



Comptroller General  
of the United States

Washington, D.C. 20548

B-248991

March 3, 1993

The Honorable David Pryor  
Chairman, Subcommittee on  
Federal Services, Post  
Office and Civil Service  
Committee on Governmental  
Affairs  
United States Senate

Dear Mr. Chairman:

This responds to your June 4, 1992 request that we review the expenditure of appropriated funds in connection with the travel of two Department of the Interior officials, Messrs. \_\_\_\_\_ and \_\_\_\_\_ to Idaho in May of this year. You were concerned that appropriated funds may have been used improperly to pay for travel expenses associated with political activities.

Based on the factual information provided to us by the Department of Interior, we conclude that the Department has adhered to guidelines developed by the White House for allocating travel expenses of senior administration officials. The two Department officials attended both official and political activities during the travel in question, and the travel expenses of the officials were apportioned between appropriated funds and the funds of the Republican National Committee on a basis which reflects the time spent on the respective activities.

#### BACKGROUND

In order to respond to your request, we obtained a report on the travel in question from the Interior Department.<sup>1</sup> We also reviewed Interior Department records and other relevant documents concerning this travel and the payment arrangements for it.

According to the Interior Department's report, the Secretary of the Interior originally planned to attend both the official and political events in Idaho on May 14 and 15.

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<sup>1</sup>Letter dated June 26, 1992, from Timothy S. Elliott, Deputy Associate Solicitor, Division of General Law, to Michael R. Volpe, Assistant General Counsel, GAO.

However, when the Secretary was unable to take the trip to Idaho because of other business, his office asked Messrs. \_\_\_\_\_ and \_\_\_\_\_ to substitute for him at both the official and political events.

Mr. \_\_\_\_\_, the Director of the Bureau of Land Management, undertook travel from May 11 to May 16, 1992, which involved four stops: Asheville, North Carolina; Denver, Colorado; Coeur D'Alene, Idaho; and Boise, Idaho. The Department reports that Mr. \_\_\_\_\_ travel to North Carolina and Colorado had been planned some time in advance and involved only official functions. When the Secretary's schedule precluded him from traveling to Idaho, Mr. \_\_\_\_\_ extended his trip to cover both the political and official events in Idaho.

According to the Department's report, the time Mr. \_\_\_\_\_ spent on official and political events during his trip (calculated in minutes) is as follows:

EVENT	DURATION	OFFICIAL	POLITICAL
Agency Program Overview Asheville, NC, 5/12	90	90	
Field Trip Asheville, NC, 5/12	480	480	
ALMERS Meeting Denver, CO, 5/14	210	210	
"Elephant Stomp" Post Falls, ID, 5/14	75		75
GOP Reception Hayden Lake, ID, 5/14	105		105
Breakfast with Mining and Timber Executives Coeur D'Alene, ID, 5/15	90		90
Hecla Mining Company Board Meeting Coeur D'Alene, ID, 5/15	25	25	
"Otter Roundup" Nampa, ID, 5/15	120		120
Boise Interagency Fire Center Open House Boise, ID, 5/16	240	240	
TOTAL TIME (MINUTES)	1435	1045	390

Mr. , the Director of the Bureau of Mines, travelled during May 14-15, 1992, from Newark, New Jersey to Spokane/Coeur D'Alene and returned to Washington. When he began his trip, Mr. was away from the office on personal business. Mr. substituted for the Secretary at the same political functions in Idaho that Mr. attended. According to the Department's report, he also conducted a number of official functions which had been planned for a trip in June.

The breakdown for official and political events during Mr. trip is as follows:

EVENT	DURATION	OFFICIAL	POLITICAL
People for the West Meeting Coeur D'Alene, ID, 5/14	90	90	
"Elephant Stomp" Post Falls, ID, 5/14	75		75
GOP Reception Hayden Lake, ID, 5/14	170		170
Meeting with FMC Representatives Coeur D'Alene, ID, 5/15	60	60	
Project Review Meeting with Simplot Coeur D'Alene, ID, 5/15	30	30	
Breakfast with Mining and Timber Executives Coeur D'Alene, ID, 5/15	60		60
Meetings with Hecla Mining Company Employees and Board of Directors Coeur D'Alene, ID, 1/15	105	105	
Media Interviews Coeur D'Alene, ID, 1/15	45	45	
Rotary Club Speech Coeur D'Alene, ID, 5/15	60	60	
TOTAL TIME (MINUTES)	695	390	305

It is unclear when Messrs. \_\_\_\_\_ and \_\_\_\_\_ were asked to perform this political and official travel. The Department's report indicates that Messrs. \_\_\_\_\_ and \_\_\_\_\_ were asked to substitute for the Secretary of the Interior at both political and official events in Idaho shortly before they occurred.

#### DISCUSSION AND ANALYSIS

As noted in your letter, appropriated funds may be spent only for the purposes for which they have been appropriated. 31 U.S.C. § 1301. According to the government's travel policy, agencies may authorize only that travel which is necessary to accomplish the purposes of the government effectively and economically, and may reimburse only those expenses essential to transacting official business. 41 C.F.R. § 301-1.101(a); 41 C.F.R. § 301-1.3(b).

