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UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

MAR 7 1979

B-192746-O.M. D

TO : Director, CED

FROM : General Counsel - Milton J. Socolar MILTON SOCOLAR

SUBJECT: Review of Aspects of the Maritime Administration's Relationship with the National Maritime Council (Council) (CED8-497) (Code 06554) - B-192746-O.M.

The purpose of this memorandum is to provide you with an opinion regarding the legality of the Maritime Administration's (MarAd) use of appropriated funds in connection with the National Maritime Council's "Don't Give Up the Ships" advertising and public relations campaigns. As arranged with Mr. Joel L. Slotsky, Supervisory Auditor, we are providing both the facts which we developed and an opinion on the legal issues concerning MarAd's involvement in Council lobbying efforts, as raised by the August 7, 1978, letter from the Honorable Benjamin S. Rosenthal, Chairman, Commerce, Consumer and Monetary Affairs Subcommittee of the House Committee on Government Operations.

MARAD'S INVOLVEMENT WITH THE COUNCIL

MarAd is a subordinate agency of the Department of Commerce and is headed by the Assistant Secretary for Maritime Affairs, hereafter referred to as the Assistant Secretary. In 1971 and 1972, MarAd took a leading role in organizing and establishing the National Maritime Council, a non-profit trade association of ship-operating and shipbuilding companies and maritime unions. MarAd became a member of the Council and undertook the obligation of providing administrative support to the Council, serving as the "executive secretariat." The staff of the secretariat, who were MarAd employees, answered correspondence directed to the Council, collected dues and assessments, and arranged for payment of Council expenditures. MarAd in its capacity as executive secretariat also arranged for meetings of various Council committees and often arranged special Council functions such as dinners for shippers to induce them to use U.S. carriers. The value of services that MarAd provided the Council amounted to approximately $200,000 on an annual basis. MarAd justified its involvement with the Council and expenditures that resulted from this relationship primarily on the authority contained in 46 U.S.C. §§ 1101 and 1122. Section 1101 declares it to be United States policy to "foster the development and encourage the maintenance" of a modern, efficient merchant marine. Section 1122 provides as follows:

"The Commission [Secretary of Commerce] is authorized and directed--

* * * * *

"(b) Inducing preferences for American vessels; construction of super-liners.

"To study, and to cooperate with vessel owners in devising means by which--

"(1) the importers and exporters of the United States can be induced to give preference to vessels under United States registry; and

* * * * *

"(d) Liaison with other agencies and trade organizations.

"To establish and maintain liaison with such other boards, commissions, independent establishments, and departments of the United States Government, and with such representative trade organizations throughout the United States as may be concerned, directly or indirectly, with any movement of commodities in the water-borne export and import foreign commerce of the United States, for the purpose of securing preference to vessels of United States registry in the shipment of such commodities; * * *."

MarAd construes the above-quoted statutes, which direct it to foster development of the merchant marine, cooperate with U.S. vessel owners in inducing shippers to give them preference, and establish and maintain liaison with trade organizations, as providing it with the requisite authority to expend appropriated funds in the performance of the Council's administrative functions. Normally, great deference should be given to an agency's interpretation of the statute under which it operates, but where questions of the agency's own jurisdiction or power are concerned, any agency interpretation of a relevant statute which extends powers conferred on the agency must be strictly scrutinized.

We are of the opinion that neither the mandate contained in 46 U.S.C. § 1122(d) for MarAd to establish and maintain liaison with such representative trade organizations as are concerned with water-borne foreign commerce of the United States, nor any implied authority in the other cited

provisions, authorize it to expend appropriated funds in performing administrative services for such private organizations. It is a well-established principle that Federal funds may only be paid out pursuant to law. 48 Comp. Gen. 773 (1969); 49 id. 578 (1970); and 54 id. 921 (1975). In this regard, 31 U.S.C. § 628 provides:

> "Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made and for no others."

Hence Federal agencies cannot make use of appropriated funds to supply services to private organizations in the absence of specific authority. 15 Comp. Dec. 178 (1908); B-69238, July 13, 1948; and 28 Comp. Gen. 38 (1948).

