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WASHINGTON D.C. 20548

B-206391
B-217896

October 30, 1985

The Honorable William Proxmire
United States Senate

Dear Senator Proxmire:

This is in response to your July 26, 1985, letter requesting this Office to review and comment upon your draft bill to prohibit the use of appropriations for the payment of certain costs involved in lobbying the Congress. We endorse the objective of enacting into permanent law appropriate restrictions on the use of Federal funds by the executive branch for lobbying Congress. While at present there are a number of legal prohibitions against the use of appropriated funds by executive branch agencies and departments for lobbying activities, each one has shortcomings that limit its effectiveness.

Last year we issued a report on executive branch lobbying GAO/GGD-84-46, March 20, 1984, entitled, "No Strong Indication that Restrictions on Executive Branch Lobbying Should be Expanded." This is the same report that you mentioned in your request. In that report, we suggested legislative language for an appropriation restriction on indirect lobbying to be enacted into permanent law, which reads as follows:

"Except as otherwise provided by law, an appropriation may not be used other than for activities that involve direct communications between executive and legislative branch officials: (1) for publicity and propaganda purposes, for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress; and (2) to pay the salary or expenses of any grant or contract recipient or agent acting for such recipient to engage in any activity designed to influence legislation or appropriations pending before the Congress."

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The bill language proposed by our report would have allowed direct communication between executive and legislative branch officials without limitation. Use of appropriated funds for publicity or propaganda designed to influence members of the public to lobby for the support or defeat of pending legislation would have been precluded, as would the use of appropriated funds for any lobbying activity, direct or indirect, by grantees or contractors with respect to pending legislation.

The draft legislation suggested in our report was an attempt to exclude, in a permanent, non-penal provision applicable to the executive branch as a whole, the activities which, until fiscal year 1984, were restricted by annual appropriation acts of general application and by 18 U.S.C. § 1913 (1982), as that provision historically has been interpreted by the Department of Justice.

Your draft bill, with minor exceptions, uses the language of 18 U.S.C. § 1913. However, this provision has always been construed by the Department of Justice to apply only to the use of appropriated funds by officers and employees of the United States for grass-roots lobbying of the Congress. Grass-roots lobbying, as contrasted with direct lobbying, occurs when Government officials or Federal fund recipients urge members of the public to contact Members of Congress in an attempt to influence legislation.

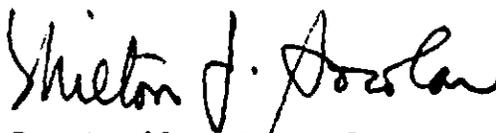
As you know, the Department of Justice has interpreted the phrase "to Members of Congress or the request of any Member or to Congress, through the proper official channels" in 18 U.S.C. § 1913 as not restricting direct communication to individual Members of Congress or to the Congress as a whole so long as such communications, in fact, reflect the views of the agency. Since your bill, as currently drafted, parallels the language of 18 U.S.C. § 1913 so closely, if enacted, it would probably be interpreted in the same way. In other words, we do not think your bill would preclude the sort of unsolicited direct congressional contacts by executive branch officials which were the subject of our opinion to you concerning State Department efforts to oppose a draft resolution concerning MOX fuel (B-217896, July 25, 1985).

Subsection (a)(3) of the proposed bill also precludes direct congressional contact "with respect to the conduct of any other business by the Congress" unless requested by a Member of the Congress (Subsection (b)). This would

prohibit, for example, the provision of important information about agency programs which the agency believes should be brought to the attention of a Senator or Congressman with cognizance over the subject matter, but which was not requested because the legislator was not aware of the problem. We think such a result would be very undesirable. As reflected in the proposed anti-lobbying provision included in our March 20, 1984 report, quoted above, our Office would not be in favor of restrictions on any officially approved, unsolicited direct contacts by executive branch officials with individual Members of Congress or the Congress as a whole, whether they were initiated in connection with pending or proposed legislation or for other legitimate purposes.

Subsection (a) of your proposed bill would also prohibit recipients of assistance, in addition to officers and employees of the executive branch, from expending appropriated funds for activities intended or designed to influence legislation in Congress. In this connection, the Office of Management and Budget recently clarified which lobbying costs are disallowable grants costs under OMB Circular A-122, "Cost Principles for Nonprofit Organizations." Department of Defense and General Services Administration regulations pertaining to reimbursement for obligation costs by Government contractors were subsequently amended to make them consistent with the principles of Circular A-122. The proposed bill appears to be consistent with the cost disallowance provisions of OMB Circular A-122 and the amended regulations of the contracting agencies. Nevertheless, you may wish to add, after the reference to a "recipient of assistance" in proposed subsection (a), "or a Government contractor."

Sincerely yours,

for 
Comptroller General
of the United States