1):

"(c) The provisions of §370.735-21 shall not prohibit the acceptance of the following:

"(1) Invitations addressed to and approved by the Board for employees designated by the Board (including, where applicable, their wives or a member of their immediate family), to participate in ceremonial or inaugural flights, and meals, accommodations, and entertainment incidental thereto."

2/ A memorandum dated Jan. 13, 1966 stated in part:

"In the light of past participation of our officers in such affairs, coupled with the fact that we do not have a responsibility in any way for the construction differential/subsidy or operating differential/subsidy, or other forms of Government aid to ship construction or operations, it would appear that from the standpoint of public relations participation in such affairs should be permitted."

"As noted above, the opinion of December 24, 1957 states that prior decisions have 'indicated generally' that the payment by others of traveling expenses of an employee of the Government on official business is prohibited by 18 U.S.C. 1914 and that such a practice would result in an unauthorized augmentation of appropriations. It is believed that participation in a ceremonial flight can, and should be, distinguished from official 'travel' in the ordinary sense of the term. Typically, 'travel', and the incurrence of 'traveling expenses', are incidental to the performance of official business at a particular point away from the employee's headquarters. In the case of ceremonial flights, however, the official business is making the flight, i.e., being on board the aircraft, and events taking place en route, or at the ultimate destination, are merely incidental to the flight. Expressed another way, the 'ceremony' is the flight. The purpose of participating in such flights is not primarily to permit official business to be performed at the ultimate destination of the flight, but rather, to have been a passenger on the flight.

"Thus, it would appear that the expenses defrayed by an air carrier in connection with participation by Government officials in ceremonial flights are not, in fact, 'traveling expenses' of the kind to which the opinion of December 24, 1957, and prior decisions, referred. Whether it be concluded that this distinction is, or is not, a valid one, it has in fact been made by the Board. Specifically, when officials representing the Board have participated in a ceremonial flight which did not originate in Washington, D.C., their normal traveling expenses from Washington, D.C., to the point of origination of the flight and return from that point to Washington, D.C., have been borne by the Government." (Underscore added.)

37 Comp. Gen. 776, supra, did not object to the participation by Board employees in such inaugural flights. However, we see a distinction between participating in an inaugural flight, where, as indicated above, "the ceremony is the flight," and attendance at a ship launching, where the ceremony takes place at a location which must be traveled to. Both ceremonies are considered by the agencies concerned to fall within the official duties of the officials who attend them. But in each of the two situations, necessary travel to attend the ceremonies should be paid for out of appropriated funds, as was done in the case of the Board officials when travel expenses to and from the departure point of the inaugural flight were paid from appropriated funds. Also, while we reserve judgment on the question of whether accommodations may be provided Federal Maritime employees who attend ship launchings, 46 C.F.R. §500.735-11 itself distinguishes between "travel" and "accommodations." Therefore, we do not think the effect of the Comptroller General decision cited by the regulation is properly overcome by referring to travel by chartered plane as an "accommodation."

In our opinion therefore, unless it can be demonstrated that the chartered flight from New York City to Bath was in fact part of the ship launching ceremony, travel by Commissioner Day to Bath on such flight without reimbursing the charterer of the plane for the reasonable value of the flight resulted in an unauthorized augmentation of Federal Maritime Commission funds.

QUESTION 4

Listed below are several items which are not readily reconcilable between what you reported to the Committee and what was shown on your travel vouchers. Please provide explanations for these items.

<u>Date of trip</u>	<u>Item</u>
April 30 to May 4, 1971	The report to the Committee shows no per diem or other expenses but voucher shows \$77.95.
June 4-8, 1971	The report shows \$106.25 per diem but voucher shows \$118.75
June 1-7, 1972	The report shows \$145.70 per diem and \$38.77 for other expenses but voucher shows \$221.95 and \$57.22 respectively.

Sept. 9-12, 1973
 Feb. 28 to Mar. 2, 1974
 Apr. 26-28, 1974
 Aug. 2-4, 1974
 Nov. 14-16, 1974
 May 23-24, 1975
 Oct. 23-25, 1975

The report did not show rental car costs which were included on the vouchers.

Commissioner Day's response

"(a) Trip of April 30 - May 4, 1971

"Report to Committee showed no per diem -- a net figure per accounting adjustment (explained on voucher note attached).