In defense of its involvement with the Council, MarAd states that it has informed "Congress" concerning its relationship with the Council. Specifically, MarAd claims to have included a description of Council involvement in its annual report and provided details of the relationship to the House Committee on Merchant Marine and Fisheries. MarAd points out that, notwithstanding this knowledge, Congress has continued to appropriate funds each year for its operations without restriction and consequently Congress has thereby authorized its Council involvement.

We do not agree with MarAd's conclusion that Congress has tacitly approved its Council relationship. The mere fact that the activity here involved has been disclosed to a committee of the Congress and has not been objected to does not require the conclusion that the activity has been authorized or that funds have been appropriated therefor. B-69238, supra.

Moreover, there is convincing evidence to suggest that MarAd's involvement with the Council was never approved by the Department of Commerce. On August 21, 1971, the General Counsel of MarAd forwarded a memorandum to the General Counsel of the Department of Commerce seeking confirmation of MarAd's legal position that it had authority to maintain full membership in the Council, serve as the Council's executive secretariat, and perform routine Council administration tasks. After discussions on the matter, the Commerce General Counsel rejected the MarAd proposal. According to the record, he indicated that both the membership and executive secretariat proposals were inappropriate on the basis of troublesome potential conflicts of interest between a Government agency and a trade association consisting of components of the industry it regulates. The former Commerce

General Counsel informed us in a recent interview that his position was also based on what he considered an improper use of appropriated funds in performing the Council's administrative functions with Government funds and resources.

In disregard of the Commerce General Counsel's authority to make conflict of interest determinations pursuant to employee standard of conduct regulations contained in 15 C.F.R. § 0.735-38, MarAd's General Counsel characterized the Commerce General Counsel's rejection as a policy and not a legal determination and therefore concluded that MarAd was not bound by the rejection. Hence MarAd became a permanent member of the Council and assumed the responsibility as executive secretariat of the Council at MarAd Headquarters in Washington, D.C., and at each of the regional MarAd offices. MarAd elected to provide the Council's administrative support requirements in lieu of a cash contribution that other members were obligated to make to support the work of the Council.

However, in view of MarAd's continued involvement with the Council for a period of approximately 7 years with the acquiescence of the Department of Commerce and its oversight congressional committee, it would be difficult to conclude that the involvement was totally unauthorized. However, this does not mean that MarAd is free to make appropriated fund expenditures for Council functions which are specifically prohibited by law. (In a previous memorandum, we have already pointed out a possible violation of 18 U.S.C. § 205 when MarAd employees signed certain Council income tax returns for years prior to 1978 as "preparers.")

COUNCIL'S ADVERTISING CAMPAIGN

During the mid-1970s, the Council became interested in promoting the U.S. merchant marine through the media. In October 1975, it commissioned a media consultant firm, Burson-Marsteller, to conduct a public affairs study for the U.S. merchant marine. This study was designed to determine attitudes, the level of interest and knowledge, and the opinions and positions of the men and women who make decisions vital to the functioning of the industry. The study was also designed to test the knowledge and attitudes of those who influence the public opinion environment in which the U.S. merchant marine operates.

The Burson-Marsteller report for the National Maritime Council was completed in February 1976. The report concluded that the maritime industry needed to do a great deal more than it had in the past to influence favorable legislative action. It suggested that the merchant marine should be portrayed as a vital reserve force for those defense oriented members of Congress who would respond to such an approach. The report pointed out that past lobbying efforts had been too strongly

focused on the House Merchant Marine and Fisheries Committee and the Senate Merchant Marine Subcommittee, and recommended that efforts be made to educate key legislative officials on the basic issues of the merchant marine and its current legislative targets. Shortly after receipt of the study report, the Council, on June 17, 1976, decided to initiate an advertising campaign.

In the early summer of 1976, a representative of the advertising agency of Vansant Dugdale & Co. contacted Lewis Paine, a MarAd employee and executive secretary of the Council, at his office at MarAd headquarters and indicated an interest in representing the Council. The Vansant representative was given certain material, including a copy of the Burson-Marsteller study report.

Vansant submitted a proposal for the Council advertising program in September 1976, which was directed at two major audiences. The first was "Official Washington, D.C.," which included the Congress and its staff, the Executive branch, and the resident media community. The second was the corporate officers and directors of major U.S. companies. In December 1976, the Vansant advertising program proposal was accepted by the Council Board of Governors, which included Robert J. Blackwell, the Assistant Secretary of Commerce for Maritime Affairs.

