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Public Information Activities  
Relating To The  
Atomic Energy Commission's  
Underground Nuclear Tests  
At Amchitka Island, Alaska B-164105

B-164105

*BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES*

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FILE COPY - COMP. GEN

SEPT. 10, 1971



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

B-164105

Dear Senator Gravel:

This is our report in response to your letter of July 30, 1971, which raised certain questions concerning the propriety of the manner in which the Atomic Energy Commission (AEC) had used public information funds in connection with its underground nuclear test program at Amchitka Island, Alaska.

You specifically mentioned certain allegations concerning (1) the renting of a hotel suite staffed by AEC public relations people in Anchorage prior to public hearings on May 26, 1971, (2) the making of numerous expensive films directly related to the underground test program, (3) the hosting of 16 Alaska State officials at the Nevada Test Site, and (4) the dispatching in 1969 of a party of AEC public relations people to tour the State of Alaska to discuss the merits of the proposed Milrow test.

You stated that AEC's public information funds were being used to promote the agency's programs rather than to explain them, to discredit those who opposed the agency's programs rather than to assist them, and to distort the purposes and the problems connected with the underground test program in such a way as to create propaganda where the Congress intended only public access to information.

Information concerning the activities conducted by AEC which relate to the above allegations and the cost of these activities is contained in appendix I.

Our review was conducted at AEC Headquarters, Germantown, Maryland, and at AEC's Nevada Operations Office (NVCO), Las Vegas, Nevada. As discussed with your staff, because of time limitations we did not conduct an exhaustive examination to ensure that all expenditures related to the Amchitka public information program were identified.

For many years AEC has requested and has been authorized and appropriated funds to conduct a public information program. Section 508 of the Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1971 (84 Stat. 903) is for consideration with respect to this matter. It 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 propaganda purposes designed to support or defeat legislation pending before Congress."

Similar provisions are contained in prior appropriation acts.

We have on several occasions, in response to inquiries from Members of Congress, construed the provisions of anti-propaganda appropriation restrictions similar to section 508. The only case in which we have concluded that the prohibition had been violated involved an effort by the Post Office Department to defeat H. R. 12595 in the second session of the 86th Congress. There the violation was clearly manifest. A copy of our decision to the Postmaster General, B-116331, dated May 29, 1961, is included as appendix II. Otherwise, we have concluded that the particular activities questioned were not sufficiently in the nature of propaganda or publicity designed to influence legislation to warrant disallowance of the expenditures involved.

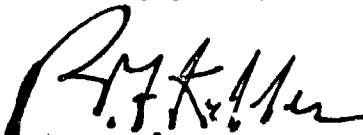
We viewed films made by AEC and reviewed transcripts and listened to tapes of various presentations made by AEC and contractor representatives concerning the Amchitka Island test program. In our opinion, these films and presentations also were not sufficiently in the nature of propaganda or publicity designed to influence legislation to warrant disallowance of the expenditures involved.

The above cited statute contains no guidelines for making exact judgment distinctions between prohibited and allowed activities. In the absence of guidelines it is extremely difficult to separate the two on the basis of distinctions which could be applied uniformly and impartially. We believe therefore that in order to apply the statutory injunction there must be present circumstances which leave no room for doubt as to the prohibited nature of the expenditures involved.

In the Post Office Department case, referred to above, there was a clear exhortation to the public for the purpose of applying pressure on individual Congressmen. No such factors are evident with respect to the activities here involved. The films and presentations, basically, provided information concerning AEC's activities at Amchitka Island and did not, in our opinion, suggest a purpose of incitement to the application of pressure on the course of legislation.

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. F. Keller". The signature is written in a cursive style with a large initial "R".