"(b) Trip of June 4 - 8, 1971

"The figure of \$106.25 was obtained from an incorrect voucher which was later corrected.

"(c) Trip of June 1 - 7, 1972

"The report incorrectly showed only a sub-total on the first voucher sheet - second voucher sheet with grand total attached.

"(d) Trips of-

September 9 - 12, 1973
 February 28 - March 2, 1974
 April 26 - 28, 1974
 August 2 - 4, 1974
 November 14 - 16, 1974
 May 23 - 24, 1975
 October 23 - 25, 1975

"The report was prepared from records which did not include rental car expenses because these were paid for by FMC credit card and were billed directly to the Commission (see records attached)."

GAO's comment

Commissioner Day's response adequately reconciles the difference between what he reported to the Committee and what was shown on his travel vouchers.

PROPRIETY OF OFFICIAL TRAVEL
FOR COMMISSIONERS TO ATTEND
MEETINGS IN WASHINGTON D.C.,
FROM OUT OF TOWN ON VACATION

QUESTION

May a commissioner properly charge the Government for traveling expenses from the place where he is on vacation to Washington, D.C., and return, for the purpose of attending a meeting on official business?

GAO's COMMENT

The general rule is that when an employee proceeds to a point away from his official duty station on annual leave, he assumes the obligation of returning to that station at his own expense. B-182449, January 19, 1976. In recognition of an employee's entitlement to reimbursement for his traveling expenses on official business, however, (paragraph 1-1.3 of the Federal Travel Regulations, FPMR 101-7), the following exception exists. When an employee's annual leave is interrupted for temporary duty (i.e., official business) at his official duty station he may be reimbursed for his expenses for authorized travel from his place of leave to that station and return. B-177106, December 26, 1972. Returning to Washington, D.C. for official business from vacation necessarily involves a change in duty status whether the temporary duty may consist of the attendance at a meeting for one day (B-185070, Apr. 13, 1976) or the performance of duty for several months (28 Comp. Gen. 237 (1948)).

Commissioners of regulatory agencies however are Presidential appointees who are exempt from the provisions of the Annual and Sick Leave Act (5 U.S.C. 2061(1)). Generally speaking, therefore, commissioners do not take annual leave within the ordinary meaning of the term in the Government. Rather the commissioners are generally considered as being on duty at all times, including periods of vacation, and therefore have freedom to absent themselves from duty as they see fit. See H. Rep. No. 629, 83d Cong., 1st Sess. 6 (1953).

TRAVEL INSTANCES WHERE ALL OR PART OF
COMMISSIONERS' TRAVEL COSTS WERE PAID BY
PRIVATE ORGANIZATIONS

The Committee wanted to know whether there was a potential conflict of interest when part or all of commissioners' travel expenses were paid by private organizations.

GAO's COMMENT

In the absence of evidence to the contrary we assume no conflict of interest situations existed with respect to such payments, and in any event we do not have statutory or regulatory authority to issue formal legal opinions on whether the conduct of officers and employees of other agencies amounts to a conflict of interest.^{1/} We did analyze the travel aspects of these trips as discussed below.

TRAVEL BY COMMISSIONER PAUL R. DIXON
FEDERAL TRADE COMMISSION

1. 10/5/72 to 10/9/72: Travel to Bermuda to speak at meeting of the National Association of Chain Drug Stores.

Paid by U.S. Government:	transportation	\$173.00
	other	19.00
		<u>\$192.00</u>

Hotel was "provided other than by government" for an unknown value.

2. 11/11/72 to 11/14/72: Travel to San Francisco to speak at the National Frozen Food Convention.

Paid by U.S. Government:	transportation	\$414.00
	other	13.00
		<u>\$427.00</u>

Hotel was "provided other than by government" for a value of \$120.00.

^{1/} The basic provisions governing such questions are criminal statutes enforced by the Department of Justice, other statutes administered by individual agencies, and other statutory standards and requirements subject to implementation by other agencies concerned.

3. 10/19/73 to 10/22/73: Travel to Oklahoma City, Oklahoma to speak at Oklahoma Retail Grocers Association.

Paid by U.S. Government:	transportation	\$229.27
	other	23.50
		<u>\$252.77</u>

Hotel was "provided other than by government" for an unknown value.

4. 11/29/73 to 11/30/73: Travel to New York to speak at American Apparel Manufacturers Association.