During December 1976 and thereafter, the Council Advertising Committee met periodically to act on and approve proposed advertising. Mr. Paine, the Council executive secretary, attended all these meetings and was familiar with each advertisement and the committee's action on it.

Six page-size advertisements were approved by the Committee for various magazines and newspapers for the 1977 advertising campaign. These advertisements presented the message that the size of the U.S. merchant marine fleet had shrunk in comparison with other nations and urged shippers to use U.S. ships. Five of the six advertisements went on to urge the reader to contact his Congressman and express his feelings about a strong American merchant marine. Also the advertisements offered a booklet for readers who wrote in to the Council. A typical advertisement message reads as follows:

"If you want a stronger
America, there isn't any choice.

"If you ship goods overseas, you may not know or care which flag the ship flies. If you're concerned with this country's well-being, we urge you to care.

"While other nations have been aggressively supporting ships flying their own flags, the American merchant marine has diminished in importance in the past several decades. Our post-World War II fleet of over 4800 U.S. flag merchant ships have shrunk to 577. We're 10th in fleet size in the world trade community (Russia's fleet is 400% larger) and 8th in merchant ship construction.

"We are at a crucial point regarding the health of our merchant marine. The industry has been making great advances in technological innovations, manpower training, efficiency of operation and overall reliability of service. Yet, despite this continual upgrading, today less than 6% of U.S. foreign trade is carried on ships flying the U.S. flag. Compare that to other major nations who have 50% of their foreign trade carried on their own merchant ships.

"Like other countries, we owe a fair share of our shipping to our ships. Shippers in other countries give preference to the merchant ships of their nation; we believe American shippers should do the same.

"Obviously this would be unreasonable if the rates were higher or the service inferior. But if it costs no more and the service is unsurpassed, why shouldn't your cargo go on ships flying your nation's flag?

"If you are not involved with shipping, you can still tell your Congressmen how you feel about a strong American merchant marine. If you'd like to know more, send for our booklet on U.S. Flag Shipping. Write National Maritime Council, Box 7345, Washington, D.C. 20044.

"National Maritime Council
"Management, labor and government working together for a strong, stable U.S. flag shipping industry.

"DON'T GIVE UP THE SHIPS"

At the time these advertisements were being developed and approved, Mr. Paine wrote a letter, dated January 5, 1977, to Vansant for the purpose of correcting a misconception by the Vansant agency as to the function of the Council. Mr. Paine explained that the Council did not serve in a lobbying capacity. However, on February 15, 1977, Mr. Paine and other MarAd employees attended a meeting with Vansant representatives and requested Vansant to prepare a letter of transmittal for the booklet, "U.S. Flag Shipping." The report of the meeting by a Vansant employee indicates that the letter was supposed to urge readers to communicate a desire for a strong U.S. merchant marine to their representatives in Washington, D.C. The MarAd officials subsequently claimed that the advertising agency misinterpreted their instructions. In any event, the report of the meeting indicated that communications with Members of Congress were discussed and considered.

Also during 1977, all MarAd Market Development Offices apparently maintained a stock of advertising reprints for distribution. These were used in support of market development activities. The Houston office adopted the policy of enclosing reprints of the advertisements promoting the U.S. merchant marine with official Government correspondence sent to members of the public. As mentioned above, these reprints urged the reader to tell his Congressman how he felt about a strong U.S. merchant marine. One such recipient considered the advertisement mailing as a lobbying effort by MarAd and complained to his Senator as follows:

> "The enclosed letter copy seems to me to be a blatant attempt to influence legislation by an agency of the U. S. Government on government time, using government stationery and postage. It is my understanding that this practice is illegal and I would appreciate your seeing to it that the practice is stopped."

Upon investigation of the matter, MarAd admitted that the advertisement should not have been mailed out by the regional office but went on to disclaim that the advertisement constituted lobbying. MarAd made the following explanation:

> "The National Maritime Council as a non-profit, tax exempt corporation and with the participation of the Government in its activities is not in any way involved in lobbying activities. It serves as a forum for discussion of issues but does not take positions on issues. The advertisements of the Council are intended to acquaint readers with the status of the United States Merchant Marine,

and to urge readers to concern themselves with the development of a strong Merchant Marine in the national interest. The advertisements neither refer to specific legislation nor do they suggest that a position be taken by the readers on any legislation."

