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

B-150136

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The Honorable Robert H. Mollohan  
House of Representatives

Dear Mr. Mollohan:

As you requested, we have reviewed several additional questions raised by Mrs. U. John Rogers concerning the payment of the legal expenses of former Central Intelligence Director Richard Helms by the United States Government. Mrs. Rogers is concerned that the Government has paid attorneys to represent Mr. Helms in criminal proceedings against him. PW

ASC 00210

Responding to an earlier inquiry by Mrs. Rogers, we explained our views on the Government's paying Mr. Helms' legal expenses in our letter to you dated May 19, 1978, B-150136. There we said that, according to the Department of Justice (DOJ), the only attorneys paid by the Government to represent Mr. Helms were those defending him in civil proceedings arising from activities performed within the scope of his employment as Director of Central Intelligence. He also stated that DOJ informed us that it would have been against Department policy to expend funds to retain private counsel to represent Mr. Helms in Federal criminal proceedings. We noted that under DOJ guidelines, DOJ attorneys are precluded from providing representation when to do so would create a conflict of interest. We listed examples from the Department's statement of policy (28 CFR §§ 50.15, 50.16 (1978)) of those instances which the Department views as conflict situations, and we noted that the Department had given conflict of interest as the reason it was necessary to hire private counsel in Mr. Helms' case. We accordingly concluded that, under the circumstances as described by DOJ, the expenditure of Federal funds for the purpose of paying Mr. Helms' legal expenses was proper. RF-C0003

You forwarded a copy of our letter to Mrs. Rogers, who now states:

"Many Americans have the lurking suspicion that Mr. Helms arguably de jure civil expenses were but a cover to channel money into his criminal defense. This has a greater likelihood when the cases so completely overlap."

She asks several specific questions concerning this matter. We encountered some delays in getting responses from DOJ to our inquiries on this matter but we have now received the information. Below are set forth Mrs. Rogers' questions and our answers to them.

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"1) The letter states that Mr. Helms' civil legal expenses were paid from a \$1.8 million appropriation.

"Query: How much was paid to Mr. Helms' counsel?"

According to its latest figures, the DOJ paid a total of \$130,269.20 to Mr. Helms' counsel through fiscal year 1978. No cases are currently pending in which DOJ is paying Mr. Helms' counsel.

"2) The Department of Justice said 'conflicts of interests' (sic) precluded them from representing Mr. Helms.

"Query: What conflicts and what interests?"

DOJ attorneys representing Mr. Helms would have been required to make arguments contrary to the Department's position on the legality of the Central Intelligence Agency's (CIA) mail-opening program. DOJ hired private counsel to represent Mr. Helms in actions based on allegations that the CIA had wrongfully intercepted mail. DOJ's official position is that the CIA acted illegally in conducting its mail-opening program. However, under the American Bar Association's Code of Professional Responsibility, an attorney is required to include all realistic defenses which will advance his client's interests. Canon of Professional Ethics No. 7. Therefore, any DOJ attorney defending Mr. Helms would have had to take the position that the CIA's mail openings were legal. This would have created a conflict of interest within DOJ because that position is in opposition to the Attorney General's official view that CIA mail openings were improper.

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"3) Several provisions from 28 C.F.R. § 50.25(a)(2), (6), (9), and (10) are set forth as justifying this expenditure of funds.

"Query: Into what category does Mr. Helms' case fall and for what reasons?"

Subparagraphs (a)(2), (6), (9) and (10) of part 50.25 of title 28 of the Code of Federal Regulations are not the legal justification for the DOJ to expend its funds to retain private counsel in cases such as the suit against Mr. Helms. Rather, they are DOJ's policy statement of the circumstances which create a conflict of interest, thereby making it necessary for the Department to hire private counsel in order to provide representation in accordance with its Guidelines on Representation of Government Employees. As explained in our answer to question 1, attorneys representing Mr. Helms would have to take the position that the CIA mail openings were ~~not~~ improper, a position contrary to the Department's stated policy. Mr. Helms' case falls into the category

set forth in subparagraph (a)(10), as one in which "adequate representation of the employee requires the making of an argument which conflicts with a Government position." DOJ's authority to expend its funds to retain counsel comes from sections 516 and 517 of title 28 of the United States Code. (See our earlier letter referred to above, for a complete discussion of the basis of this authority.)

"4) The letter omits the name(s) of Mr. Helms' civil attorney(s).

"Query: What was the name of his civil counsel?"

The firm of Arent, Fox, Kintner, Plotkin and Kahn, Washington, D.C., initially represented Mr. Helms in the civil actions brought against him. The firm of Schwalb and Donnemfeld, Washington, D.C., later assumed Mr. Helms' representation. We hope this information is helpful in replying to Mrs. Rogers.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General  
of the United States