Acting Comptroller General  
of the United States

The Honorable Mike Gravel  
United States Senate

PUBLIC INFORMATION ACTIVITIES  
CONDUCTED BY THE  
ATOMIC ENERGY COMMISSION  
REGARDING UNDERGROUND NUCLEAR TESTING  
AT AMCHITKA ISLAND, ALASKA

BACKGROUND

In the middle 1960's AEC decided that its Nevada Test Site would not be adequate for conducting certain high-yield underground nuclear tests. The primary limitations at the Nevada Test Site were anticipated ground motion and its possible effect on structures in nearby communities. AEC selected Amchitka Island, Alaska, from several possible locations because it was judged to best satisfy the criteria established for a supplemental test site for high-yield tests. Primarily on the basis of the results of the Milrow test, AEC plans to conduct a higher yield test (Cannikin) in the Fall of 1971.

AEC's Nevada Operations Office (NVOO) is responsible for coordinating the planning and execution of nuclear-weapons tests and other nuclear-explosive-related experiments. In carrying out its responsibilities, NVOO utilizes the services of private contractors for construction activities, maintenance and personnel services operations, and technical services at its site locations.

The Manager of NVOO is administratively responsible to the General Manager of AEC. NVOO, however, receives programmatic direction from the Division of Military Application at AEC Headquarters, which has the overall responsibility for the direction of AEC's weapons program.

PUBLIC INFORMATION ACTIVITIES  
PRIOR TO THE MILROW TEST

From June 23 through June 28, 1969, AEC representatives and a representative from one of AEC's weapons laboratories visited Juneau, Anchorage, Fairbanks, and Kodiak, Alaska, to discuss with and answer questions from interested groups concerning the then proposed Milrow test and its possible effects. The visiting team consisted of one of the AEC Commissioners; the Manager of NVOO; the Deputy Director of the Division of Military Application; the Assistant Manager for Engineering and Logistics, NVOO; the Director of the Office of Public Affairs, NVOO; and a representative from the Sandia Laboratory.

The Manager of NVOO, in a report dated July 1, 1969, to the Assistant General Manager for Military Application stated that:

"It appeared that the team's visit was worthwhile in providing actual facts where rumors and speculation had been spreading almost unchecked."

The report pointed out that the visiting team had told several of the groups with which it had met that a public information office would be opened in Anchorage a few weeks later and that it would remain open until the Milrow test was conducted.

On July 14, 1969, AEC opened an Alaskan Office of Information at Spenard, Alaska (a suburb of Anchorage). The Office of Information, which was located at the offices of Holmes & Narver, Inc., an AEC cost-plus-fixed-fee contractor, was established to provide information to and answer requests from news media, individual citizens, groups of citizens, and State and local officials. The office remained open until October 8, 1969, or 6 days after the Milrow test was conducted. Cost data provided by AEC showed that Holmes & Narver spent about \$61,200 in connection with the operation of the Alaskan Office of Information.

In addition to the office at Spenard, Alaska, AEC opened the Anchorage Information Center at the Westward Hotel in Anchorage, Alaska, 8 days before the Milrow test was conducted. The center remained open for several days after the test. Records provided by AEC showed that Holmes & Narver incurred costs of about \$4,500 for operation of the center. These costs were incurred for room rental at the Westward Hotel from September 21, 1969, through October 8, 1969, and for other incidental items.

NVOO advised us that the costs of \$65,700 (\$61,200 plus \$4,500) incurred for operation of the Alaskan Office of Information and the Anchorage Information Center related to both public information and operational activities but that it was unable to allocate the costs between the two activities.

#### Preparation and distribution of a report on information actions

After the Milrow test was conducted, a report entitled "Information Actions, Project Milrow, Amchitka, Alaska, 1967 - 1969" was prepared by NVOO. This document, which contains a discussion of the events surrounding the Milrow test, includes several references to Senator Gravel. A copy of the document is being provided with this report.

Distribution of the document, according to AEC, was limited to the Division of Military Application and the Division of Public Information at AEC Headquarters; public information officers at nine AEC field offices; the Manager and staff of NVOO; a former AEC Commissioner; and a briefing team of 11 persons who had worked on the project. Members of the briefing team included representatives of AEC contractors and other Government agencies. AEC stated that the representatives of other Government agencies were under contract to AEC and that AEC paid the cost of their work.

