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

B-163762

November 24, 1980

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The Honorable Benjamin A. Gilman
House of Representatives

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Dear Mr. Gilman:

We refer to your October 1, 1980, request for an opinion on the [authority of the Legal Services Corporation (hereafter referred to as the Corporation) to expend appropriated funds for "lobbying" activities]. Specifically, you have requested our views on a memorandum to legal services program grantees, dated April 14, 1980, prepared by the Corporation's Office of General Counsel, setting forth the Corporation's interpretation of its legal authority to engage in legislative representation activities. We have concluded that applicable law prohibits the Corporation from expending appropriated funds for publicity or propaganda purposes designed to induce members of the public to contact elected representatives for the purpose of supporting or defeating legislation pending in the Congress or any State legislature. The Corporation's legal memorandum in essence takes this position also. CNG 00067

The Legal Services Corporation Act of 1974, as amended (42 U.S.C. § 2996 et. seq.) provides the Corporation with broad authority to fund programs that furnish legal assistance to eligible clients. The Corporation does this by making grants to and contracts with individuals, organizations and local governmental entities, known as recipients.

The provisions of 42 U.S.C. § 2996f establish certain criteria and restrictions the Corporation must observe in grants and contracts with providers of legal assistance. Of particular interest is the restriction contained in 42 U.S.C. § 2996f(a)(5), which requires the Corporation to insure that funds made available to recipients are not used, either directly or indirectly, to "undertake to influence the passage or defeat of any legislation by the Congress of the United States" or by State or local legislative bodies. CWO 00001

Three exceptions are made to this broad prohibition on the expenditure of appropriated funds to influence legislation. One exception allows the otherwise prohibited activities by an employee of a recipient where the proper representation of an eligible client requires such activity. The second exception allows an employee of a recipient, when requested, to testify and otherwise assist legislative bodies. The third exception permits appearances before such agencies or bodies on the recipient's own initiative on matters directly affecting legal services program activities.

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In addition to the limitations on legislative representation discussed above, annual appropriation act restrictions have, throughout the existence of the legal assistance program, also curtailed such activities. Section 607(a) of the Treasury, Postal Service, and General Government Appropriation Act, which has been included in the Act every year since 1972, provides as follows:

1972-1978

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."

We have construed section 607(a) as prohibiting the expenditure of Federal funds by Executive agencies and Government Corporations for activities involving appeals addressed to members of the public suggesting that they contact Members of Congress and indicate support of or opposition to legislation pending before Congress, or urge their congressional representatives to vote in a particular manner. ✓ 56 Comp. Gen. 889 (1977).

Aggressive legislative representation by program personnel at the State level led Congress to extend the section 607(a) restriction as it applies to the corporation to cover publicity and propaganda activities aimed at State legislatures as well. This extension was accomplished by the Moorhead Amendment, which was first included as a restriction on the use of Corporation appropriations in the ✓ Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1979, Public Law No. 95-431 (October 10, 1978), 92 Stat. 1021. It reads as follows:

"* * * Provided, No part of this appropriation shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress or any State legislature."

This amendment was first introduced on the floor of the House on June 14, 1978. Mr. Moorhead explained its purpose as follows:

"Mr. MOORHEAD of California. Mr. Chairman, it has come to the attention of some Members that Legal Services Corporation grantees have been using Federal moneys for propaganda or publicity purposes. In my State of California, a grantee of the Legal Services

Rep. William S. Moorhead

Corporation has been involved in a mass letter-writing campaign designed to influence the California Assembly. Some of the comments in the California letterwriting campaign are as follows: 'Now comes the real battle. We must overcome the Senate Finance Committee, we need pressure applied on the Senate Finance Committee, the Governor, and Assemblyman Arnett.'

"My constituents object to their Federal tax money being used to lobby their State legislature.

"They object to their Federal tax money being used to urge the legislature to take a course of action with which they do not agree.

"I do not think it was the intent of the Congress to have the Legal Services Corporation carry on like lobbyists.

"In the past, Congress has acted to prevent taxpayers money being used for propoganda or publicity purposes. A provision added to the Treasury, Postal Service, and General Government Appropriations Acts prohibits using funds appropriated by Congress for lobbying or propoganda purposes. And the General Accounting Office has enforced this antilobbying provision even against the White House.

"I want it made clear that this amendment would in no way prohibit a Legal Services Corporation lawyer from sitting down with a client, advising the client that it is in his or her best interest to write a Congressman or an assemblyman about a particular problem affecting that client.

"Additionally, my amendment would in no way prohibit a lawyer advising the client what the client should say in a letter or any other communication.

"My amendment seeks only to do what this Congress has done in the past with the Treasury, Postal Service, and general government appropriation bill.

"In that bill, which we just passed, the Legal Services Corporation and all other corporations or agencies are prohibited from using appropriated funds for—'publicity or propaganda purposes designed to support or defeat legislation pending before Congress.'

"However, there is at least one loophole open to abuse of Federal funds and my amendment takes care of that.

"The only effect of my amendment is to prohibit the use of Federal funds to be used for publicity or propaganda purposes designed to support or defeat legislation pending before State legislatures as well as the Congress.