As noted previously, the travel by Messrs. \_\_\_\_\_ and \_\_\_\_\_ in question here constituted "mixed" trips which included both official and political events. It is often difficult to characterize travel as either purely official business or purely political, because both types of activities may occur on the same trip, and because of the absence of clear criteria to apply in attempting to distinguish between what is official and what is political. As we pointed out in a 1981 report:

"[W]e have long held that the President and his Cabinet and other subordinates have a duty to inform the public about Government policies, and policymaking officials traditionally have utilized Government resources to disseminate information in explanation and defense of those policies.

"As we have stated in the past, 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. So far as we are aware, no guidelines of a legally binding nature have been established by legislation, judicial decision, or otherwise. Therefore, we have no basis to conclude as a matter of law that appropriated funds were improperly used."<sup>2</sup>

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<sup>2</sup>Report to the Chairman of the House Committee on Government Operations, dated March 6, 1981, B-196862, Review of White (continued...)

Recognizing these difficulties, the Justice Department has held that determinations concerning official versus political events must be made on a case-by-case basis "by the persons most familiar with the facts of a particular trip [who] will have to assess all of the circumstances involved and apply a large measure of common sense." 6 Op. Off. Legal Counsel 214, 216 (1982).

With these considerations in mind, we have reviewed the Interior Department's determinations concerning which events in the travel by Messrs. and were official and which were political. Based on the information provided to us, the events which the Department classified as political clearly were. We have no reason to question the Department's determination that the other events were official.

The Counsel to the President has developed guidelines for allocating travel expenses of senior administration officials who perform such mixed trips. See Memorandum for the Cabinet dated February 12, 1990, "Guidelines for Allocating Travel Expenses of Senior Administration Officials."<sup>3</sup> These guidelines, not having been promulgated as a formal rule, regulation, or Executive order, do not carry the force of law. However, the guidelines follow closely the analysis contained in the 1982 Justice Department opinion, cited above, and adopt the cost allocation method recommended in that opinion.

The guidelines provide that when the traveler's activity includes both official and political functions on a given trip, the travel expenses are to be allocated based on the time spent at each function. For example, the travel expenses of a trip involving just two events of equal duration--a 1-hour official function, such as a speech on administration policy, and a 1-hour political function, such as attending a fundraising event--would be allocated 50 percent to official purposes and 50 percent to political purposes.

The Department of the Interior has adhered to the guidelines with respect to the travel by Messrs. and . The Department calculated that 27.2 percent of Mr. trip was political (390 minutes spent on political

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<sup>2</sup> (...continued)

House and Executive Agency Expenditures for Selected Travel, Entertainment, and Personnel Costs (AFMD-81-36), at 1-2.

<sup>3</sup>"Senior administration officials" is defined to include those federal officials appointed by the President with the advice and consent of the Senate.

activities divided by 1435 minutes of combined official and political activities). Applying the 27.2 percent to Mr. total travel expenses of \$1,868.62, the Department concluded that \$508.26 should be reimbursed by the Republican National Committee (RNC). The Department has received \$455.94 from the RNC, and is seeking an additional \$52.32.

The Department calculated that 44 percent of Mr. trip was political (305 minutes spent on political activities divided by 695 minutes of combined official and political activities). Applying the 44 percent to Mr. total allowable travel expenses of \$602.75, the Department concluded that \$265.21 should be reimbursed by the RNC. Since the RNC had reimbursed the Department \$280.29 for Mr. travel, the Department is refunding \$15.08.

A final issue is whether salary payments to Messrs. and should be reimbursed for any of the time they devoted to political activities during their travel. Messrs. and are not subject to legal restrictions on their political activities that are imposed on other federal employees by the Hatch Act, 5 U.S.C. §§ 7324 et seq. ✓

Moreover, the rate of pay for their positions is set by statute, 5 U.S.C. § 5316, ✓ and they are not governed by the provisions of the Annual and Sick Leave Act of 1951, as amended, 5 U.S.C. §§ 6301 et seq. ✓ by virtue of 5 U.S.C. § 6301(2)(x) ✓. As a result, Messrs. and are in a continuous pay status, and they are entitled to their salaries as a matter of law regardless of whether they are performing the duties of their offices. In other words, their right to payment of their salaries is derived from the fact that they hold the office and not from their performance of official duties. See B-216385, November 29, 1984. ✓

Accordingly, we have no basis on which to question payment of Messrs. and salaries during their travel, even while they were engaged in political activities. Employees in a continuous pay status do have an obligation to expend an honest effort and a reasonable proportion of time on the performance of their official duties. See 5 C.F.R. § 2635.705(a) ✓ published at 57 Fed. Reg. 35061 (Aug. 7, 1992). In this connection, our review indicates that the political activities Messrs. and

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\*They are exempt from the Hatch Act under 5 U.S.C. § 7324(d)(3) ✓ as presidential appointees confirmed by the Senate who have policy-making responsibilities in the nationwide administration of federal laws.

performed during their travel to Idaho took place in the evening or very early in the morning.

In accordance with the agreement reached with a member of your staff, we will make this opinion generally available 7 days from the date it is signed.

Sincerely yours,

*for James F. Hinchman*  
Comptroller General  
of the United States