We discussed the justification for and appropriateness of the document with AEC officials. They advised us that the document, which AEC considers to be an internal case study, was written by members of the AEC public information staff who participated in the Milrow program and issued as an informal document by NVOO several months after the Milrow test was conducted. AEC stated that, while the account of events is factual, some of the material attempts to provide an analysis of events. AEC stated also that the report was not reviewed by Headquarters management and that, since the material was not reviewed, the editorial judgments reflect only the views of the writers.

In addition, AEC provided us with the following statement:

"AEC management was not aware of this document until GAO called it to Headquarters' attention on or about September 1 [1971]. As was pointed out to the GAO representatives, the General Manager was unaware of the existence of the document until September 2, and the Commissioners were not aware until September 3 when the matter was discussed with them by the General Manager.

"Upon learning of the existence of the document, the General Manager directed that all copies in the field be withdrawn immediately and destroyed. This instruction was issued September 2 and the recall action was taken immediately by telephone. Similar action will be taken at Headquarters except for retention of a record copy.

"The personal views expressed (in the case study) were not known to agency management, and do not reflect the attitudes of nor are they condoned by AEC management. At the direction of the Commission, the General Manager is taking appropriate disciplinary action."

PUBLIC INFORMATION ACTIVITIES  
PRIOR TO CANNIKIN

NVOO advised us that the need for information offices in connection with the Cannikin test was demonstrated by the experience gained at the time of the Milrow test.

In two documents dated November 1, 1970 ("Public Information Plan for Amchitka STS" and "Public Information Action Plan - Project Cannikin"), AEC set forth its plans for public information actions to be taken in connection with the Cannikin test. These plans were approved by the Departments of State, Defense, and the Interior and were transmitted to the Executive Office of the President.

The Cannikin public information plan provided for the establishment of an Alaskan Office of Information at Anchorage about 180 days before the planned test date to respond to news media and public inquiries, to handle arrangements for visits, and to conduct the Cannikin public affairs program within the State of Alaska.

In addition the plan provided that:

"A Project Cannikin Information Center will be established at an appropriate location in Anchorage to be ready for occupancy on D minus 3 days. \*\*\* This Information Center will be opened to the public and news media from D minus 2 days to D plus 1 day and as much longer as needs dictate. It will be used for press conferences, press coverage of the D minus 1 day readiness briefing, and shot-day activities."

As discussed previously, an Alaskan Office of Information had been opened on July 14, 1969, prior to the Milrow test, at the Holmes & Narver offices in Spenard, Alaska, and closed shortly after the test was conducted. NVOO advised us that discussions which it held with Holmes & Narver officials led to the conclusion that the Holmes & Narver offices would not be available prior to Cannikin because of an increase in workload.

As a result, beginning on May 10, 1971, Holmes & Narver rented space at the Royal Inn of Anchorage for use as an information office and for other operational needs. NVOO stated that the Royal Inn was selected from several other hotels in Anchorage because it had suitable facilities available at the lowest cost.



A purchase order in the amount of \$8,270 covering this rental was issued to the Royal Inn of Anchorage by Holmes & Narver on May 19, 1971. The purchase order identifies the space rented and notes the intended use as follows:

1. A two-room suite for use as office space from May 10, 1971, through October 10, 1971, at a cost of \$5,390.
2. One room, adjacent to the above, for use as sleeping quarters, from about August 1, 1971, through October 10, 1971, at a cost of \$710.
3. A three-room suite located on a separate floor from the above, from about September 10, 1971, through October 10, 1971, at a cost of \$1,395.
4. The Royal Room (a conference room) from about September 10, 1971, through October 10, 1971, at a cost of \$775.

A NVOO official advised us that, because classified material was to be stored in one of the rooms in the two-room suite, the room for sleeping quarters was required for security guards. NVOO officials advised us also that the three-room suite would be used as office space for operational purposes.

