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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20543

DEC 23 1971

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Dear Mr. Moss:

The Sacramento Star of July 21, 1971, carried a news account to the effect that the San Francisco Regional Director of the Office of Economic Opportunity (OEO) overrode an OEO auditor's finding that 2,362 of funds granted by OEO to the California State Economic Opportunity Office (CSO) were improperly used to finance a number of telegrams which the auditor had found were for the purpose of enlisting support for Senator George Murphy in the November 3, 1970 election.

The telegrams in question were sent on October 30, 1970, to 168 OEO grantees including Head Start Projects and County supervisors in California. We are advised that typically the telegrams sent included the following message:

"WE HAVE JUST RECEIVED A VERBAL MESSAGE FROM SENATOR GEORGE MURPHY THE MESSAGE TO YOU IS THAT HE STRONGLY RECOMMENDS YOU RECALL YOUR SUPPORT IN CALIFORNIA HEAD START FUNDING.--"

"SENATOR MURPHY STATES: 'GETTING FROM ALL CORNERS OF CALIFORNIA I AM REQUESTING YOU TO RECALL YOUR SUPPORT IN THE HEAD START PROJECT. AS YOU MAY KNOW, I AM CURRENTLY ON OF FIGHT AGAIN, P. 270, THE OTHER REASON I AM ASKING AND CHIEF I WOULD BE ASKING YOU TO RECALL YOUR SUPPORT IN CALIFORNIA HEAD START FUNDING BY OEO MILLION OVER AND BY THE NATIONAL ON RECOMMENDATION OF OEO'S IN NOVEMBER I WOULD BE ASKING YOU PLEASE TO RECALL YOUR SUPPORT IN CALIFORNIA. MY THANKS TO YOU AND GEORGE MURPHY FOR YOUR SUPPORT CALIFORNIA FOR FINANCING THIS PROJECT. I AM SO GRATEFUL TO MY APPOINTMENT. I AM SO GRATEFUL TO YOU FOR YOUR SUPPORT TO YOUR HEAD START FUNDING TO IN CALIFORNIA. THANKS TO ALL YOUR CORNERS.'"

"Helen K. Usher, Director
"State Office of Economic
Opportunity."

Enclosed for the Sacramento account, the copy of the Director of OEO in San Francisco and the copy of the letter to the auditor's file in the Sacramento account for the telegrams. The copy of the letter to the auditor is enclosed for the Sacramento account for the use of Federal

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funds were credited. The referred to Civil Service ruling was in response to an inquiry of the C.D. General Counsel of February 4, 1971, as to whether the sending of the telegrams in question were in violation of subsections (c) and (d) of the Economic Opportunity Act as amended.

On March 2, 1971, the General Counsel of the Civil Service Commission advised the General Counsel of C.D. as follows:

"We have reviewed the content of the telegram in question, copies of which were allegedly sent by Mr. Under to several community action agencies in California. The telegram makes reference to proposed legislation introduced by Senator Murphy to restore certain funds which were cut in the Head Start program. The content of the telegram indicates that it is a reply by Senator Murphy to an expressed expression of earlier concern over the cut made by Mr. Under, in his capacity as Director of the State of California Office of Economic Opportunity. In our view, absent a showing that Mr. Under actively campaigned for Senator Murphy during the election in question, the sending of copies of the telegram does not, standing alone, constitute a violation of the aforementioned sections of the Economic Opportunity Act or of the Hatch Act. There is no indication that the telegram was used as part of Senator Murphy's campaign for reelection or that Mr. Under used copies of the telegram as part of a concerted campaign effort to solicit votes or support for the Senator.

"In our review of this matter, we note that the telegram in question is dated November 2, 1970, and that a copy was sent to the Office of Economic Opportunity on that date by the Chairman of the San Mateo, California, Board of Supervisors. In addition, your covering letter indicates that the telegram in question was sent to several community action agencies, but none of these are identified. We would appreciate knowing whether your agency contacted any agency in this matter, and if so, whether the results provide some evidence of active campaigning on the part of Mr. Under apart from the alleged mailing of the telegram. We would appreciate your taking no further action in this matter, but, as indicated earlier, it is our view that the mailing of the telegram, standing alone, does not constitute a violation of law.

With respect to the telegrams in question, we have informally learned from the Civil Service Commission that the Office of Economic Opportunity

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has written nothing further to the Civil Service Commission indicating that an transfer had been made into the number. In this regard, our independent review in Washington and California does not indicate that the OEO conducted further inquiry into the matter.

By letter dated July 26, 1971, you requested our comments on this matter. We requested a complete report from OEO including OEO's views concerning the availability of the grant in question for the purpose of sending the telegram with special reference to the provisions of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2743(b) which prohibits the use of OEO funds for political activities.