Paid by U.S. Government:	transportation	\$69.27
	other	25.50
		<u>\$94.77</u>

Hotel was "provided other than by government" of an unknown value.

5. 5/20/75 to 5/22/75: Travel to Ft. Lauderdale, Florida to speak at National Retail Merchants Association.

Paid by U.S. Government:	transportation	\$236.73
	other	13.00
		<u>\$249.73</u>

Hotel was "provided other than by government" for a value of \$52.00.

Applicable regulations

16 C.F.R. 0.735-11 Gifts, entertainment and favors.

"(e) Neither this section nor §0.735-12 ['Outside employment and other activity'] precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not

allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under Commission orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967." (Underscore added.)

GAO's comment

In all of the above trips we understand that but for lodging the Government paid for Commissioner Dixon's travel and other expenses, thus indicating he attended the functions on official business. His lodgings were paid for by the private source. Paragraph (e) above does not allow an employee to be reimbursed by a person for travel on official business when reimbursement is proscribed by our decision B-128527, March 7, 1967 (46 Comp. Gen. 689 (1967)). In that decision we held that any employee's expenses incurred incident to official travel (thus including lodging expenses) are chargeable to the agency's appropriations. Without statutory authority for the agency to accept gifts or donations from private sources, reimbursement for any expenses incident to an employee's official travel (either in cash or in kind) would constitute an improper augmentation of the agency's appropriations. We are unaware of any statutory authority providing for the acceptance of gifts or donations by the Federal Trade Commission.

TRAVEL BY COMMISSIONER CHARLOTTE T. REID
FEDERAL COMMUNICATIONS COMMISSION

1. 6/28/72 to 6/29/72: Travel to Williamsburg, Virginia to attend meeting of Maryland/D.C./Delaware Association of Broadcasters.

Transportation provided by member of association (Commissioner drove with the member). Value: \$30.00.

2. 10/4/73 to 10/5/73: Travel to Columbus, Ohio to speak "for Congressman Ralph Regula".

Nothing was charged to the U.S. Government; transportation and lodging were "provided other than by the government" for a value of \$88.00.

3. 10/21/73 to 10/22/73: Travel to Aurora and Barrington, Illinois to speak for the Republican Women's Club of Aurora.

Transportation "provided other than by government" for a value of \$141.00.

4. 12/6/73 to 12/7/73: Travel to Boca Raton, Florida to speak for the National Home Study Institute.

Transportation "provided other than by government" for a value of \$150.00.

5. 1/3/74 to 1/8/74: Travel to Arizona to speak for the Distilled Spirits Council of U.S., Inc.

Transportation "provided other than by government" for a value of \$440.73.

6. 2/2/74 to 2/3/74: Travel to Milwaukee, Wisconsin to speak for the American Association of University Women.

Transportation "provided other than by government" for a value of \$203.47.

Applicable regulations

47 C.F.R. §19.735-202 - Gifts, entertainment and favors.

"(f) Neither this section nor §19.735-203 [Outside employment and other activity] precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967."
(Underscore added.)

GAO's comment

We understand the Government did not pay for any of the expenses with respect to the trips listed above. Instead it appears that Commissioner Reid's transportation and/or lodging expenses were provided for by the private source concerned either in cash or in kind. The record is unclear, however, whether Commissioner Reid attended the activities in her official capacity or during a leave of absence. If the travel was on official business, then our decision B-128527 (46 Comp. Gen. 689 (1967)), discussed earlier, applies and the reimbursement of her expenses by private sources may have been an improper augmentation of funds.

If Commissioner Reid attended the activities during a leave of absence, however, no augmentation question is present. Under such circumstances, acceptance of the transportation and lodging accommodations would be authorized by the underlined portion of paragraph (f) above, the purpose of which was to allow an employee to accept reimbursement when he voluntarily participates in outside activities (e.g., participation in a convention, seminar or meeting held by a private organization) not otherwise prohibited on his own time or other authorized leaves of absences. (See letter of the Chairman, Civil Service Commission, 46 Comp. Gen. 689, 690 (1967)).

TRAVEL BY COMMISSIONER RICHARD SIMPSON
CONSUMER PRODUCT SAFETY COMMISSION

1. 11/11/74 to 11/12/74: Speaking engagement in Milwaukee, Wisconsin at a seminar sponsored by Wisconsin Manufacturers Association.

