



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-114823

DEC 23 1974

The Honorable Charles A. Vanik
House of Representatives

Dear Mr. Vanik:

This is in reply to your letter of September 13, 1974, asking us to investigate certain activities of the Export-Import Bank of the United States (Eximbank) in connection with the passage in the House of Representatives of H.R. 15977, 93d Congress, amendments to the Export-Import Bank Act of 1945, 12 U.S.C. §§ 635 et seq. You specifically ask whether 18 U.S.C. § 1913 is applicable to Eximbank and request a determination as to whether the several activities listed in your letter constitute a violation thereof.

Since 18 U.S.C. § 1913 is a penal or criminal statute, determinations of violations thereof, as well as its applicability to a particular agency, are properly within the responsibility of the Department of Justice and the courts. It would therefore be inappropriate for us to attempt such a determination.

We would point out for your information that Eximbank is a wholly-owned Government corporation. 31 U.S.C. § 846. It is also, by virtue of its enabling act, an agency of the United States. 12 U.S.C. § 635(a)(1). It was initially capitalized at \$1,000,000,000, and all capital stock is owned by the United States. Id. § 635b. Dividends, if any, are deposited into the Treasury as miscellaneous receipts. Id. § 635(a)(1).

Although Eximbank's fiscal operations and authority are subject to the control of Congress, the Bank does not receive direct appropriations. It funds its operations in large part through borrowings from the Treasury, with a current statutory limit of \$6,000,000,000 (12 U.S.C. § 635d), and pays interest to the Treasury on its outstanding debt obligations at rates lower than prevailing commercial rates. The Bank submits estimates of proposed expenditures, similar to budget requests, annually to the Senate and House Committees on Appropriations, and the Congress, as part of each year's foreign assistance appropriation act, places limits upon the amounts available for program activities and administrative expenses.

In an attempt to provide the factual information you requested, we presented your questions to Eximbank officials. The substance of the

Bank's reply, signed by J. E. Coretta III, General Counsel, is set forth below:

"Eximbank has two people who are assigned to Congressional liaison and who report directly to the General Counsel who supervises Congressional liaison work. These employees are in daily communication with the staffs of Representatives and Senators answering inquiries and providing information as requested. They are also in frequent contact with Members themselves. In addition, the Bank has carried out a continuing program of providing the Congress with factual information on the Bank. This has included information concerning specific loans, how the Bank operates, what programs have been implemented to meet the mandates from the Congress and other general factual information. This information has been obtained from the Bank's own files as well as from the results of surveys which have been contracted to determine the competitiveness of the Bank's programs as they relate to financing offered to competitors by other countries, the percentage of total U. S. exports which require financing and the relationship of exports to jobs.

"During the past 18 months and in many years before, the officers and directors, as well as about 25 employees of the Bank, have been involved in furnishing this information. Eximbank has sent hundreds of communications to Members of Congress in answer to various telephone and written inquiries. Also, Chairman Casey met with several Members of Congress and answered a number of questions on all of the Bank's operations. Because of general interest and the suggestion that certain information would be of interest to all Members of Congress, he wrote two factually informative letters to the Members. The first letter provided information available from the Bank's files about the importance of exports and export related jobs to the community, or information about companies within the Member's district using the various facilities offered by Eximbank. The second letter set forth substantial factual data as well as the Bank's concern over two procedural proposals that could have adversely affected the Bank's ability to support U. S. exports.

"In addition, the officers and directors of the Bank have also had frequent telephone and personal communications with Members in response to their inquiries. Several written communications were sent to Members answering specific questions which they had raised. These communications covered all aspects of the Bank's operations.

"When the news media began publishing various reports on the Bank's pending legislation, Eximbank was besieged with phone

calls from companies all over the United States asking what they could do and why was the Bank having so many problems with Congress at a time when it is so necessary to assist U.S. exports. These questions were answered in a completely factual manner.

"Several Members of Congress and their staffs, as well as trade associations and companies asked the Bank to meet with them and to give them factual information on the Bank's operations, or to advise them of the status of the pending legislation. The Bank complied with these requests. The Bank did not contact any 'lobbying groups' asking for their participation in support of its legislation. However, when asked, we also provided these groups with the information requested.

"You asked 'what Bank officials came to the House to lobby for passage of the legislation, and whether their presence in the House was solicited or unsolicited.' During the course of Congressional action on the proposed legislation, several members of the Banking Committee urged the General Counsel and his associates to be present in the House during debate on the Floor in order that they could answer any questions which might arise surrounding the Bank's operations during that debate. As a result, the following persons were present in the gallery during the House Floor debate: J. E. Corette III, General Counsel; Stephan W. Minikes, Vice President and Assistant to the Chairman; Robert T. Wray, Senior Attorney; Nancy Pigman and Mary George, who work in Congressional liaison. On several occasions, members of the Banking Committee or their staffs requested information from the Eximbank officials who were present at their request. We do not consider this as lobbying.

