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

RELEASED January 10, 1984

B-212235 (1) November 17, 1983

The Honorable Jake Garn
Chairman, Committee on Banking, Housing and
Urban Affairs
United States Senate

Dear Mr. Chairman:

This is in response to a communication on your behalf from Mr. Paul Freedenberg, of your staff, requesting this Office to rule on the propriety of an article entitled "Renewal of the Export Administration Act: The Legislative Picture" that was published in the May 30, 1983, issue of Business America, a biweekly magazine-type trade publication of the Department of Commerce. The communication requested us to determine whether the publication of the article violated statutory restrictions against lobbying with Federal funds or any other statutory restriction. Our review of this matter led us to conclude that the article violated an appropriation restriction against lobbying activities.

Representative Don Bonker, Chairman, Subcommittee on International Economic Policy and Trade, Committee on Foreign Affairs, has asked us the same question. A similar report is also being sent to Represenative Bonker as of this date.

BACKGROUND

The International Trade Administration of the Department of Commerce publishes a biweekly periodical called Business America which usually contains a series of articles dealing with international trade. Individuals and businesses engaged in international commerce subscribe to this magazine. The index page of the May 30, 1983, issue described the section entitled "A Guide to Export Administration," of which the article in question was a part, as follows:

> "The current debate over extension of the Export Administration Act of 1979 has put the spotlight on U.S. export control policy, once of interest only to the exporting community. The ongoing review of this legislation governing our export control system provides government, U.S. exporters and the Congress an opportunity to balance security, foreign policy and commercial goals for the nation. In this issue, Business America tries to take some of the mystery out of the export control

process, and examines provisions of pending legislation to amend the existing statute. Testimony on behalf of the Administration position by Under Secretary Lionel Olmer appears on pages 10-12."

The examination of "provisions of pending legislation to amend the existing statute" referred to above is a three page article entitled "Renewal of the Export Administration Act: The Legislative Picture" written by Paige Sullivan, Policy Analyst for the Assistant Secretary for Trade Administration. The article discusses three bills under consideration by the Congress.

The article describes the provisions of H.R. 2500, the Reagan Administration bill to revise the Export Administration Act of 1979. It points out that "The Reagan bill is a moderate bill, which makes few substantive changes in the 1979 statute." In contrast, the article describes other legislation as making radical changes and weakening existing controls as follows:

"Despite the moderation of the Reagan bill and encouraging progress in the international arena on curbing some of the excesses of East-West trade, the 98th Congress is considering several proposals contained in two major bills--the Bonker bill in the House (H.R. 2761) and the Heinz-Garn bill in the Senate (no number yet)--some of which represent radical departures from the current statute and which, if enacted, would lead to the weakening of Presidential authority to impose foreign policy controls, and to a reduction in our ability to prevent diversion to the Soviet bloc of United States-origin goods and technology.

"The Chairman of the House Foreign Affairs Subcommittee on International Economic Policy, Representative Don Bonker, has introduced a bill which would greatly liberalize our existing export control law. It would make it harder to control exports in support of our foreign policy interests by taking away from the President his authority to extend foreign policy controls over goods being exported under an existing contract, unless allowed to by Joint Resolution in the Congress."

The article analyzes each major provision of H.R. 2761 and outlines many problems that the Administration believes would result, if that bill were enacted into law. The article concludes with the following exhortation to readers:

"There are many other provisions in the House and Senate bills that make radical changes in existing law and weaken our controls by doing so. Anyone who wishes to see the United States retain an effective, but more efficient export control system should certainly let his Congressman know that he supports the Reagan bill to amend and extend the Export Administration Act of 1979."

STATUTORY LOBBYING RESTRICTIONS

There are two types of statutes that prohibit lobbying activities by Federal officials and employees. These statutes may be categorized as Appropriation Act restrictions and penal statutes. We shall first deal with the penal statute which is 18 U.S.C. § 1913 entitled "Lobbying with appropriated moneys" which provides as follows:

"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, 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 a few 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.

We understand that the Department of Justice interprets the provisions of 18 U.S.C. § 1913 much the same as we interpret the provisions of the appropriation restriction against lobbying contained in section 608(a) of the annual Treasury, Postal Service and General Government Appropriation Act, which is discussed in detail below. Since 18 U.S.C. § 1913 contains a fine and imprisonment provision, its enforcement is the responsibility of the Department of Justice and the courts. Accordingly this Office does not consider it appropriate to comment on its applicability to particular situations or to speculate on the conduct or activities that would or would not constitute a violation. 20 Comp. Gen. 488 (1941). Therefore, we plan to refer this matter to the Department of Justice for investigation and appropriate action after thirty days from today or sooner should you release this opinion to the public within that period.

Since the early 1950's, various Appropriation Acts have contained general provisions prohibiting the use of appropriated funds for "publicity or propaganda." The annual Appropriation Act for the Department of Commerce does not contain any such restrictions. On the other hand, a general provision in the annual Treasury, Postal Service and General Government Appropriation Act 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 above-quoted prohibition 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 the Department of Commerce. The prohibition was in effect during fiscal year 1983 when the Article in Business America was

published. The above restriction was designated as section 608(a) of H.R. 7158, the Treasury, Postal Service and General Government Appropriation Act, 1983, which was not enacted into law. However, that Act, including section 608(a) was incorporated by reference in section 101(a) of Public Law No. 97-377, December 21, 1982, (96 Stat. 1830) Continuing Appropriations for Fiscal Year 1983. The Department of Commerce was funded by this continuing resolution during the period in question.

In interpreting "publicity and propaganda" provisions such as section 608(a), this Office has consistently recognized that every Federal agency has a legitimate interest in communicating with the public and with the Congress regarding its policies and activities. To the extent that policy of the Administration or of an agency is embodied in pending legislation, discussion by officials of that policy may well necessarily refer to such legislation and be either in support of or against it. An interpretation of section 608(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 which we do not consider could reasonably have been intended.

In our view, Congress did not intend, by the enactment of section 608(a) and like measures, to preclude all expression by agency officials of views on pending legislation. Rather, the prohibition of section 608(a) applies primarily to expenditures involving direct appeals addressed to members of the public suggesting that they contact their elected representatives and indicate their support of or opposition to pending legislation, or 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 608(a). 56 Comp. Gen. 889 (1977); B-129874, September 11, 1978.

We have reviewed the Business America article in the context of the guidelines outlined above. With the exception of the last paragraph, we believe the article conformed to the requirements of law. Officials of the Department of Commerce are permitted to express their views on proposed legislation. They may legitimately criticize certain proposed legislation and indicate their support for other proposed legislation, as they have done in this article.

However, Federal officials may not use federal funds to disseminated an appeal to members of the public to urge their congressional delegation to support legislation favored by the Administration as was done in the last paragraph of the article. We therefore conclude that the antilobbying restriction contained in section 608(a) was violated by the article.

Representative Bonker had asked us some additional questions about possible criminal liability of the person or persons responsible for the publication. Since we have no jurisdiction over questions of criminal violations, we plan to send our report to the Department of Justice and to the Secretary of Commerce in 30 days from today, unless either you or Representative Bonker releases it earlier.

Sincerely yours,

Harry R. Van Cleve

FOR Comptroller General
of the United States