**Comptroller General**
**of the United States**
**Washington, D.C. 20548**

B-229257

June 10, 1988

The Honorable David Pryor
Chairman, Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This is in response to your letter of October 15, 1987, requesting this Office to determine whether certain expenditures by the Federal Trade Commission (FTC) were necessary, appropriate, consistent with that agency's mission and in accord with laws of general applicability governing lobbying and public relations expenditures by agencies. We have received the FTC's views on the issues raised by you. After reviewing the matter, we have concluded that none of the FTC expenditures at issue violated applicable laws and regulations.

BACKGROUND

The FTC states that Daniel Oliver, Chairman, Federal Trade Commission, made a speech entitled "Saving the Post Office" before the Direct Marketing Association's Government Affairs Conference in Washington, D.C. on May 15, 1987. The thrust of that speech was to point out that the Postal Service is an inefficient government monopoly by virtue of authority contained in the Private Express Statutes. (39 U.S.C., chapter 6.) Under these statutes the Postal Service enjoys the exclusive right to deliver letter class mail. (Package delivery has already been deregulated.) Mr. Oliver suggests deregulation of the delivery of letters so that private entrepreneurs can begin to enter the business and directly compete with the Postal Service. In his view, this would result in cheaper and better letter delivery service.

Mr. Oliver then told the Direct Marketing Association that he had urged Postmaster General Tisch to take action to repeal the Private Express statutes as follows:

> "The Direct Marketing Association is an ideal source of opposition to the Postal Service's monopoly powers. Your industry has a lot to gain from a competitive postal market. And here, your self-interest coincides with the interests of all consumers. The benefits of

asked the Postmaster General to comment on that weakness.

In addition to the activities described above, FTC staff have on occasion been interviewed by members of the press and on radio talk shows and expressed views advocating the deregulation of the Postal Service. Also, FTC staff have participated in meetings with representatives of the Chamber of Commerce and other public interest organizations to discuss the establishment of an ad hoc committee to plan activities designed to accomplish the privatization of the Postal Service.

DISCUSSION

Authority of FTC to Investigate and Report

The FTC states that it has statutory authority that empowers it to study, comment upon, and disseminate information regarding matters affecting competition and consumer protection. The Commission relies on 15 U.S.C. § 46(a) and § 46(f) which provide as follows:

> "(a) Investigation of persons, partnerships, or corporations
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> "To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce . . .
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> . . . . .
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> "(f) Publication of information; reports
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> "To make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use. . . ."

The FTC also points out that a number of former FTC officials while with the Commission have spoken out in other contexts on statutory restrictions that in their views diminish competition and consumer welfare. Former FTC Chairman Lewis A. Engman gave a speech in Detroit, Michigan, on October 7, 1974, in which he questioned whether the former Civil Aeronautics Board's control over routes and

rate changes did not unduly restrict competition in the airline industry. Former FTC Commissioner Michael Pertschuk issued a statement on May 16, 1984, supporting the Commission's opposition to a pending Senate bill establishing a domestic content requirement for imported automobiles. Finally, former FTC Chairman James C. Miller III wrote an article on the postal monopoly that appeared in The Cato Journal. The FTC offers these examples to demonstrate that FTC officials have in past years spoken out on statutes that in their view restrict competition.

From a review of these provisions and applicable legislative history, we agree that the Congress intended to grant to the FTC authority to investigate a wide range of matters that affect commerce in the United States and to convey information concerning such matters to the public. See, e.g., FTC v. Cinderella Career & Finishing Schools, Inc., 404 F.2d 1308, 1319 (D.C. Cir. 1968); Mattox v. FTC, 752 F.2d 116, 122 (5th Cir. 1985); Leiberman v. FTC, 771 F.2d 32, 34 (2d Cir. 1985). We also agree that the Postal Service activities may affect the operations of many business entities. Since the Postal Service has a substantial impact on commerce throughout the country and affects the operation of many business entities, we agree that the FTC has authority under subsections 46(a) and 46(f) to study the operations of the Postal Service and convey its findings to the public.

The relevant fiscal year 1987 appropriation covering Federal Trade Commission salaries and expenses, Pub. L. No. 99-591, Oct. 30, 1986, 100 Stat. 3341-67 provides funds for necessary expenses of the Federal Trade Commission. The appropriation contains no restrictions on FTC activities relevant to the complained of activities.

The FTC has determined that expenses involved in compiling and reporting information on the Postal Service further the purposes of this appropriation. In view of FTC's statutory authority outlined in 15 U.S.C. §§ 46(a) and 46(f), we concur in this determination.

Lobbying and Propaganda Restrictions

FTC's fiscal year 1987 appropriation does not contain a restriction on the use of such funds for lobbying. Id. The only antilobbying legislation relevant to these circumstances is 18 U.S.C. § 1913, which says:

> "No part of the money appropriated by any 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 . . . 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 . . . through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."

Section 1913 further provides for penalties of a fine, imprisonment, and removal from federal service. Because section 1913 provides for criminal penalties, its interpretation and enforcement is the responsibility of the Department of Justice. This Office may, however, refer appropriate cases of apparent violations of section 1913 to the Justice Department for prosecution. See, e.g., B-212235(1), Nov. 17, 1983 (Commerce Department publication favoring revision of Export Administration Act referred to Justice). To our knowledge, there has never been a prosecution under this statute. B-217896, July 25, 1985. In addition, only a few court decisions have cited the statute and, generally, they have not dealt with the question of a violation, but have been concerned with peripheral issues. See, e.g., National Association for Community Development v. Hodgson, 356 F. Supp. 1399 (D.D.C. 1973); American Public Gas Association v. Federal Energy Administration, 408 F. Supp. 640 (D.D.C. 1976). See B-214445, Oct. 24, 1984.

The Department of Justice interprets section 1913 to apply only when funds are spent in a grass roots lobbying effort, where an attempt is made to induce members of the public to contact their representatives in Congress to persuade them to either support or oppose pending legislation. B-216239, Jan. 22, 1985; 63 Comp. Gen. 624, 625-626 (1984).

In our view, the Department of Justice's interpretation of section 1913 permits officials of the executive branch to express their views regarding the merits or deficiencies of legislation. B-217896, July 25, 1985; 63 Comp. Gen. 624, 626 (1984). The objective of expressing those views may even be to persuade the public to support the agency's position, provided the public is not urged to contact Members of Congress. See B-216239, Jan. 22, 1985. There is no statement in the FTC materials provided to us for review exhorting members of the public to contact Members of Congress to urge repeal of the statutes that grant the Postal Service a letter class mail delivery monopoly.

CONCLUSION

In summary, we conclude that none of the FTC activities we reviewed violated applicable laws and regulations. While providing information advocating Postal Service deregulation to members of an audience attending an address by the Postmaster General might be subject to criticism as an excess of zeal, it does not, in our view, rise to the level of a violation of the law.

Unless you publicly announce its contents earlier, we plan no further distribution until 30 days from the date of this opinion. At that time, we will send copies to interested parties and make copies available to others on request.

Sincerely yours,

for Comptroller General
of the United States