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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-116331

MAY 29 1961

Dear Mr. Postmaster General:

By letter of May 8, 1961, reference B-8, 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, 289.

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!"

"H. L. McLeester, 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 ^{by} 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 \$40 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 benefitting 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 Gurningham 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 X 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

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 dependant 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 proscribed 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.

"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,

JOSEPH CAMPBELL

Comptroller General
of the United States

The Honorable
The Postmaster General