Holmes & Narver rented office equipment from a commercial firm in Anchorage for use at the Royal Inn. In a letter dated August 17, 1971, initiated as a result of our inquiries, the Assistant Manager for Engineering and Logistics, NVOO, advised the Director, Finance Division, NVOO, that:

"With respect to the furnishings for the public information suite in the Royal Inn, I have been informed by H&N [Holmes & Narver] that there was an inquiry made by H&N to three or four furniture rental stores in Anchorage, in addition to an inquiry being made to GSA supply in Alaska. The GSA did not have available suitable furniture for this suite at the time the inquiry was made and it was determined that rental was the only timely solution. The furniture was tentatively selected by H&N and was examined by a Public Information representative from NV [Nevada Operations Office] and was thus subsequently leased. There was a cheaper source of supply from a commercial firm in Anchorage than the one we chose; however, the conference table was not of adequate size, and so this source of supply was not used. \*\*\*"

On August 18, 1971, the Assistant Manager for Engineering and Logistics advised the Director, Finance Division, that:

" \*\*\* research indicated that the Corps of Engineers, Anchorage, does currently have sufficient units of standard GSA metal furniture to allow us to change out the furniture in the Royal Inn Suite.

"H&N has been directed to terminate the furniture lease and the furniture mentioned above from the Corps of Engineers will be installed upon the termination of the lease, approximately the end of the month, at no cost for the period of use other than for the drayage involved."

The purchase order for the rental of the equipment provided for a total rental cost for the 5-month period May 10 through October 10, 1971, of \$2,070, or \$414 a month.

#### Public hearings regarding Cannikin

On April 14, 1971, the Governor of Alaska, during a briefing by AEC and in letters to the Chairman of the Council on Environmental Quality and the Administrator of the Environmental Protection Agency, requested that public hearings be conducted relating to the proposed Cannikin test. The public hearings were subsequently conducted in Juneau on May 26, 1971, and in Anchorage on May 28 and 29, 1971.

The hearings, which were chaired by the Manager of NVOO, consisted of technical presentations concerning the selection of Amchitka Island; engineering, logistics, and the impact on the Alaskan economy; the effects of the Milrow test; predictions on the containment and phenomenology of the Cannikin test; environmental effects of Cannikin; ground motion effects of nuclear tests; predictions concerning the probability of tsunamis; geological and hydrological considerations; and the off-site radiological safety program. Also, presentations were made at the hearings by opponents of the Cannikin test, and questions concerning Cannikin were answered by the Cannikin project representatives.

#### Visits to the Nevada Test Site

NVOO officials advised us that on several occasions individuals or groups have been invited to the Nevada Test Site for the purpose of acquainting them with the underground test program.

For example, the Governor of Alaska accepted an invitation from NVOO to send a representative to observe the Jorum test on September 16, 1969. Records furnished by NVOO showed that AEC incurred costs of about \$359 for transportation and per diem in connection with this representative's visit.

NVOO advised us that, on another occasion, the Governors of eight western States, whose citizens might be affected by existing or projected nuclear test programs, accepted invitations to attend or send representatives to a "Governors' Conference" at NVOO on April 1 and 2, 1969. The States represented were Nevada, California, Oregon, Idaho, Utah, Arizona, Wyoming, and Colorado. In the invitations sent to the Governors of these States, NVOO stated that it could fund the transportation costs of up to five representatives from each State. Information provided concerning the conference showed that NVOO paid the transportation costs for 29 representatives, which amounted to about \$2,500. NVOO also identified costs of about \$1,045 for local transportation and two luncheons held for the representatives. These costs were incurred by the Visitors Bureau of the Reynolds Electrical and Engineering Company, Inc., the principal AEC cost-plus-fixed-fee support contractor at the Nevada Test Site.

