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Memorandum

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Date: November 17, 1987

To: Assistant Comptroller General - Richard C. Fogel

From: Associate General Counsel - Rollee H. Efros

Subject: Alleged Consumer Products Safety Commission Lobbying--B-229275-O.M.

Richard Huberman, Staff Counsel, Subcommittee on Commerce, Consumer Protection, and Competitiveness, House Committee on Energy and Commerce, requested HRD to investigate an incident of possible lobbying by Consumer Products Safety Commission (CPSC) officials. Bobby Hoover of HRD conducted an investigation and has requested a determination of whether the activities of the CPSC officials violate any law or regulation restricting lobbying by Federal officials. We have concluded that the activities in question did not violate any law or regulation.

FACTUAL DATA

AMP Incorporated, Harrisburg, Pennsylvania, is an electrical products manufacturer which specializes in connectors. It has developed a unique connector that permits the permanent splicing of aluminum electrical wire to copper wire. The fire hazard associated with aluminum electrical wiring installed in old housing can be virtually eliminated when this product is used to reterminate the wiring.

On July 22, 1987, the Chairman, CPSC, wrote AMP a letter expressing concern over information that had come to his attention that AMP might no longer market these connectors for home repair purposes. This would leave no suitable connector on the market for electricians to use to correct the problem in the approximately two million aluminum wired residences. The Chairman asked AMP to reconsider the decision as a service to the public on a matter of product safety.

On September 1, 1987, an AMP official responded with a letter to CPSC. AMP acknowledged that it was considering discontinuing sales of the connector for the residential

market and had formed a task force to thoroughly evaluate the residential connector program. AMP invited a representative of CPSC to meet with the task force on September 22, 1987, at the AMP headquarters. This meeting was rescheduled and ultimately held on October 21, 1987.

AMP was concerned about potential product liability problems that might result from its continued marketing of the connector to the residential market. In early October, AMP contacted CPSC and asked about the possibility of CPSC indemnifying it for any liability that might result. On or about October 9, 1987, a CPSC attorney telephoned an AMP attorney to discuss AMP's request. The attorney stated that CPSC had no authority to indemnify AMP. He also pointed out that a hearing on CPSC's reauthorization legislation was scheduled on October 20, 1987, before the House Committee on Energy and Commerce, and suggested that AMP might wish to testify at the hearing to discuss potential product liability problems regarding the sale of the connector to the residential market. The AMP attorney was unaware of the reauthorization hearing and requested additional details. After obtaining specific information about the hearing from the CPSC Office of Congressional Relations, the CPSC attorney recontacted the AMP attorney and gave him the name of the committee, the phone number, and the proposed order of witnesses.

When the hearing on the CPSC reauthorization legislation was rescheduled from October 20 to October 27, 1987, the CPSC attorney again contacted AMP to advise it of the new schedule. He learned during this contact that the company had already decided not to request to appear at the hearing.

LEGAL ISSUE

The annual Department of Housing and Urban Development Independent Agencies Appropriations Act1/ under which the CPSC receives its appropriations, does not contain a restriction on the use of funds for lobbying. The only antilobbying legislation relevant to these circumstances is 18 U.S.C. § 1913, which read in part 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,

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1/ See Pub. L. No. 99-591, October 30, 1986, 100 Stat. 3341-242.

> letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of 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."

Section 1913 further provides for penalties of a fine, imprisonment, and removal from federal service.

Because 18 U.S.C. § 1913 provides for criminal penalties, its interpretation and enforcement is the responsibility of the Department of Justice. This Office may, however, refer appropriate cases of apparent violations of 18 U.S.C. § 1913 to the Justice Department for prosecution. See, e.g., B-212235(1), November 17, 1983 (Commerce Department publication favoring revision of Export Administration Act referred to Justice). To our knowledge, there has never been a prosecution under this statute. B-217896, July 25, 1985. In addition, only a few court decisions have cited the statute and generally they have not dealt with the question of a violation, but have been concerned with peripheral issues. See, e.g., National Association for Community Development v. Hodgson, 356 F. Supp. 1399 (D.D.C. 1973); American Public Gas Association v. Federal Energy Administration, 408 F. Supp. 640 (D.D.C. 1976). See B-214455, October 24, 1984.

The Department of Justice interprets 18 U.S.C. § 1913 to apply only when funds are spent in a "grass roots" lobbying effort, where an attempt is made to induce members of the public to contact their representatives in Congress to persuade them to either support or oppose pending legislation. B-216239, January 22, 1985; 63 Comp. Gen. 624, 625-626 (1984). In 1978, the Attorney General obtained from his legal counsel an opinion on the propriety of comments by judicial officers on legislation directly affecting the judiciary in light of 18 U.S.C. § 1913. That Memorandum Opinion for the Attorney General, (Applicability of Anti-lobbying Statute (18 U.S.C. § 1913) - Federal Judges, 2 Ops O.L.C. 30, 31, 1978)), concluded as follows:

> "The limited legislative history demonstrates that [the enactment of 18 U.S.C. § 1913] was spurred by a single, particularly egregious instance of

> official abuse--the use of Federal funds to pay for telegrams using selected citizens to contact their congressional representatives in support of legislation of interest to the instigating agency. See 53 Cong. Rec. 403 (1919). The provision was intended to bar the use of official funds to underwrite agency public relations campaigns urging the public to pressure Congress in support of agency views." (Emphasis added.)

We do not believe the CPSC communications with AMP constituted grass roots lobbying in that such communications was not designed to exhort members of the public to contact a Member of Congress regarding support or opposition to legislation. Rather the communications was merely designed to inform a regulated company with a product liability problem that a hearing on legislation was scheduled where the company could aquaint the appropriate House Committee with its needs for additional legislation. We believe it is within the statutory authority of a regulatory agency to advise a regulated company that a remedy it seeks can only be obtained through legislation and that such legislative remedy may be initiated by a particular Congressional Committee.

Accordingly, we conclude that CPSC's communications with AMP regarding the hearing were appropriate and did not constitute grass roots lobbying under the Department of Justice interpretation of 18 U.S.C. § 1913.