"You have also asked how much money was spent on this total effort. The Bank pays the salaries of its employees and did not hire or pay any outsiders for the purpose of lobbying or urging passage of this legislation. In its continuing informational effort to the Congress, the Bank spent approximately \$1,500 in miscellaneous expenses over the past 18-month period. These would include, among other things, xeroxing, postage and taxi fares.

"In summary, all communications with the Congress have been purely factual to either give Members or their staffs information in answer to requests, or to inform them of the manner in which the Bank attempts to comply with its mandate from Congress."

We inquired further into the Bank's communications with private companies, trade associations, and lobbying groups, and were advised by Mr. Corette that, as far as he can determine, all such communications were oral and were in response to requests and inquiries posed to Eximbank.

In connection with your request, we considered relevant provisions of the Foreign Assistance and Related Programs Appropriation Act of 1974, Pub. L. No. 93-240, January 2, 1974, 87 Stat. 1049, title V of which contains Eximbank's authorization and limitations for fiscal year 1974. Section 601 of this Act provides as follows:

"No part of any appropriation contained in this act shall be used for publicity or propoganda purposes within the United States not heretofore authorized by Congress."

We have, in interpreting this language, taken the position that it was intended to prevent "publicity of a nature tending to emphasize the importance of the agency or activity in question." 31 Comp. Gen. 311, 313 (1952). We have also consistently expressed our belief that a provision such as this does not provide adequate guidelines under which to judge the activities of an agency, especially when balanced against the agency's legitimate interest in communicating with the public and with members of Congress for permissible purposes. We have thus felt it inappropriate to conclude that such a provision has been violated where the agency could provide reasonable justification for its activities.

Moreover, since section 601 speaks only in terms of appropriations in that Act and such Act does not contain appropriations for Eximbank, we do not believe it may properly be construed as applicable to the Bank. However, we note that section 607(a), Pub. L. No. 93-143, 87 Stat. 510, 526, the Treasury, Postal Service, and General Government Appropriation Act, 1974, provides that:

"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 propoganda purposes designed to support or defeat legislation pending before Congress." (Emphasis added.)

The underscored language appears specifically intended to cover corporations or agencies like Eximbank which have funds made available for expenditure by other than direct appropriations. In the face of language so clearly suited to this purpose, we are unable to conclude that Congress intended to cover the Bank under the terms of section 601 of Pub. L. No. 93-240, but believe that section 607(a), Pub. L. No. 93-143, applies to Eximbank since its scope extends to "this or any other Act."

It is somewhat narrower than section 601, Pub. L. No. 93-240, prohibiting only one type of publicity or propaganda, that "designed to support or defeat legislation pending before Congress."

We consider that, in general, section 607(a) is not violated by the dissemination by an agency of general comment on, or discussion of, pending legislation. This view is, we believe, necessarily implied by consideration of the nature of those public information functions of an agency which are legitimate and lawful. Thus, public officials may report on the activities of their agencies, may expound to the public the policies of those agencies, and may likewise offer rebuttal to attacks on those policies. Expenditure of public funds for dissemination of information in these categories is hence lawful. It must be recognized that, to the extent to which the policy of an agency is affected by pending legislation, 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.

We conclude, therefore, that Congress did not intend, by the enactment of section 607(a) and like measures, to preclude all expression by agency officials of views on pending legislation. Rather, the prohibition of section 607(a) in our view applies only to expenditures involving direct appeals addressed to the public suggesting that they contact members of Congress and indicate their support of or opposition to pending legislation, i.e., appeals to members of the public for them in turn to 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). In this context, direct communications by agency officials with members of Congress would not constitute a violation of section 607(a), regardless of the purpose of such communications.

As with section 601, Pub. L. No. 93-240, we also believe section 607(a) is too vague to be susceptible of adequate guidelines which would clearly delineate unauthorized types of expenditures, and consequently do not consider it appropriate to override administrative determinations of propriety with respect to any specific action, except where the ultimate aim of such action is so palpably designed to support or defeat pending legislation in the manner described above as to compel the conclusion that the administrative determinations are unreasonable in the face of the statutory prohibition.

Considering Eximbank's justification of its communications with private concerns as being in response to inquiries and requests for information, and in the absence of evidence to the contrary, there does not appear to be sufficient basis to conclude that section 607(a) has been violated.

We trust that the foregoing information will be of assistance to you.

Sincerely yours,

R.F.KELLER

Acting Comptroller General
of the United States