In another case, 21 members of the Nevada legislature visited NVOO on May 20, 1969, and toured the Nevada Test Site on May 21, 1969. NVOO stated that an airplane was provided to pick up members of the legislature whose homes were in northern and central Nevada. The cost of transporting these representatives was not available at NVOO because the airplane used belonged to the Lawrence Livermore Laboratory, one of AEC's nuclear laboratories. The airplane made frequent trips between Las Vegas and the Central Nevada Supplemental Test Site. NVOO advised that no other costs (except local transportation) were incurred by AEC relating to this visit.

According to NVOO, during briefings held for the Alaska legislature on April 4, 1970, several of the legislators suggested that a tour of the Nevada Test Site would be beneficial to acquaint members of the legislature with the operations and procedures involved in the underground nuclear test program.

NVOO stated that initially the legislators had requested that, because of the possibility of a change in the Alaska legislature after elections in November 1970, such a tour be scheduled for sometime in January 1971. NVOO explained, however, that sometime during November or December 1970, in telephone conversations between NVOO representatives and members of the Alaska legislature, the members requested that the tour be scheduled after adjournment of the legislature.

On April 5, 1971, the Manager, NVOO, advised the President of the Alaska Senate and the Speaker of the Alaska House of Representatives that formal invitations for a visit would be extended by Holmes & Narver. The Governor of Alaska was later invited to select representatives to participate in the tour.

A NVOO official advised us that no documentation was available showing when the date for the tour was finally established; however, the actual date set for the tour was coordinated by NVOO, Holmes & Narver, and the legislators. NVOO officials stated that the legislators were in control of setting the schedule and that it was set for their convenience.

The selection of the Alaskan representatives that visited Nevada was made by the President of the Alaska Senate, the Speaker of the Alaska House of Representatives, and the Governor of Alaska.

The Alaskan representatives were briefed in Las Vegas on May 18, 1971, and toured the Nevada Test Site on May 19, 1971. The General Manager of Holmes & Narver acted officially as the host for the Alaskans' visit to NVOO, and the Manager, NVOO, participated in the visit. Records furnished by NVOO showed that Holmes & Narver incurred costs in connection with the visit totaling about \$8,200 which included transportation costs and per diem for the 16 representatives. A NVOO official advised us that, in addition, the Visitors Bureau of the Reynolds Electrical and Engineering Company, Inc., incurred costs related to the visit of about \$670.

FILMS PRODUCED RELATING TO  
THE AMCHITKA TEST PROGRAM

NVOO stated that 10 films have been produced that relate to the Amchitka test program. Seven of the films are of lectures similar to technical presentations made at the May 1971 hearings in Alaska. A teletype from the Nevada Operations Office to AEC Headquarters requesting authority to produce the lecture films stated that:

"The films will be used to answer requests from Alaskan groups for programs on the various subjects covered. They could also be shown on armed forces and commercial television in Alaska. We anticipate many requests for programs on the various subjects and it will not be possible to have the individuals present the programs in person. The films would be shown by AEC personnel or others associated with the program.

"It is felt that the fact that these are films of the actual presentations to be given in Alaska hearings will help to establish the credibility of the presentation. The films will be used in the public affairs program to counter major opposition to Cannikin that appears to be developing in Alaska."

The other three films are "Amchitka Revisited," "The Amchitka Program," and "The Warm Coat." NVOO advised us that the "Amchitka Revisited" film was produced prior to the Milrow test in 1969 because an earlier film concerning testing at the Nevada Test Site was found useful in informing residents of Nevada and adjacent States about the test program and about measures taken to ensure public safety.

NVOO stated that major questions on safety and conservation issues had emerged during preparations for Milrow and that, in an attempt to present factual information to answer such questions that might arise concerning the proposed Cannikin test, the "Amchitka Revisited" film was updated in the Spring of 1971 and named "The Amchitka Program." The "Amchitka Revisited" film runs about 15 minutes and "The Amchitka Program" runs about 25 minutes.