MarAd regional Market Development offices apparently involved themselves occasionally with efforts of other organizations to influence Members of Congress on specific legislation. For example, at a Council Eastern Region General Meeting on June 10, 1977, held in New York and attended by three MarAd representatives and 21 representatives of industry, someone called attention to the efforts of another organization to obtain congressional support for cargo preference legislation. Each representative in attendance was urged to complete the forms included in the cargo preference advertisement and send them to the organization. In addition, each company was urged to contact its Congressman to support the legislation. The minutes of the meeting were written by a MarAd employee and included the following account of this comment on the cargo preference legislation:

"Attention was called to the full page advertisement which has appearing [sic] in the papers and on television and are being sponsored by the 'U. S. Maritime Committee to Turn the Tide' in favor of the 30% oil bill. It is not fully known who is on the committee but it is incumbent upon every company to get in touch with their various Congressmen and tell them immediate action should be taken. This is something that means a great deal to the industry and we should not be the ones to standby idle. Labor is working very hard, some industry is working hard. Every company should use the form attached to the add, fill it out whenever possible and return it to the Committee. The Chairman of the Committee is Mr. L. Rice, Chairman of the Board of Ogden [a shipbuilding firm]."

The minutes go beyond the mere reporting of what someone else said and amount to an exhortation that "we should not be the ones to stand by idle." The executive secretary of the Council's Eastern Region, Mr. F. J. O Donnell, a MarAd employee, circulated the minutes to all Eastern Region members, including seven firms and unions that were not represented at the meeting. This incident indicates that the Council did take positions on pending legislation, and participated in an industry effort to lobby for congressional support again, with MarAd assistance.

Another example involves a brochure. In 1976, Sea-Land Company, a carrier member of the Council, sponsored the preparaton of a brochure by KBC Associates, a Washington, D.C. economics consulting firm. The brochure was to be published and distributed by the Council, and was designed to correct certain myths or misconceptions that had been circulating about the U.S. merchant marine. While in draft form, it was extensively reviewed and approved by the staff of the Maritime Administration. The text of the brochure concluded with a suggestion that readers communicate with Members of Congress on behalf of the merchant marine, as follows:

> "MYTH: The U.S. public cannot significantly influence the future of the U.S. Merchant Marine.
>
> "FACT: If the U.S. public is concerned over the future existence of the U.S. Merchant Marine and its economic and military support contributions to the United States, they should write their congressman or senator and ask him or her what they can do to support the U.S. Merchant Marine."

MarAd market development representatives would sometimes leave this publication with shippers when visiting them in connection with market development surveys.

On at least one occasion, MarAd employees, acting on behalf of the Council, used correspondence to urge a member of the public to write his Congressman regarding the U.S. merchant marine. In this case, a reader responded to one of the magazine advertisements and urged the Council to take a certain position on a general public issue. The executive secretary responded by disclaiming that the Council participated in lobbying activities but then encouraged the correspondent to write Congress and express his views about the U.S. merchant marine. The response, contained in a May 13, 1977, letter signed by Mr. Paine, the executive secretary of the Council, to Mr. R. L. von Hohenleiten is as follows:

> "The National Maritime Council is a non-profit organization which due to its structure is prohibited from participation in lobbying efforts for legislation. However, we do urge private citizens and other groups to write Congress on how they feel about the American merchant marine."

In our view, this statement by a Federal official at a time when a cargo preference bill was pending in Congress amounts to lobbying.

See later discussion of the Council's 1977 advertising campaign.) The fact that Mr. Paine did not explicitly refer to the pending bill or urge Mr. von Hohenleiten to vote for it is immaterial. See B-178648, September 21, 1973.

PENAL STATUTES

Federal "anti-lobbying" statutes are found at 18 U.S.C. § 1913 (1976) and 2 U.S.C. §§ 261-270 (1976). The Federal Regulation of Lobbying Act, enacted as title III of the Legislative Reorganization Act of 1946, 2 U.S.C. §§ 261 et seq., requires the registration of certain persons and organizations engaged in activities described in the Act, and imposes penal sanctions for violations. Its constitutionality was upheld in United States v. Harriss, 347 U.S. 612 (1954). This Act is generally considered to be not applicable to the legislative activities of Government agencies. See in this connection the Report and Recommendations on Federal Lobbying Act by the House Select Committee on Lobbying Activities, H.R. Rep. No. 3239, 81st Cong., 2d Sess. 35 (1951).

