



**Comptroller General  
of the United States**

Washington, D.C. 20548

B-233592

March 20, 1989

The Honorable Barbara Boxer  
House of Representatives

Dear Mrs. Boxer:

This responds to the request to our Office made through your November 2, 1988, letter to the Secretary of the Navy that we verify your interpretation of various statutes and regulations as they pertain to the activities of Admiral [redacted], Commander of the San Francisco Naval Base, regarding the home-porting of the USS Missouri in San Francisco. The activities concern Admiral [redacted] involvement in a local election issue about the cost to the city of home-porting the Missouri.

We understand from the materials you provided us that there were two conflicting propositions on the November 1988 ballot regarding the Missouri: under Proposition "R," the Navy would pay all home-porting costs, whereas under Proposition "S," the city, pursuant to a memorandum of understanding between the Navy and the former Mayor of San Francisco, would pay the federal government approximately \$2 million to keep the Missouri home-ported in San Francisco. The city would also pay \$1 million per year for another 20 years. We further understand, from listening to a tape of a radio talk show in which Admiral [redacted] participated, that according to the Admiral federal law requires a city to contribute to the cost of home-porting, so that passage of Proposition "R" would have required the Navy to home-port the Missouri in another city.

The materials provided also include a letter, written on Navy stationery and signed by Admiral [redacted], addressed to "Dear Navy League Member." The letter, dated October 26, 1988, recaps polls showing ballot Proposition "R," the proposition the Admiral says effectively would reject home-porting the Missouri, ahead of Proposition "S," and proceeds to urge the addressee to "help save the Missouri." Ultimately, Proposition "S" was successful.

Through your November 2 letter to the Secretary of the Navy, you ask our Office to verify your view that Admiral [redacted] violated (1) Department of Defense (DOD) Directive

1344.10, "Political Activities by Members of the Armed Forces"; (2) 32 C.F.R. § 40.4(c)(7), which concerns DOD use of government property, facilities, and personnel; (3) the statutory restriction at 31 U.S.C. § 1301(a) on the use of appropriated money; and (4) 18 U.S.C. § 641, a criminal statute applicable to the improper use of government funds.

Initially, we note that in his February 3, 1989, response to your letter, the Secretary of the Navy recognizes that DOD regulations do prohibit military personnel from engaging in certain political activities. The Secretary asserts, however, that those regulations do not preclude defense officials from explaining or defending policies or actions relating to issues of national defense. In the Secretary's view, Admiral [redacted] wrote the letter to the Navy League members only to explain the Navy's position on the issues. The Secretary concludes that if Admiral [redacted] actions violated the regulations, the violation was "at worst, an inadvertent, technical one."

We think Admiral [redacted] actions with respect to the Navy League member letter were not in accord with the DOD policy governing the political activities of service members set out in DOD Directive 1344.10. The Directive states that, as a general policy, a member is entitled to express his personal opinion on a political issue, but not as a representative of the Armed Forces, and may not use his official authority or influence to interfere with an election or solicit votes for a particular issue. The Directive also deals specifically with nonpartisan political activities, which are defined to include activities supporting or relating to issues, like referenda, not specifically identified with national or state political parties. Participation in local nonpartisan activity is permitted, but the member taking part in such activity may not wear his uniform or use any government property or facilities while campaigning, and may not act in any way that implies that the Department concerned or any of its elements is taking a position or is involved in the campaign.

In the Navy League member letter, Admiral [redacted] stated:

"If you want the battleship and her escorts in San Francisco Bay; if you want to revitalize the ship repair industry and save blue collar jobs; if you want this area to do its share for national defense; the time to act is now." (Emphasis in original.)

The letter then noted that various San Francisco newspapers have carried letters to the editors that Admiral characterized as "anti-military," and continued:

". . . as the polls indicate, this small group is winning. Their success in preventing home-porting will be to the detriment of not only the Bay Area, but also to the detriment of the entire country.

"I urge you to take pen in hand right now and express your opinion. Also, your council president . . . has asked me to emphasize her request for your help in this matter. She is asking for volunteers to help save the Missouri.

"As of this writing, there are only eleven days left. The battle can be won if we can overcome complacency and the small, anti-military activist groups. Join the fight." (Emphasis in original.)

In our view, the language of the letter reflects the type of nonpartisan activity proscribed by the DOD Directive. The clear purpose of the letter was to rally support for the ballot proposition that would continue home-porting the Missouri in San Francisco which, when the letter was written, looked like it was going to fail. It is difficult not to infer from the letter--the call to volunteer "to help save the Missouri" and to "overcome complacency and the small, anti-military activist groups"--that Admiral was using his official capacity as Commander of the San Francisco Naval Base to urge the passage of the referendum that would keep the Missouri in San Francisco.

In contrast, we do not find Admiral comments on the radio show to be objectionable under the Directive. There, Admiral basically explained in a factual way the benefits that accrue from having the Missouri in San Francisco, the detriments attendant to having the ship homeported elsewhere, and how the costs to the city compared with obligations undertaken by other cities to home-port ships. The Admiral made it expressly clear that he was not "politicking" on the Navy's behalf and, to the extent the Admiral offered an opinion on the merits of the referenda, we think it was reasonably clear that the opinion was his own.

The DOD regulation at 37 C.F.R. § 40.4(c)(7)(i) precludes the use for other than official purposes of government property, facilities and personnel, with specific examples

being stationery, stenographic services, typing assistance, duplication equipment and services.

The position of the Secretary of the Navy, as relayed in his February letter to you, is that the preparation of the letter was a clear exercise of Admiral [redacted] official duties. The Secretary asserts that Admiral [redacted] official duties as the senior Navy representative in the Bay area--at the time of what the Secretary calls a "unique" situation--included working with local officials and citizens on issues that affected both the Navy and the local community. The Secretary advises that the Admiral prepared the letter in response to a request by the president of the Navy League for factual information about the effect of the referenda on the home-porting of the Missouri. The Secretary states:

"I believe that Rear Admiral [redacted] intention in writing the letter . . . and, indeed, in his other activities was not to interject himself into or campaign for a particular political cause, but to explain the Navy position on the issues just as I had communicated our position to [San Francisco] Mayor Agnos."

It is clear from the Secretary's letter that Admiral [redacted] was acting within the scope of his official duties in preparing and distributing a response to the Navy League president's request for information. Consequently, while the Admiral may have violated the DOD Directive in executing his duties in that regard, we do not think it fair to say that he therefore should be viewed as having used government property for an unofficial purpose under 37 C.F.R. § 40.4(c)(7)(i).

The provision at 31 U.S.C. § 1301(a) precludes the application of appropriations to objects other than those for which the appropriations were made, except as otherwise provided by law. In view of our conclusion above, we see no legal basis to suggest that the statute has been violated here.

Finally, 18 U.S.C. § 641 prescribes criminal penalties for a person who embezzles or steals government property. Since the enforcement of penal statutes is beyond our jurisdiction, it has been our traditional position that it would be inappropriate for our Office to comment on the applicability of such laws or venture to determine what does or does not constitute a violation. 20 Comp. Gen. 488 (1941).

In sum, we agree that Admiral [redacted] preparation and mailing of the October 26, 1988, letter to Navy League members was an improper activity under DOD Directive 1344.10, but we do not think that he violated either the cited regulatory provision or appropriation law.

Sincerely yours,



Acting Comptroller General  
of the United States