The report received by our Office from the Office of Economic Opportunity on November 5, 1971, makes the following points:

(1) The situation at the time the telegrams were sent were as follows. The Economic Opportunity Amendments of 1970 authorized an appropriation of \$2,755,500,000 for programs under the act for fiscal year 1971. It also authorized various add-on appropriations including one for \$180,000,000 for Headstart. With respect to the basic appropriation it was specified that \$27,000,000 be earmarked for Headstart subject to certain restricted administrative flexibility. However, the act had also provided that if Congress did not appropriate the full \$2,755,500,000, the earmarking for Headstart, like those for most other programs under the act, would be reduced. In its budget request for fiscal year 1971 the Administration had requested \$2,610,000,000 for programs under the act. The Bureau estimated that under an appropriation of this amount, Headstart would still receive \$27,000,000 in fiscal year 1971. On July 23, 1970, the House of Representatives passed a bill that would have appropriated \$2,606,100,000 for programs under the act. At that level of appropriation the Headstart earmarking would have been about \$27,300,000. On October 13, 1970, the Senate Appropriation Committee reported the House Bill with amendments including a change of the amount for programs under the act to \$2,633,500,000 and a specification that \$330,000,000 of that amount was to be earmarked for the Headstart programs. Since July 1, 1970, the appropriation for programs under the act had been contained in continuing resolutions that limited the rate of obligation for Headstart to that of 11% of the \$270,000,000 which amounted to \$29,700,000 per month. Since October 13, 1970, the House has been in adjournment and the Administration has been unable to carry out with respect to the Headstart programs under the act, including the \$27,000,000 of program reauthorizations in accordance to be given them in fiscal year 1971, because of

E-130515
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unexpected low grantee carryover balances and reduced obligations in many areas. This situation as to the amount of funds available caused a great deal of consternation and dissatisfaction throughout community action agencies and the purpose for which the California Council sent the telegrams was to ameliorate this dissatisfaction.

(2) With regard to the grant funds that were used, one of the functions of SCSO was to engage in activities which would provide State agencies and officials with information and the general public with information as to statistics of the problems and needs of the poor and the progress in effect to overcome poverty within the State. The work program of SCSO grant included plans to change or improve its efforts to inform newspapers and the public of the needs, problems, and programs of the poverty effort.

(3) In view of the fact that there was no showing that Mr. Uhl actively campaigned for Senator Murphy in the 1970 election, OIG concludes that it was within the discretion of the Regional Director in San Francisco to find that the sending of the telegrams did not violate the OIG no instruction against political activities. It was OIG's view that a determination of this Civil Service Commission previously discussed established that such a finding was permissible if not required.

After receiving OIG's comments and the Civil Service Commission we had our auditors in Washington and California review OIG records including the investigative report files with a view toward ascertaining whether there was any evidence that Mr. Uhl had done anything in relation to sending the telegrams which would indicate that he or his staff engaged in activities supportive of Senator Murphy's campaign for reelection. Our auditors were unable to find any evidence which would support such activity. We were advised that in the past our auditors have had occasion to look at SCSO timekeeping records and that it was apparent these records could not be relied upon to disclose the specific activities of SCSO employees.

According to OIG regulations, OIG Instruction 6007-1, September 1968, the sender of the telegram in question was subject to the prohibitions of both the OIG regulations against political activities and the prohibition of Chapter 15, of title 18, of the United States Code (the so-called Hatch Act) which prohibits federal employees from engaging in such activities. While the nature of the political activity involved was one of the OIG's concerns rather than a concern of the State, as such would not be a concern of the State, the OIG's concern was that the OIG's regulations, and the Hatch Act, were being violated.

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provided that "GEO may refer any specific information of apparent violation of the non-match Act restrictions set forth in this instructions to the General Counsel of the Civil Service Commission for investigation and determination. The General Counsel of the Commission may cause an investigation and inform GEO and the result be available to agency involved of the findings of fact and the corrective action recommended."

Accordingly, under GEO regulations, it was appropriate to refer the matter to the Civil Service Commission for determination and GEO was justified in following the ruling of the General Counsel of the Civil Service Commission in making its determination in the matter.

With regard to the question of whether the sending of these telegrams was in violation of the prohibitions against using GEO funds for political activities, the timing of these telegrams raises at first view a heavy presumption that the sender of the telegrams did violate such prohibitions. However, after a review of all the facts involved, we can appreciate the legitimacy of a decision that the sending of the telegrams was a valid public information activity rather than an unlawful use of GEO grant funds for political activities. Accordingly, inasmuch as our independent review has stated no further actions of the sender which would tend to establish a political activity on behalf of Senator Murphy's campaign, we view the decision of the Civil Service Commission as appropriate and feel that GEO properly relied upon such determination in the exclusion of the GEO auditor's finding in this particular matter.

Sincerely yours,

(SIGNED) ELMER L. STAATS

Comptroller General
of the United States

U The Honorable John E. Moss
House of Representatives