



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

745

A-61553

May 10, 1935.

Honorable Sam Rayburn, Chairman,
Committee on Interstate and Foreign Commerce,
House of Representatives.

My dear Mr. Chairman:

Reference is had to your letter of April 17, 1935, as follows:

"In recent hearings before this Committee on the public utilities act of 1935 some questions arose during the testimony of Mr. Lillenthal, Director of Tennessee Valley Authority, with reference to the employment of publicity experts.

"In the official register of the United States for 1934, page 139ff, the TVA lists a 'Washington representative of information division' \$3600; a 'Press information, Knoxville', \$4000; a 'Director information, Knoxville', \$5800.

"In describing the duties of these gentlemen Mr. Lillenthal said that they prepared press releases, answered inquiries coming from all sources with reference to TVA, prepared magazine articles and reprints therefrom, etc.

"Mr. Lillenthal's attention was directed to Act of Oct. 22, 1913, 38 Statutes, p. 212, Art. 221, U. S. Code, Title 5, Sec. 54:

"No money appropriated by any act shall be used for the compensation of any publicity expert unless specifically approved for that purpose'.

"It seems to be generally admitted that neither the TVA Act nor any subsequent appropriation measure has made any specific appropriation for the compensation of anyone doing work of this sort. It was stated, however, that it was understood your office had made a ruling holding, in other governmental departments, that the act referred to was not construed as preventing the employment of persons to carry on publicity activities.

"Has there been such a ruling? If so will you kindly furnish this Committee with a copy? Assuming there is such a ruling, in your judgment does it apply to TVA?"

"And if there has been no ruling, will you kindly advise this Committee whether the words 'publicity expert' set forth in the statute are to be construed as exempting from the prohibition of the statute persons such as described above?"

Up to the present time this office has had no occasion to render a decision construing the statute quoted in your letter. This might be due to the fact that its purpose is so clear as to require no interpretation of its provisions, but it may be due to the fact that each spending agency has determined for itself what constitutes a "publicity expert" and is observing the statute accordingly. The purpose of the Congress apparently was to prohibit improper publicity activity within the agencies comprising the Executive branch - that is, publicity work not specifically authorized by law or necessary to the accomplishment of an authorized work. If so, the method adopted, the language employed, was unfortunate. It is to be noted the prohibition is against compensating any "publicity expert". As a consequence those employed for or engaged upon publicity work are not appointed as publicity experts, and, at least for the most part, do not pose as publicity experts - and the respective appointing officials would doubtless insist, and stoutly, that they are not experts but rather are just clerks spending some of their time preparing material for the press.

The matter of the duties to which each employee is assigned is largely and primarily a responsibility of the head of the particular agency, subject, of course, to the provisions of the Classification laws and the action of the Civil Service Commission thereunder.

There are agencies the regular duties of which are to acquire and disseminate information and those so engaged would apparently not come within the purpose of the statute in question, that is, the prohibition intended. And it is believed there would be no question with respect to employees engaged in answering requests for information proper to be given out and with respect to the work of the agency by which employed, or in giving such information to those who make personal inquiry. Then there is the agency given a work to do the accomplishment of which would be aided by timely dissemination of accurate information official in character. This, apparently, is where the border line is reached and where abuses become possible. If in this type of case the activity be carefully confined to making available accurate information as to the service the agency is lawfully authorized to render the public - so the public may be timely and correctly informed - and the services of so-called "experts" are necessary to compile the information in most advantageous form - it would seem that employment of "experts" in such connection would not conflict with the purposes of the law.

But where the public duty to be performed does not for its accomplishment and in itself require such dissemination of information and "experts" are employed largely to publicize the activity or to encourage public approval or support, such employments would appear to be those intended to be prohibited.

In its present form, the statute is ineffective. It would be effective if amended or supplemented by a provision likewise prohibiting the use of any appropriated money to pay compensation to any officer or employee in the Executive Branch of the Government who voluntarily engaged in, or who authorizes or knowingly permits any subordinate to engage in, any publicity activity not authorized by law.

Applying the foregoing to the work upon which certain employees of the Tennessee Valley Authority are engaged as stated in your letter, supra - and as to which you specifically ask my views - inasmuch as I have found nothing in the Tennessee Valley Authority Act of 1933 which necessarily requires for the doing of the work thereby authorized, the dissemination of information as to the corporation's activities through newspapers and magazines or by issuance of pamphlets, etc., it would appear that employment of personnel to prepare "press releases" and "magazine articles" on the activities of the corporation would be out of harmony with the purposes of the act of October 22, 1915, 38 Stat. 212, quoted in

your letter, but not necessarily in conflict with its specific provisions * depending upon whether such employees are actually "publicity experts", which might be difficult to establish even if true.

Sincerely yours,

(Signed) J. R. McCarl

Comptroller General
of the United States.