The statute that is more pertinent to lobbying activities of Federal agencies is 18 U.S.C. § 1913, entitled "Lobbying with appropriated moneys" which provides as follows:

> "No part of the money appropriated by an enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.
>
> "Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than one year, or both; and after notice and hearing by

> the superior officer vested with the power of removing him, shall be removed from office or employment."

To our knowledge there has never been a prosecution under this statute. Moreover, a review of the case law indicates that only three Federal court decisions have cited the statute. National Association for Community Development v. Hodgson, 356 F. Supp. 1399 (D.D.C. 1973), and American Public Gas Association v. Federal Energy Administration, 408 F. Supp. 640 (D.D.C. 1976), interpreted the statute to a limited degree while Angilly v. United States, 105 F. Supp. 257 (S.D.N.Y. 1952) merely cited the statute without interpretation or discussion.

Since the above statutes contain fine and imprisonment provisions, their enforcement is the responsibility of the Department of Justice and the courts. Accordingly, this Office does not consider it appropriate to comment on their applicability to particular situations or to speculate as to the conduct or activities that would or would not constitute a violation. 20 Comp. Gen. 488 (1941). Our role in this area is limited for the most part to determining whether appropriated funds were used in any given instance, and referring matters to the Department of Justice where deemed appropriate or when requested to do so.

APPROPRIATION ACT RESTRICTIONS

Since the early 1950's, various appropriation acts have contained general provisions prohibiting the use of appropriated funds for "publicity or propaganda." The acts appropriating funds for MarAd do not contain any such restrictions. On the other hand, the Treasury, Postal Service, and General Government Appropriation Act, 1979, Pub. L. No. 95-429, 92 Stat. 1000, section 607(a) provides:

> "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." (Emphasis added.)

The prohibition of section 607(a) applies to the use of any appropriation "contained in this or any other Act." Thus it is applicable to the use of appropriated funds by MarAd. A prohibition essentially identical to that of section 607(a) has been in annual appropriation acts since MarAd became involved with the Council in 1971.

In interpreting "publicity and propaganda" provisions such as section 607(a), this Office has recognized that every Federal agency

has a legitimate interest in communicating with the public and with Congress regarding its policies and activities. If the policy of the Administration or of an agency is affected by pending legislation, including appropriation measures, discussion by officials of that policy will necessarily, either explicitly or by implication, refer to such legislation and will presumably be either in support of or in opposition to it. An interpretation of section 607(a) which strictly prohibited expenditures of public funds for dissemination of views on pending legislation would consequently preclude virtually any comment by officials on administration or agency policy, a result we do not believe was intended.

In our view, Congress did not intend, by enactment of section 607(a) and like measures, to prohibit agency officials from expressing their views on pending legislative and appropriation matters. Rather, the prohibition of section 607(a) applies primarily to expenditures involving appeals addressed to members of the public suggesting that they contact their elected representatives and indicate support of or opposition to pending legislation, or urge their representatives to vote in a particular manner. The foregoing general considerations form the basis for our determination in any given instance of whether there has been a violation of section 607(a). 56 Comp. Gen. 889 (1977); B-128938, July 12, 1976.

CONSIDERATION OF POSSIBLE VIOLATIONS

As outlined above, the essential elements of a violation of section 607(a) and related provisions are the use of appropriated funds by an agency to appeal to members of the public to urge their elected representatives to support or oppose pending legislative matters, including appropriation acts, or to vote in a particular manner. Thus an agency directly violates this restriction when it expends funds in the preparation and dissemination of materials which appeal to members of the public to urge Congress to support or oppose pending legislative matters. For example, the Executive Office of the President violated this restriction in 1973, when it prepared "Battle of the Budget" kits for use in speeches to the public by Presidential appointees urging the defeat of 15 pieces of legislation. B-178448, April 30, 1973. Again in 1973, several executive agencies and departments violated this restriction when they expended funds in the preparation and dissemination to the media of news releases encouraging the public to urge Congress to defeat certain "budget busting" legislation. B-178648, supra.

