COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-129874

AUG 15 1978

The Honorable James A. McClure
United States Senate

Dear Senator McClure:

This responds to your inquiry of June 21, 1978, requesting information about prohibitions on the expenditure of Federal funds for "lobbying". We have coordinated the development of our response with of your staff, and understand your present interest concerns an identification of the principal Federal laws governing the expenditure of Federal funds for lobbying and their general scope. We understand from that this information may serve as a basis for a later request, to be discussed with you and your staff, for a comprehensive review of the effectiveness of the laws involved and efforts to implement and enforce those laws.

There are two Federal laws of general applicability that cover "lobbying" with appropriated funds. The first is a criminal statute, 18 U.S.C. §1913, which provides:

> "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, letter, printed or written matter, or other device, intended or designed to influence in any manner a member of Congress, to favor or oppose, by vote or otherwise any legislation or appropriation by Congress * * * this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to members of Congress * * * requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."

The second provision--currently section 607(a) of the Treasury, Postal Service, and General Government Appropriation Act, 1978, Pub. L. No. 95-81, 91 Stat. 34--has appeared in appropriation acts since the early 1950's. Section 607(a) provides:

> "No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress." See also Department of Interior Appropriations Act, 1978, Pub. L. No. 95-74, §304, 91 Stat. 307.

Section 1913 of title 18, U.S. Code, is a criminal statute containing fine and imprisonment sanctions. Although we recognize that both the criminal statute (hereafter referred to as section 1913) and the appropriations act restriction (hereafter referred to as section 607(a)) describe similar activities for which Federal funds may not be used, it has been our traditional practice not to comment on the applicability of section 1913 to specific factual situations. The enforcement of section 1913 is the responsibility of the Department of Justice and the courts.

We note initially that neither section 607(a) nor section 1913 specifically define or use the term "lobbying". The absence of the term from these two laws, together with its use or application to other Federal laws wholly unrelated to the expenditure of Federal funds, highlights the importance of defining "lobbying" in the context of the laws involved here.

In the context of the Federal Regulation of Lobbying Act (2 U.S.C. §261 et seq.), for example, "lobbying" generally means direct communication with members of Congress by lobbyists to influence legislation. United States v. Harris, 347 U.S. 612 (1954). And in the context of the Internal Revenue Code, see I.R.C. §162, "lobbying" can include both direct and indirect communication with Members of Congress and others by lobbyists. (Indirect or grassroots lobbying generally means encouraging the public, through a solicitation, to communicate a position of the lobbyist to a legislative body). The Federal Regulation of Lobbying Act and the Internal Revenue

Code do not, of course, apply to the expenditure of Federal funds by Federal agencies. Even if they did apply, expenditures and communications that constitute "lobbying" under the Federal Regulation of Lobbying Act and the Internal Revenue Code often would not qualify as "lobbying" under section 607(a) and section 1913--the two statutory restrictions involved here that govern the expenditure of Federal funds. In short, the Federal Regulation of Lobbying Act and the Internal Revenue Code apply or use definitions of "lobbying" that differ markedly from those applied to section 607(a) and section 1913.

Section 607(a) and section 1913 describe the activities for which Federal funds may not be used in general terms such as "publicity", "advertisements", or "propaganda" intended to influence congressional support or opposition to legislation.

We have identified no regulations of general applicability that implement either section 607(a) or section 1913. The few courts that have construed section 1913, however, have not considered expenditures incurred in direct contact with members of Congress by Federal agencies as falling within the purview of that prohibition. See National Association for Community Development v. Hodgson, 356 F. Supp. 1399 (D.D.C. 1973). A similar approach has consistently been applied to cases arising under the appropriation act restriction, section 607(a), and its predecessors. Recommendations to congressional committees or Members of Congress concerning the need for new or amended legislation are considered a legitimate function of any Federal agency.

We consider the prohibition in section 607(a) against "publicity or propaganda * * * designed to support or defeat legislation pending before the Congress" as applying primarily to Federal expenditures involving direct appeals to the public urging that they in turn contact their elected Federal representatives and indicate their support of or opposition to pending legislation. This latter type of activity--a matter we alluded to earlier in this letter--is generally considered a form of indirect or grassroots lobbying, and it is to this type of effort that section 607(a) would ordinarily cover. Although we are not in a position to offer definitive interpretive guidance on the application of section 1913, that prohibition, like section 607(a), specifically applies to

the funding of propaganda in the nature of "* * * advertisement[s] * * * designed to influence * * * a member of Congress, to favor or oppose, * * * legislation * * * ."

One other area of concern indirectly raised by your inquiry relates to the expenditure of funds by Federal grantees. By its terms, section 1913's criminal sanctions are limited to Federal employees. See also National Association for Community Development v. Hodgson, previously cited, at 1406. However, Federal grantees may expend their funds only for proper grant purposes. See 55 Comp. Gen. 750 (1976). The extent to which the appropriation restriction of 607(a) would bear on the purposes for which a Federal grant could properly be authorized could only be addressed on a case-by-case basis, taking into account the grant authorization statute that would be involved, any relevant provision of the current authorization or appropriation statutes, and possibly both the language of the grant document and the particular activity of the grantee carried out pursuant to that document.

We hope this information will prove responsive to your inquiry. We will be pleased to provide whatever additional information you might require.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States