



DIGEST - NO CIRCULATION —
COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-178528

JUL 27 1972

The Honorable Thomas V. Eagleton
United States Senate

Dear Senator Eagleton:

This refers to your letter, dated April 23, 1973 (as supplemented by letters of May 2 and May 17), requesting a report on the circumstances of a mass mailing, on Department of State letterhead, of a letter signed by Walter Annenberg, Ambassador to Great Britain, transmitting to the addressees copies of editorials from British newspapers in praise of President Nixon.

Initially you asked whether there is any statutory prohibition against the use of appropriated funds for sending a letter such as the one in question. Upon our advice to your staff that State Department funds may not in fact have been used for the mailing, you asked that we broaden our inquiry and conduct a thorough investigation of the matter. We have found, as a result of that investigation, that the mailing was made by the Republican National Committee at the suggestion of members of the White House staff and paid for by the Committee using its own funds and mailing lists. The only State Department involvement in the matter appears to have been the signing by Ambassador Annenberg of the original letter which was typed on official Department of State stationery.

With respect to your request for the names of individuals in the Department of State or on the White House staff who were responsible for the mailing, we have found that Mr. Charles W. Colson, then a member of the White House staff, asked Ambassador Annenberg to sign the original of the letter which was, according to Mr. Colson, drafted by a member of the White House staff. Mr. Colson stated that he did not remember who drafted the letter. Mr. Colson gave the signed original to Mrs. Kathleen Balston, also of the White House staff, with instructions to have it mailed to prominent citizens, members of the press, and other groups whose names were available at the Committee.

Mr. Robert Rousek of the Committee advises us that the Committee reproduced and mailed 2709 copies of the letter, at a cost of \$334.19. Of the total, 969 went to chairmen of college political science departments, 1044 to editorial writers of publications, and 696 to leading

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citizens in various communities. The lists of addresses used were, it appears, those maintained by the Committee, and not those used by the Department of State for its own mailings. We have found no evidence that any funds other than those of the Committee were used for this mailing.

You asked whether any similar letters have been sent by other American ambassadors. We have been unable to find any indication that any other letters of this nature have been sent.

With respect to your inquiry whether existing State Department regulations are adequate in dealing with the use of Government funds for unofficial activities, the only departmental regulation which deals with this issue is 22 CFR 10.735/207, which provides that:

An employee shall not directly or indirectly use, or allow the use of Government property of any kind * * * for other than officially approved activities. * * *

This regulation, since it makes no attempt to limit the kinds of activities which may be "officially approved," does not reach the case in which a particular expenditure is approved by an official but is nevertheless unauthorized because not consonant with the purposes of the appropriation from which it is drawn. We know of no practical way, however, to formulate specific and comprehensive regulatory standards delimiting all the circumstances in which an expenditure is within the terms of the corresponding appropriation, particularly since each appropriation act may contain its own limitations and restrictions.

On the other hand, we note that departmental regulations deal extensively with the type of conduct which employees may properly engage in, whether or not an expenditure of Government funds is involved. See 22 CFR Part 10.735. Regulations such as these, which set forth what activities of employees will be considered improper, necessarily also proscribe expenditures of Government funds incidental to such improper activities. We cannot therefore say that State Department regulations are inadequate in this respect.

You ask in your letter of May 17 for any information we can develop concerning the legality of the subject mailing. Since, as noted above, no appropriated funds were apparently involved in the actual mailing, we are not empowered to render an opinion on this aspect of the matter. In addition, we find no indication of violation of the campaign financing laws which we administer since, although the Committee bore the expense of the mailing, we have no evidence that this expenditure was not duly reported as required by law. In this regard controlling regulations do not require breakdown by items of mailing expenses.

B-178528

Insofar as the Ambassador signed the original letter which was typed on official State Department stationery, there was a minimal use of funds appropriated to the Department. Such use brings to question the possible violation of section 701 of Public Law 92-544, the act that funded State Department activities at the time the letter was typed and signed. Section 701 prohibits the use of funds made available by that act for publicity or propaganda purposes not authorized by the Congress.

The President, his Cabinet and other high officials have a duty to inform the public on Government policies and, traditionally, high ranking officials have utilized Government resources to disseminate information in explanation and defense of those policies. It is very difficult to distinguish between such permissible activities for which appropriated funds are available and other activities, similar in nature but for purely political or partisan purposes so as to constitute publicity or propaganda.