"The Warm Coat" film which runs about 12 minutes documents the transplanting of sea otters from Amchitka to other locations. With respect to "The Warm Coat," a booklet prepared by NVOO summarizing the public information actions taken in connection with the Milrow test stated:

"Originally it had been believed that possible injury to the sea otter population would be of greatest concern to Alaskans and might provide the most serious problem in connection with the Amchitka program. Widespread publicity given to the sea otter transplant program, and hundreds of showings of the sea otter film in Alaska, appeared effective in convincing the public that the AEC-State cooperation in the transplant program was an important contribution and that the Amchitka sea otters would not be placed in jeopardy."

NVOO advised us that Pan American World Airways, Inc., which produced the seven lecture films under a Holmes & Narver purchase order, estimated that the total cost of the seven films was about \$11,500.

NVOO advised us also that Pan American World Airways, which is an AEC cost-plus-fixed-fee contractor, filmed, for record and historical purposes, most of the AEC activities on Amchitka and that the films "Amchitka Revisited" and "The Amchitka Program" were produced by Pan American from this stock footage and other footage shot specifically for the films. AEC officials stated that "The Warm Coat" film was produced at AEC Headquarters from stock footage taken by Pan American. NVOO officials provided us with Pan American's estimates of the cost of producing the films but stated that the estimates had not been reviewed. The information provided by NVOO showed the cost of the "Amchitka Revisited" film as \$15,000, "The Amchitka Program" as \$10,000, and "The Warm Coat" as \$5,900.



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

B-116331

May 29, 1961

Dear Mr. Postmaster General:

By letter of May 8, 1961, reference 3-B, the Acting General Counsel of your Department submitted a report to this Office in the matter of allegations by Representative Glenn Cunningham, Member of Congress, that certain Postal employees violated section 401 of Public Law 86-561, approved June 30, 1960, 74 Stat. 283.

Section 401 provides that:

"No part of any appropriation contained in this Act, or of the funds available for expenditure by any individual, corporation, or agency included in this Act, shall be used for publicity or propaganda purposes designed to support or defeat legislation proposed or pending before Congress."

In the second session of the 86th Congress, Congressman Cunningham introduced H. R. 12595, designed to prohibit the Post Office Department from transporting by aircraft, on a space available basis, first class mail bearing surface postage. The Department was vigorously opposed to the provisions of H. R. 12595. The activities of Department officials questioned in the light of section 401 consist of various statements, both oral and written, issued with the apparent purpose of arousing sentiment against H. R. 12595. Several such written statements were enclosed with the Acting General Counsel's letter.

The Acting General Counsel advises us that numerous requests were received from Members of Congress for clarification of its position regarding the airlift program and the effect of H. R. 12595; that the former Postmaster General responded by addressing a letter dated June 29, 1960, to each Member of the House of Representatives; and that the former Assistant Postmaster General, Mr. George M. Moore, furnished Regional Operations Directors and approximately 200 postmasters with background information, including the Postmaster General's letter of June 29, requesting them to make every effort to acquaint the public with the Department's airlift program. The following letter sent on June 29, 1960, to various postmasters is illustrative of the instructions given by the Department:

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"The enclosed copy of a letter from Postmaster General Summerfield to all Members of the House of Representatives is being furnished for your use and information.

"The letter should not be furnished in its entirety to anyone but you are free to use any of the information and data contained therein to explain the benefits of the airlift program to postal patrons of your area and to point out that the enactment of H. R. 12595 can only serve to deprive them of the airlift service now being received.

"Best wishes for success in our current project."

And the following letters were written in the course of carrying out the above and similar instructions:

"Dear Patron and Friend:

"WOULD YOU PAY FOR TWO SEATS ABOARD AN AIRLINER AND USE ONLY ONE????

"Of course you wouldn't but that's just what Congress will ask you to do should it enact the Cunningham Bill - H. R. 9488. [H. R. 9488 was replaced by H. R. 12595.]

"For some seven years the Post Office Department has placed ordinary first class mail aboard air liners whenever the volume of air mail failed to fill that space already paid for. This resulted in improved mail service for one and one-half billion pieces of mail per year without additional cost to our taxpayers.

