

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548



B-118638

AUG 2 1974

The Honorable Henry B. Gonzalez
House of Representatives

Dear Mr. Gonzalez:

This refers to your letter asking for certain information concerning trips reportedly made by District of Columbia Police Chief Jerry Wilson "as an emissary of the White House expressing the Administration's views on legislation under consideration in Congress." In order to report fully to you, we requested that Commissioner Washington provide us with detailed information on Chief Wilson's activities in this regard. Apparently, the District of Columbia lost our original request but we have now received a reply from Commissioner Washington transmitting a report by Chief Wilson on his official travels during the period January - July 1973.

Your first question is whether the activities of Chief Wilson in any way violate the legal strictures on executive lobbying. We assume that you refer to the provisions of law which prohibit the use of appropriated funds for publicity or propaganda purposes designed to support or defeat legislation pending before the Congress. For the period covered by our review, this prohibition is contained in section 608(a) of the Treasury, Postal Service, and General Government Appropriation Act, 1973, approved July 13, 1972, Pub. L. 92-351, 86 Stat. 471. (A similar prohibition is contained in 18 U.S.C. 1913, but that, being a criminal statute, is properly a matter for consideration by the Department of Justice.)

In our view, Congress did not intend, by the enactment of section 608(a) and like measures, to preclude all expression by officials of views on pending legislation. Rather, the prohibition of section 608(a) we believe, applies only to expenditures involving direct appeals addressed to the public suggesting that they contact Members of Congress and indicate their support of or opposition to pending legislation, i.e., appeals to members of the public for them in turn to urge their representatives to vote in a particular manner.

Thus, public officials may with propriety report on the activities of their agencies, may expound to the public the policies of those agencies, and of the administration of which they are members, and may likewise offer rebuttal to attacks on those policies. Expenditure of appropriated funds for dissemination of information in those categories is hence lawful. But it must be recognized that, to the extent to which the policy of an agency or administration is embodied in pending legislation, discussion by officials of that policy will necessarily, either

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explicitly or by implication, refer to such legislation, and will presumably be either in support of that legislation or in opposition to other non-administration legislation or both. An interpretation of section 608(a) which strictly prohibited expenditures of appropriated funds for dissemination of views on pending legislation would consequently preclude virtually any comment by officials on administration or agency policy, a result which, as noted above, we do not believe was intended. The foregoing general considerations form the basis for our determination in any given instances of whether there has been a violation of section 608(a).†

Applying these considerations to the case at hand, we are unable to conclude that Chief Wilson's activities violated the strictures against executive lobbying. According to the report we received, Chief Wilson's trips during the period in question fall into four categories. Category 1 includes his attendance at a conference of major city police administrators, at which he made no speeches. Category 2 includes his participation in panels on the use of force by police at 2 seminars sponsored jointly by the International Association of Chiefs of Police and the National District Attorneys Association. A copy of his talk on these occasions was provided to us. Category 3 includes an address Chief Wilson gave to the Florida Sheriffs Association. Category 4 includes "travel to various cities as personal representative of the President to discuss methods by which crime was reduced in District of Columbia and Presidential emphasis on assignment of priority to crime reduction nationally," under the auspices of the Law Enforcement Assistance Administration (LEAA).

We have found no indication that any of these activities by Chief Wilson violated the prohibition against the use of appropriated funds for publicity or propaganda purposes designed to support or defeat pending legislation. Thus, in Category 1, no speech was given by Chief Wilson. In Category 2, we have reviewed the text of the talk given by Chief Wilson and have found in it no reference whatsoever to legislation. As to Category 3, Chief Wilson has advised us that, although he is unable to find a copy of the text of his address, it dealt generally with crime prevention and did not mention pending legislation.

With respect to the fourth category, we were provided with a fact sheet setting forth the mission and the message conveyed by Chief Wilson in his trips under the auspices of LEAA. We find no reference therein to specific legislation. Rather, the general tenor of the presentations, at least as far as shown by the fact sheet, appears to have been a discussion of crime as an urban problem and of means to deal with it, including commitment of sufficient resources and maintenance of strong interest and leadership by officials at all levels of government.