An agency may also violate the restriction by expending appropriated funds in support of private organizations that appeal to the public to contact their elected representatives and express their approval or disapproval of legislation. The District Court for the District of Columbia

discussed violations of 18 U.S.C. § 1913, the penal statute similar to section 607(a) which is discussed above, in National Association for Community Development v. Hodgson, supra, as follows:

> "This general purpose when combined with the plain meaning of the words of the statute, clearly indicates that the intention of Congress in passing Section 1913 was to prevent corruption of the legislative processes through government financial support of an organization 'intended or designed to influence in any manner a Member of Congress, to favor or oppose * * * any legislation or appropriation' and thereby precludes the drowning out of the privately financed 'voice of the people' by a publicly funded special interest group." 356 F. Supp. at 1404.

While we express no opinion with respect to section 1913, it seems clear that an agency that knowingly uses appropriated funds to assist a private organization in the preparation and dissemination of propaganda materials designed to encourage the public to urge Congress to act on legislation, violates section 607(a). We considered the question of whether certain activities which would be lobbying if performed on behalf of the Government still violate section 607(a) if performed for a private organization, in our decision B-129874, September 11, 1978. A bill to establish a Consumer Protection Agency (CPA) was before the Congress at the time. Certain private consumer organizations had requested the Office of Consumer Affairs (OCA), Department of Health, Education and Welfare (HEW), to provide them with five or more specific examples of instances in which the proposed CPA, if it had been in operation, could have intervened on behalf of consumers and influenced decisions of regulatory agencies. The consumer organizations desired these examples for use in contact work with Congressmen in order to graphically illustrate how effectively a CPA could operate. OCA sought advice from the HEW General Counsel who cautioned against complying with the requests. We stated that OCA would have violated section 607(a), had it prepared such examples and provided them to the consumer organizations. Accordingly, an agency may violate section 607(a) by expending funds to directly appeal to the public on legislation and also by assisting private organizations to appeal to the public on legislation.

With this background, we shall now consider whether MarAd's involvement with the Council amounted to a violation of section 607(a).

According to testimony of the Honorable Robert J. Blackwell, the Assistant Secretary of Commerce for Maritime Affairs (IRS Administration of Tax Laws Relating to Lobbying, Hearings Before a Subcommittee on the House Committee on Government Operations, 95th Cong., 2d Sess.

Part 2, 100-107 (1978)), MarAd employees performed about 90 percent of the administrative functions of the Council from 1971 until 1978. As many as 40 MarAd employees devoted a part of their duty hours to Council work, including four employees at Headquarters MarAd and at the regional offices that devoted as much as 20 percent of their time to Council requirements. Mr. Blackwell estimated the salary expenditures for Council functions during 1977 at $157,803. Further, MarAd provided office space, equipment, and facilities for Council requirements and paid travel expenses for MarAd employees involved in Council-related travel. MarAd considered this contribution of services and facilities as its proportionate share of support for the Council in lieu of other membership assessments and dues as were levied against other Council members.

Moreover, in response to questions by the Subcommittee, MarAd conceded that "* * * personal services by MarAd employees were performed, on what would appear to be 'publicity and propaganda' and that appropriated funds were consequently involved."

In December 1976, MarAd employees on behalf of the Council retained the advertising agency of Vansant Dugdale & Co., to develop an advertising program in support of Council objectives. In January 1977, with the active involvement of MarAd employees, six advertisements were approved for publication in newspapers and magazines throughout 1977. The advertisements explained that the U.S. merchant marine was falling behind in comparison with the fleet size of other countries and exhorted American shippers to ship their cargo on American ships. Five of the advertisements urged readers to contact their Congressmen. Three suggested that readers express their feelings about a strong merchant marine and the other two indicated readers should think about the advertisement's message, which was supportive of a strong U.S. merchant marine, and then share their thinking with their Congressmen. These advertisements were run periodically throughout the year from the beginning of March 1977 until November 1977 except for one that ran in December 1977. The publications in which they appeared were leading magazines and newspapers such as Business Week, Fortune, Newsweek, Time, U.S. News and World Report, and the Wall Street Journal. (Similar advertisements were run in 1978 with the important difference that they did not urge the readers to contact their Congressmen. Hence the 1978 Council advertisement campaign did not raise a question about anti-lobbying restrictions.)