"The proposed legislation would require your Postal Service to abandon this space - even though paid for in advance resulting in a slower movement of your mail at a possible increased cost.

"Won't you write or wire your senator, urging his opposition to this bill - H. R. 9488! Your Postmaster would appreciate a copy of your efforts, that he might show his Postal People that others do care for improved mail service.



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"The need is for immediate action as the senate may have bill under consideration in next day or two.

"PLEASE HELP US TO HELP YOU!

"R. L. McLester, Postmaster

"Your Postal Employees"

"August 8, 1960

"Dear Postmaster:

"The Cunningham Bill, H. R. 12595, which was passed by the House of Representatives in July, 1960 is to be considered when the Senate reconvenes. This bill prohibits the airlifting of ordinary first-class mail.

"Although first-class mail in New England is at present airlifted only between Boston, Cleveland and Chicago, it can be expected that this service will be expanded to other larger cities of the Region in the near future if the Department is allowed to do so. The advantages to businessmen and large users of the mails are obvious.

"Please exert every effort to have the attached suggested editorial brought to the attention of your local newspapers. In addition the problem itself should be brought to the attention of large users of the mail. Many such users are at present benefiting by the airlifting of first-class mail between New York and various points in the country.

"It will be appreciated if a copy of this editorial, should it appear in print, be sent to this office.

"Sincerely,

(Signed) "J. B. Demott

"J. B. DeMott

"Regional Operations Director

"Attachment

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"Since 1953, the Post Office Department has been transporting 4¢ letter mail between certain areas of the country on an experimental basis. The air lines have been carrying this mail when and to the extent that space is available.

"This has meant that an ever-growing volume of ordinary first-class mail has been delivered to its destination up to 48 hours earlier than would otherwise have been the case. Since business mail comprises about 80% of all first-class mail the boon to businessmen is readily apparent. About five million regular first-class letters are now being 'airlifted' each day.

"This is progress toward the Post Office Department's announced goal of next-day delivery of first-class mail anywhere within the Continental United States.

"Realization of this goal will be prevented if a bill, which passed the House of Representatives last July, should achieve passage in the Senate and should escape or overcome the Presidential veto. The Cunningham Bill, H. R. 12595 would specifically forbid the transportation of regular first-class mail by air. The basis for this action was alleged loss of revenue to the railroads, a specious argument as the Post Office Department pays the railroads 340 million dollars annually in transportation costs and less than 3 1/2 million dollars annually to the air lines for this service.

"Airlifting of first-class mail in New England began in mid-June 1960 giving service for Boston mailers to Cleveland and Chicago. It can be expected that this service will be expanded to include other larger cities in New England if the Department is allowed to continue and expand this service.

"In addition many large users of the mail have been benefiting by the airlifting of first-class mail between New York and various points in the country.

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"We urge all those who are interested in providing quicker and better mail service to communicate with their Senators in opposition to the passage of the Cunningham Bill, H. R. 12595.

"END"

On August 19, 1960, Congressman Cunningham wrote to the Postmaster General pointing out that certain employees were engaged in activities against his bill in violation of section 401. In answer, the Congressman was advised that the Department had not instructed its field personnel to engage in any activities that would violate the statute and that it had not allocated any portion of its funds for publicity or propaganda purposes to support or defeat legislation proposed or pending before the Congress. On August 25, 1960, a notice was published on page 2 of Postal Bulletin No. 20213 as follows:

"In view of widespread public interest recently expressed in the Post Office Department's program to airlift first-class mail, attention is called to the following provision of Public Law 86-561:

"No part of any appropriation contained in this act, or of the funds available for expenditure by any individual, corporation, or agency included in this act, shall be used for publicity or propaganda purposes designed to support or defeat legislation proposed or pending before Congress."

"When acquainting the public with the Department's position on postal service matters, postal employees should not employ any postal funds for publicity or propaganda for the purpose of requesting postal patrons to influence Members of Congress with respect to their votes on any pending legislation."