Paid by U.S. Government:	transportation	\$120.74
	per diem	13.75
		<u>\$134.49</u>

Lodgings were "provided other than by government" for an unknown value.

2. 6/17/75 to 6/18/75: Visited the safety facilities at RCA in Indianapolis.

Paid by U.S. Government:	transportation	\$156.73
	per diem	17.50
		<u>\$174.23</u>

Lodgings were "provided other than by government" for an unknown value.

3. 9/26/75 to 10/3/75: Participated in seminar in Tokyo, Japan sponsored by SANKEI SHIMBUN News Media on Consumer Protection.

Paid by U.S. Government: transportation \$2,119.54

No per diem or other expenses were claimed. Items "provided other than by government": trains from Tokyo to Kyoto, Osaka, and meals and lodgings (value unknown).

Applicable regulations

None. (The Commission did not publish regulations on employee standards of conduct until Feb. 23, 1976).

GAO's comment

In all three of the referenced trips we understand the Government paid for Commissioner Simpson's travel expenses to the place of his engagement. Lodgings apparently were provided by the private source in kind. Since the Commission has the authority to accept gifts from private sources (15 U.S.C. 2076 (b)(6)) its employees may properly be furnished accommodations in kind from private sources. See 46 Comp. Gen. 689 (1967).

ANALYSIS OF TRAVEL ASPECTS OF THE
CONSUMER PRODUCT SAFETY COMMISSION'S
CONFLICT OF INTEREST REGULATION

Applicable regulations of the Consumer Product Safety Commission are:^{1/}

"§1030.301 Accepting gifts and expenses from outside sources.

"(a) Except as provided in paragraph (b) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, travel, or any other thing of monetary value from a person or organization who:

"(1) Conducts operations or activities that are regulated by the Commission;

"(2) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

"(3) Has interests that may be substantially affected by the performance or non-performance of the employee's duties.

"(b) The following are exceptions to the restrictions set forth in paragraph (a) of this section:

* * * * *

"(7) Acceptance of incidental, short-distance transportation in kind from a private organization, provided it is furnished in connection with the performance of the employee's official duties when other transportation is not otherwise available or convenient.

"(c) An employee shall not accept an honorarium, transportation expenses, or per diem from a private source when the employee

^{1/} The regulations were published in final form on Feb. 23, 1976 (41 F.R. 8018-25 (1976)).

is on official duty, under Commission orders, and the travel or per diem expenses are payable by the Commission. However, the Commission may accept gifts, including reimbursement for employee travel expenses, pursuant to §1030.304 of this Subpart.

* * * * *

"§1030.304 Commission authority to accept gifts and voluntary and uncompensated services.

"Section 27(b)(6) of the Consumer Product Safety Act (15 U.S.C., section 2076(b)(6)) gives the Commission the authority to accept gifts and voluntary and uncompensated services, notwithstanding the provisions of Section 3679 of the Revised Statutes (31 U.S.C. 665(b)). The authority of the Commission to accept gifts does not authorize employees to accept gifts in their individual names. However, certain employees of the Commission may accept such gifts and services on behalf of the Commission in accordance with the Commission's directive on gifts and voluntary services." (Underscore added.)

In our opinion, the Commission's regulations are in accord with the governing executive order (Executive Order 11222 dated May 8, 1965), the Civil Service Commission regulations (5 C.F.R. §735.101 et seq.), and our decisions. Of particular importance is the Commission's authority to accept gifts from private sources (15 U.S.C. 2076(b)(6)), and in this regard the regulations appear to properly reflect our decisions on reimbursement for official travel from a private source where an agency has such statutory authority. We explained in our decision in 46 Comp. Gen. 689 (1967) that when an agency has authority to accept gifts from private sources the following principle applies:

"No direct reimbursement of travel expenses should be made by the donor to any individual employee. Rather, reimbursement (the donation) should be made to the agency and amounts received should be credited to its appropriation. The

employee involved should be paid by the agency in accordance with all applicable laws and regulations relating to reimbursement for official travel. If the donor furnishes accommodations, goods or services in kind to an employee they may be treated as a donation to the agency and either no per diem and other travel expenses should be paid by the agency or an appropriate reduction should be made in the per diem or other travel expenses payable depending upon the extent of the donation. * * * "