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

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B-193545

March 13, 1979

*Legality of Memorandum Directing Support of Equal Rights Amendment*

The Honorable George Hansen  
House of Representatives

Do not make available to public reading

Dear Mr. Hansen:

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This refers to your letter of February 1, 1979, requesting our consideration of the legality of a memorandum [which was issued to Lower Colorado Region Supervisors of the Bureau of Reclamation by their Regional Director directing their support of the Equal Rights Amendment (ERA).]

We have received a number of congressional inquiries about the same memorandum over the past few months and have studied the questions you raise very carefully. We were unable to find any statutory provision that would prohibit a Federal agency from urging its employees to publicly support the Administration's pro-ERA policy in this manner.

Reclamation's memorandum states that the President had directed--

"\* \* \* the Head of each Department and agency to (1) make the most of public appearance opportunities to demonstrate the Administration's commitment to the Equal Rights Amendment; and (2) include in public speeches, where appropriate, language emphasizing the importance of ERA and assure that similar language is included in the speeches made by officials of their Agency or Department."

The Regional Director concluded his memorandum by asking "each supervisor and manager in this Region to comply with the above directives regardless of personal preferences or political opinions."

Since the early 1950's, various appropriation acts have contained general provisions prohibiting the use of appropriated funds for "publicity or propaganda." Section 607(a) of the Treasury, Postal Service and General Government Appropriations Act, 1979, Pub. L. No. 95-429, October 10, 1978, 92 Stat. 1001, 1016, contains a prohibition applicable to Interior and all other agencies stating:

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure

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*letter restricted*

by any corporation or agency, shall be used for publicity or propaganda designed to support or defeat legislation pending before Congress." (Emphasis supplied.)

We do not believe that section 607(a) would apply to expenditures made by the Bureau of Reclamation or any other agency in support of ratification by State legislatures of the ERA. Congress completed its action by approving the ERA and submitting it to the State legislatures for ratification. Therefore, the ERA is not now "pending before Congress."

Our decisions have consistently recognized the legitimate interests of an agency in communicating with the public and with legislators regarding its policies and activities. See 56 Comp. Gen. 880 (1977); B-128936, July 12, 1976. If the policy of an agency is affected by pending legislation, discussion by officials of that policy will necessarily, either explicitly or by implication, refer to such legislation, and will presumably be either in support of or in opposition to it. An interpretation of section 607(a) which would strictly prohibit expenditure of public funds for discussion by officials or administration or agency policy would lead to a result we do not believe was intended.

For this reason, we have interpreted the language of section 607(a), supra, as applying--

"\* \* \* only to expenditures involving direct appeals addressed to members of the public suggesting 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." B-178648, September 21, 1973.

Demonstration of support for State ratification of the ERA in public appearances and inclusion of language emphasizing the importance of ERA in speeches, would not fall within this description of proscribed activities.

The fiscal year 1979 appropriation act for the Department of the Interior contains a prohibition against expenditures of funds appropriated therein for "any activity \* \* \* to promote public support or opposition to any legislative proposal on which congressional action is not complete." Pub. L. No. 95-465, § 304, October 17, 1978, 92 Stat. 1279, 1302. (Similar language limits use of other appropriations.) This is similarly inapplicable to this case, since Congress has completed action on the ERA.

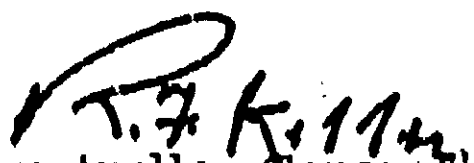
The Federal criminal statute dealing with lobbying with appropriated funds, 18 U.S.C. § 1913 (1976), does not extend to attempts to influence

State legislatures. Since this is a penal statute, with enforcement the responsibility of the Department of Justice and the courts, our responsibility in this area is limited to referring questionable situations to the Department of Justice. However, this law is by its terms inapplicable to the present situation since it refers to the influencing of a Member of Congress.

We note that the President's directive, quoted in Reclamation's memorandum, directing the Department heads to "make the most of public appearance opportunities," to demonstrate the Administration's commitment to and the importance of the ERA, would not authorize an expenditure of appropriated funds for the sole purpose of mounting a campaign in favor of ratification of the ERA. These appearances and inclusion of advocacy language in speeches, "where appropriate," would be presumably undertaken in fulfillment of other agency functions and espousal of the ERA would be incidental to the performance of these functions. In this context, we cannot say that support for the ERA would involve an illegal expenditure of appropriated funds.

Since, as we have indicated above, the actions of the Regional Director do not violate any Federal law, we do not feel that further investigation of this matter is warranted at this time. We hope this discussion has been helpful to you.

Sincerely yours,

  
Deputy Comptroller General  
of the United States