Also, in September 1977, the Houston MarAd Market Development Office sent reprints of these 1977 advertisements to approximately 250 shippers urging them to contact their Congressmen on behalf of the U.S. merchant marine. Further, MarAd, still in its capacity as staff of the

Council, extensively reviewed and approved the brochure that urged readers to contact their Congressmen to ask what they could do to support the U.S. merchant marine. MarAd used this brochure throughout 1977 in connection with market development activities that included the distribution of the brochure to members of the public. In addition, in 1977, at least one reader who expressed his views to the Council as a result of the advertisements, was urged by MarAd employees responding on behalf of the Council to express his views about the U.S. merchant marine to his Congressman.

From the foregoing it is clear that during the period from March 1977 to November 1977, MarAd expended appropriated funds in providing staff and services to the Council with the knowledge that such support was being used by the Council to carry on a very extensive national level advertising campaign designed to encourage members of the public to contact their Congressmen and express their views concerning a strong U.S. merchant marine. MarAd employees were involved in all phases of the development, approval and publication of the above described advertisements.

During 1977, at the height of the Council advertising campaign, a piece of legislation was pending in Congress that concerned MarAd and the U.S. merchant marine. This was H.R. 1037, 95th Cong., a bill to require that a percentage of United States oil imports be carried on U.S. flag vessels. Hearings on this bill were begun on March 1, 1977, before the Subcommittee on Merchant Marine and Fisheries, and were held throughout the spring and summer and concluded on July 29, 1977. The bill was then made the subject of floor debate and was ultimately defeated in the House of Representatives on October 19, 1977. 123 Cong. Rec. H11236-76 (daily ed. October 19, 1977). The period from March 1977 to October 1977 was the time that the Council's advertising campaign was the most intense, urging readers to contact their Congressmen in support of a strong U.S. merchant marine and also urging increased use of U.S. flag ships by shippers, which was what the legislation sought to require. It was also during this period, on June 10, 1977, that a meeting of the Council's Eastern Region Action Group took place, during which members of the Council were urged to contact their Congressmen and express support for cargo preference legislation. Subsequently, on August 12, 1977, the Council's Eastern Region secretariat, staffed by MarAd employees, sent copies of the minutes of that meeting to members of the Council's Eastern Region, that contained the same urging of members to contact their Congressmen in support of this legislation.

Accordingly, one may reasonably infer that the Council's 1977 advertising campaign was directed toward the cargo preference

legislation in the form of H.R. 1037. A Congressman receiving mail from constituents in support of a strong U.S. merchant marine could consider such comments as favoring cargo preference legislation.

While the advertisements and other documents did not state that Members of Congress should be urged to vote in a particular manner on legislation, the import of the publicity campaign is inescapable. A legislator receiving a letter urging support for a strong merchant marine would have little doubt that he was being urged to support legislation favorable to that goal and to oppose measures unfavorable to it. It is not necessary that a particular vote be expressly solicited for the activity to be considered to be lobbying. B-178648, supra.

CONCLUSIONS

In light of the foregoing analysis, we are of the opinion that MarAd expended appropriated funds on the administrative support it gave the Council for publicity purposes designed to support legislation pending before Congress that was favorable to the U.S. merchant marine, during the period March 1, 1977, through October 19, 1977, in violation of section 607(a) of the Treasury, Postal Service and General Government Appropriations Act, 1977, Pub. L. No. 94-363 (July 14, 1976) 90 Stat. 963, 978.

ILLEGALLY EXPENDED FUNDS

The action to be taken by our Office with respect to the expenditures of appropriated funds in violation of law is limited to recovery of the amounts illegally expended. B-178648, supra. While appropriated funds were used by MarAd in connection with its administrative support of the Council's 1977 advertising campaign during the period March 1, 1977 through October 19, 1977, when legislation favorable to the U.S. merchant marine was pending before Congress, the amount involved for each violation would have been relatively small and commingled with proper expenditures. Moreover, the activities of individual employees may not amount to lobbying; it was the aggregate of administrative support provided that we find was improper. In view of the small amounts involved, and difficulty in determining the exact amount expended illegally as well as the identity of any particular voucher involved, it would be inappropriate for us to attempt to effect recovery from each employee who received salary payments to carry out these activities. However, this does not mean that you cannot criticize the agency in your report for the improper use of appropriated funds even though there is no practical way to recover them.