Your Department's position in the matter of whether section 401 was violated is summed up in the following paragraphs:

"Congressman Cunningham implies it is a violation of section 401 to take any action either explaining or opposing a bill on official time. Adoption of Mr. Cunningham's position would mean, for example, that

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no press conference could be held during official working hours; no statements could be given to the press during such hours, after either a visit to a Congressional Committee, or to the White House, and no press releases could be given out, in which the position of the Department, either factually or on the merits of a particular bill would be stated. Accordingly, we do not agree Congressman Cunningham's implied interpretation is the proper one. We believe it more proper to interpret section 401 as inhibiting activities by which other than normal and usual expenditures are incurred. Talks before civic organizations and interviews with the press do not have the effect of incurring other than normal and usual expenditures. We further believe section 401 may properly be interpreted as prohibiting the expenditure of appropriated funds where the primary purpose of such expenditure is to bring direct pressure to bear upon Members of the Congress, either to support or defeat legislation. This Department has not, and does not interpret section 401 as precluding it from acquainting the public with its position on various matters which may be before the Congress. Rather, this Department believes it has a duty to make its views known and to present facts to the public in order that the public may be enabled to make intelligent and sound decisions. It is a truism that the working of our form of Government is dependent upon an intelligent and well-informed electorate. However, this Department also recognizes efforts to acquaint the public with its position and the presenting of facts in support of its position may have the effect of creating a climate which is either favorable or unfavorable towards pending or proposed legislation, and that as an indirect result, people may write to Members of Congress urging them to vote either for or against pending or proposed legislation. The Department, therefore, recognizes that care must be taken to prevent a legitimate program of informing the public and presenting facts from gradually becoming a prescribed lobbying campaign. In this case, when it came to attention that certain of its field service personnel were misunderstanding and misinterpreting the instructions from Headquarters, quick and effective action was taken to remedy the situation.

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"In summary, the Department does not believe section 401 was violated because no instructions were given to engage in a propaganda campaign nor were any funds allocated for that purpose. If it is decided there was a violation of section 401 by certain officials in the postal field service, the violation was innocent and resulted from a misunderstanding and a misinterpretation of instructions which such officials were duly bound to comply with or suffer disciplinary action. Further, the funds expended were so small as ought to be within the de minimus rule."

We agree that the Department has a legitimate interest in keeping the public informed as to its various mail programs. But in light of section 401, we cannot agree that the concerted effort, as exemplified by the letters quoted above, which was directed against H. R. 12595 was within the legitimate ends of the Department's information program; and to the extent that appropriated funds were used to finance any of the costs involved, it is our opinion that the provisions of section 401 were violated.

However, the action to be taken by our Office with respect to such improper use of appropriated funds is limited to recovery of the amounts improperly expended. While appropriated funds were used in connection with the Department's activities directed toward defeating legislation proposed, it appears that the amount was small and commingled with proper expenditures. Essentially, there is involved the cost of paper and printing and the time of personnel devoted to drafting the various letters disseminated. Also, it appears that several telephone calls were made which included discussion of the matter. In view of the nominal costs involved, we believe that the cost of auditing the Department's records for the purpose of segregating and stating exception to the improper expenditures involved and to effect their recovery would greatly exceed the amount to be recovered.

Accordingly, and since your Department reports that after the clarifying instructions referred to above were issued, so far as is known, postal field service personnel did not engage in any further activity in connection with the bill, we do not propose to take any further action in the matter. We understand that the question of the violation of the provisions of section 1913, Title 18, United States Code, a criminal statute prohibiting generally the use of appropriated funds to pay, directly or indirectly, for expenses in connection with

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any device intended or designed to influence a Member of Congress to favor or oppose any legislation or appropriation by Congress, has been referred to the Department of Justice for appropriate disposition.

A copy of this letter is being sent to Congressman Cunningham.

Sincerely yours,

/s/ Joseph Campbell

Comptroller General  
of the United States

The Honorable  
The Postmaster General