"This amendment does speak to the problem of mass letter writing campaigns and other publicity or propaganda gimmicks conducted with the use of Federal funds.

"Taxpayers are pretty sensitive about use of their money nowadays and I think this amendment will give them a little assurance that their money will not be spent contrary to their wishes.

"My amendment would in no way hinder the Legal Services Corporation or their grantees from testifying or advising, when asked, before any governmental body.

"It seems that the Legal Services Corporation does not respond well to anything but quite direct and clear action. I wrote to the corporation about a month ago asking their cooperation in controlling the use of Federal funds for lobbying and as yet I have received no reply. I urge the adoption of this amendment.

"I want the Members to know that I support the basic program of legal services. I worked with Legal Aid for 18 years. I think it is important that the poor have the attention that they need on legal matters. I think it is important that the poor, when they have a legal problem, can take care of that problem and can have

it taken to court with a good lawyer. I know that if we take away money for lobbying we will have more money to represent them in court where they should have representation. I know that if they take away some of the frivolous things that the Legal Services Corporation has been doing and really represent the poor, then the poor will have a better spokesman, including their local courts."

✓124 Cong. Rec. H 5544

The Moorhead amendment has been made applicable to the Corporation's appropriations each year since it was first introduced and enacted. Under this restriction, appropriated funds may not be used by recipients for legislative representation that involves "publicity or propaganda"; i.e., appeals to members of the public to urge their elected representatives to support or defeat legislation pending in the Congress or in any State legislature. Other legislative representation in the interests of clients or of recipients, as permitted by 42 U.S.C. § 2996f(a)(5), is not affected by this restriction, or, for that matter, by the section 607(a) restriction.

On April 14, 1980, the Corporation's General Counsel issued a memorandum (cited in your letter) to the Legal Services Corporation Recipient Staff on the subject of legislative advocacy. In that memorandum the General Counsel stated the Corporation's position on the effect of the amendment as follows:

"It is our view that the Moorhead Amendment neither narrowed nor broadened the existing restriction on legislative advocacy * * * legislative advocacy is permissible when done on a client's behalf * * *."

As indicated above, the Moorhead amendment extends the existing section 607(a) restriction on the Corporation's expenditure of appropriated funds for publicity and propaganda activities, whether on behalf of clients or for other purposes, to include such activities at the State as well as at the Federal level. Thus, when recipients undertake legislative representation of clients, that representation may not take the form of "publicity or propaganda designed to support or defeat legislation pending before Congress or any State legislature."

The Corporation's position concerning the effect of this provision appears to be in essence that the sort of grass roots publicity and propaganda activities which the Moorhead amendment seeks to preclude have been precluded all along by the Corporation's enabling legislation lobbying

restrictions discussed above. Thus, in the Corporation's view, "the Moorhead Amendment neither narrowed nor broadened the existing restriction on legislative advocacy* * *" While we would not agree that the Corporation has succeeded in restricting unauthorized lobbying activities by recipients in all instances, we would agree with the Corporation's reading of the limited extent to which recipient lobbying is permitted by the Legal Services Act.

The Moorhead Amendment was prompted by unauthorized lobbying activities by Corporation recipients which the Corporation was not able to prevent. In our opinion, it serves the important and worthwhile purpose of reemphasizing the broad prohibitions on legislative advocacy by Corporation recipients contained in the Corporation's enabling legislation.

The Corporation's regulations (45 CFR § 1612.4), however, do not clearly set out the Corporation's legal interpretation of these lobbying restrictions. Instead, they merely paraphrase the statute without explaining the specific activities that are permitted and those that are proscribed. Further, they do not discuss the distinction between legitimate client representation and prohibited publicity and propaganda activities on behalf of clients. Also, the regulations do not place controls on these activities, such as requiring reports by recipients, to enable the Corporation effectively to enforce the restrictions.

We understand that the Corporation is currently considering revision of its anti-lobbying regulations. To help assure full compliance with these statutory restrictions by Corporation recipients, by letter of today to the Corporation President, we are recommending that the Corporation's regulation revision clarify its policy guidance on lobbying activities and fully explain the statutory restrictions on those activities. In addition, we are recommending that the Corporation include appropriate restrictions in grant instruments and contracts with providers of legal assistance to insure that grantees and contractors have actual knowledge of these restrictions. These measures should serve to prevent violations of the lobbying restrictions that could result from misunderstandings and lack of notice.

We trust that this is responsive to your request.

Sincerely yours,

MILTON J. SOCOLAR

For The Comptroller General
of the United States



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

B-163762

November 24, 1980

The Honorable Dan J. Bradley
President, Legal Services Corporation
733 15th Street N.W.
Washington, D.C. 20005

Dear Mr. Bradley:

Enclosed is a copy of our opinion B-163762 of today, concerning the authority of the Legal Services Corporation to expend appropriated funds for certain legislative representational activities, that was requested by the Honorable Benjamin A. Gilman. In the opinion, we recommend that you take appropriate action to amend the Corporation's regulations at 45 CFR § 1612.4 to adequately implement certain statutory restrictions on the use of appropriated funds for legislative representation.

We would appreciate advice of whatever action is taken on the recommendation.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler".

For The Comptroller General
of the United States

Enclosure