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Since we recognize that the fact sheet may not fully represent the actual content of Chief Wilson's remarks during the trips in the fourth category, we have also reviewed the newspaper accounts which you caused to be printed in the Congressional Record for June 18, 1973 (H4897-98), concerning a press conference held by him during a visit to your district which was one of the trips in the fourth category. With respect to possible lobbying with appropriated funds, the only information reported therein which has any bearing on this issue is the following:

"Law enforcement officials of the nation's cities would like to see greater financial assistance from the government but fewer Federal guidelines, Washington, D.C., Police Chief Jerry V. Wilson said in San Antonio.

* * * * *

"Wilson, a 'personal representative' of President Nixon, said in a press conference at police headquarters the chances for direct grants-in-aid such as those included in Nixon's revenue sharing proposals were 'slim.' Congress rejected the proposals last week, Wilson pointed out.

* * * * *

"He said the President believes 'law enforcement is essentially a local responsibility' which needs Federal funding assistance."

Similarly the other newspaper account reports that:

"Asked if outright grants-in-aid would not be better [in combatting crime in the cities] than the present system of choosing various federal grants from a 'Sears Roebuck catalog,' he said that Nixon preferred this idea but his efforts at change had failed in the Congress."

While Chief Wilson's statements thus do refer to legislation and express a preference for a particular legislative approach to the Federal funding of local crime prevention efforts, they do not constitute appeals to the public to urge their elected representatives to vote in a particular manner. Rather, we believe, they fall within the category of exposition of policy, which is, as noted above, a permissible activity even though the policy may be embodied in pending legislation. We conclude therefore that Chief Wilson's activities, described above, do not violate the legal strictures on executive lobbying.

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You next ask whether it is legal, under the Law Enforcement Assistance Act, for Chief Wilson to make these trips. We note that under section 508 of the act of June 19, 1968, Public Law 90-351, 82 Stat. 205, as amended, 42 U.S.C. 3756, LEAA is authorized:

"* * * to confer with and avail itself of the cooperation, services, records, and facilities of State, municipal, or other local agencies * * *."

The District of Columbia, for purposes of the act of June 19, 1968, is included within the term "State." 42 U.S.C. 3781(c). We have been advised by an official of LEAA that it paid travel costs and per diem in lieu of expenses for Chief Wilson's trips under the authority of section 3756 of title 42.

Generally, the stated purpose of Chief Wilson's trips--to discuss methods by which crime was reduced in the District of Columbia and Presidential emphasis on assignment of priority to crime reduction nationally--appears consistent with the purposes of the act. Section 3756 of title 42 allows LEAA to confer with law enforcement officials for purposes within the act. It would also seem to authorize LEAA to use the services of a District of Columbia official, such as Chief Wilson, as its representative to confer with local officials for such purposes. The legislative history of this portion of 42 U.S.C. 3756 does not appear to be inconsistent with such a procedure, and accordingly we cannot say that the trips by Chief Wilson were not authorized under the act.

However, we note that 42 U.S.C. 3763(c) authorizes LEAA:

"to cooperate with and render technical assistance to States, units of general local government, combinations of such States or units, or other public or private agencies, organizations, institutions, or international agencies in matters relating to law enforcement and criminal justice."

The act defines "law enforcement and criminal justice" broadly to include "police efforts to prevent, control, or reduce crime or to apprehend criminals." 42 U.S.C. 3781(a). In view of the existence in the statute of specific authority to provide technical assistance, we believe that, although we cannot say it was improper as a matter of law to fund Chief Wilson's travels under 42 U.S.C. 3756, it would have been preferable to do so under the more apposite authority of 42 U.S.C. 3763(c).

Finally, you ask whether, while on the trips in question, Chief Wilson received his regular salary and also a per diem from the District of Columbia Government and the Federal Government. According to the report we received, Chief Wilson received his regular salary during duty hours on all trips discussed above. For his attendance at the conference of

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Major City Police Administrators, travel and per diem expenses were also paid by the District of Columbia. Travel and per diem expenses for his participation in the seminars sponsored by the International Association of Chiefs of Police and the National District Attorneys Association were paid by the latter organization. The Florida Sheriffs Association paid his travel and per diem expenses connected with his address to that group. LEAA paid travel and expenses for his trips on its behalf.

We trust the foregoing information will be helpful to you.

Sincerely yours,

A. F. KELLER

Deputy Comptroller General
of the United States