Obviously, there should be a point beyond which it could be concluded that the bounds of propriety have been overstepped. But for us to be able to determine that point and in any given situation to distinguish authoritatively between prohibited and allowable activities we would need some guidelines by which to judge the activities in question. Insofar as we are aware no such guidelines have been established by legislation, judicial decision, or otherwise. In construing kindred statutes our Office has taken the position that without statutory guidelines to proceed under, it would not be appropriate to override administrative determinations and justification of propriety, except where they are so palpably erroneous as to be unreasonable in the face of the prohibiting statute. In the present consideration, the Acting Assistant Secretary of State for Congressional Relations, in responding for the Secretary of State, advised you on April 6, 1973, that the Ambassador's conduct was concerned with calling attention to support received for policies of the United States Government and that it is not inappropriate for an Ambassador to engage in such correspondence. Unquestionably part of the function of a foreign legation is to obtain and to communicate information on press reaction in a host country to policies of the United States.

Further, we do not believe that the prohibition in section 701 against the use of appropriated funds for publicity and propaganda purposes not authorized by Congress is intended to reach cases such as this, but rather is to prevent the use of such funds to promulgate publicity of a nature tending to emphasize the importance of the agency or activity subject to the prohibition. In this case the expenditure of appropriated funds was not for the aggrandizement of the Department of State.

E-178528

As indicated above, the letter in question was drafted by a member of the White House staff and another member of that staff requested that the Ambassador sign it. It appears from the letter of April 30, 1973, from the Acting Assistant Secretary of State for Congressional Relations to you, that the Ambassador informed the Department that he signed the original letter but that he did not know to whom copies of such letter and enclosed editorials were to be sent nor at whose expense the letters and enclosures were mailed. We assume, however, that the Ambassador agreed with the content of the letter since he signed it. It appears from the letter signed by the Ambassador that its purpose was to rebut claims that allies of the United States had turned against the United States in the days preceding the "ceasefire" on Vietnam and were critical of the President. Thus the purpose of the letter was apparently to inform the public concerning one of our allies and, in effect, defend the Government's policies.

Thus, without going into the propriety of the matter--which is outside our jurisdiction--under the circumstances we would not have a sufficient basis to consider the signing of the letter in question by the Ambassador to be in violation of section 701 of Pub. L. 92-544. Moreover, we might point out that even if the signing of the letter by the Ambassador be considered in violation of section 701 of Pub. L. 92-544, the only action that we could take would be to attempt to recover the amount improperly expended. Thus, recovery would be limited to the cost of the paper signed by the Ambassador plus the time he used in considering the matter and affixing his signature, assuming such cost was determinable.

While the letters were reproduced by the Committee on stationery bearing the heading "Department of State," and a reproduction of the Great Seal of the United States, the original letter bore the same seal and heading. Section 713 of title 18, United States Code, makes it an offense to display a printed likeness of the Great Seal "for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship by the Government of the United States," or by any department thereof. Whether this provision was violated in the instant case is a matter for consideration by the Department of Justice.

Finally, your staff asked that we inform you of the circumstances of a mailing, in September 1972, of a letter signed by Mr. Lee Cherna, Vice-Chairman of Democrats for Nixon, New York City, using a State Department mailing list. Our investigation of that incident revealed the following:

The Director of Communications, Executive Branch, White House, told us that he had requested a mailing list from the Department of State. He said the list was to be used for mailing a speech to be given by an official of the Department of State at the United Nations on September 25, 1972.

In response to the request, the State Department prepared a list from its files of the names of members of National and local organizations, educational institutions, and other groups. The names were printed on plain, white, gummed labels and sent to the White House on September 11, 1972.

At the Office of the Director of Communications, White House, we were informed that the labels were then sent to the Republican National Committee where the mailing was to be made at no cost to the Government. We were also told that this procedure had been set up to avoid the possibility of any politically oriented material being sent from the White House at Government expense.

After the labels were sent to the Republican National Committee, the Director of Communications cancelled the mailing request.

The Deputy Chairman for Communications, Republican National Committee, told us that he had received a request from Mr. Charne, for a list of Jewish community leaders. He told us that because of the hectic conditions in the Committee mailing room someone accidentally used the Department labels in filling the request. He also informed us that Mr. Charne's envelopes were sent to Washington to have the labels applied and that they were then returned to New York where they were stamped and mailed on or about September 21, 1972, containing a letter signed by Mr. Charne, dated September 15, 1972.

We were told by Department of State officials that the total direct costs to the Department to run the list on gummed labels amount to \$15.31. Mr. Charne reimbursed the Department for these costs on October 31, 1972.

The State Department has no written policy on the use of its mailing lists. However, traditionally, the Department mailing lists are never intentionally given to any organization for nonofficial purposes.

We hope that the foregoing information will be of assistance to you.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

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Use

Official purposes only

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Political activities

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DEPARTMENTS AND ESTABLISHMENTS

Mailing lists

Use

Prohibition