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

B-198488

AUGUST 13, 1980

The Honorable Mark O. Hatfield
Ranking Minority Member
Committee on Energy and
Natural Resources
United States Senate

Dear Senator Hatfield:

SUBJECT: Alleged Unauthorized Use of Appropriated Moneys by Interior Employees (CED-80-128)

This is in response to your March 24, 1980, letter requesting our Office to investigate the possible unauthorized use of appropriated funds by the Department of the Interior's Office of Surface Mining (OSM). In your letter, you asked that we investigate allegations that OSM misused appropriated moneys by conducting illegal lobbying activities to defeat pending legislation in the House of Representatives.

You gave us certain documents which suggested to you that OSM employees might have violated 18 U.S.C. 1913 (a criminal matter) by engaging in the organization and operation of lobbying efforts with public interest groups to detrimentally affect legislation pending before a House committee. You also said that some of the public interest groups with which OSM had contact were not registered lobbyists as required by Federal law. You specifically asked us to verify the existence of these and other documents and information which would be of value in addressing allegations of unauthorized use of appropriated moneys (a civil matter).

Our review disclosed evidence that OSM employees were actively involved in trying to defeat S.1403, pending legislation regarding coal mining activities. Most of these activities, in our opinion, did not constitute unauthorized use of appropriated moneys. Some information suggests that there may have been some activities that did constitute unauthorized use of appropriated moneys. However, other information indicates there were no such activities. Since there was conflicting information concerning such activities, we cannot conclude that any violations of appropriation act restrictions occurred. With respect to whether 18 U.S.C.

(140002)

1913 was violated, we can not express an opinion because criminal matters are beyond our jurisdiction.

BACKGROUND

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., calls for strong environmental controls to guide the coal mining industry and to strengthen certain State and Federal standards for surface coal mining and reclamation. It established the Office of Surface Mining Reclamation and Enforcement (hereafter referred to as the Office of Surface Mining) under the Department of the Interior to implement the provisions of the act.

S.1403, which the Senate passed on September 11, 1979, would

--postpone for 12 months the date for submitting State surface mining programs for Federal approval,

--postpone the date for implementing the surface mining control program on Federal lands to coincide with the date for implementing the State program, and

--add language to the act which specifies that a State program need only comply with the provisions of the act itself and not with the regulations issued by OSM pursuant to the act.

OSM and the Department opposed these amendments. They opposed the extension provisions because a 7-month extension already granted had provided adequate time to the States to develop their programs and further delays would cause unnecessary environmental degradation. The second provision was opposed as unnecessary because it could be accomplished by a change in the regulations. They opposed the third provision because it could result in years of litigation of the many issues in the act which were clarified in the regulations and could lead to court challenges of the Secretary's eventual approval or disapproval of a State's program.

On October 4, 1979, S.1403 was referred to the House Subcommittee on Energy and the Environment, Committee on Interior and Insular Affairs, where it is now pending.

DISCUSSION

Our review of documents in OSM's files and our talks with former and present OSM employees and with representatives of interested groups indicate that OSM employees were actively involved in trying to defeat S.1403. We noted evidence of situations where OSM employees contacted Members of Congress and their staffs, State government officials, and interested groups to make known the agency's position opposing S. 1403. Most of these activities did not, in our opinion, violate Federal appropriation act prohibitions on lobbying activities of Government agencies.

As discussed below, we believe Federal prohibitions on lobbying activities of Federal agencies are aimed at agency efforts to generate grassroots support of, or opposition to, pending legislation so as to influence the votes of Members of Congress. Federal anti-lobbying statutes do not, in our opinion, prohibit dissemination to the public of information that may include the disseminating agency's position on pending legislation. Thus, agency personnel would not necessarily be violating these laws by meeting with interested groups and expressing the agency's position on pending legislation. Nor do we think Federal law prohibits efforts by agency personnel to persuade Members of Congress to vote on pending legislation in a particular way. Interior employees, therefore, did not violate Federal anti-lobbying statutes by directly contacting Members of Congress or members of their staffs in order to influence the Members' positions on pending legislation.

Section 304 of the Department of the Interior's appropriation acts for fiscal years 1979 and 1980, Public Law 95-465, October 17, 1978, and Public Law 96-126, November 27, 1979, respectively, prohibits lobbying activities as follows:

> "No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete, in accordance with 18 U.S.C. 1913."

Another anti-lobbying appropriation provision is also pertinent--section 607(a) of the Treasury, Postal Service, and General Government Appropriations Act, 1979, and the same act for 1980, Public Law 95-429, October 10, 1978, and Public Law 96-74, September 29, 1979, respectively, 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." (Emphasis added.)

The language of both sections 304 and 607(a) shows the same apparent objective of prohibiting agencies from attempting to influence legislation through public persuasion. Useing words like "public" in section 304 and "publicity" in section 607(a) indicates the prohibition to be against contacts with members of the public, as opposed to contacts with Members of Congress. We have not previously had occasion to interpret section 304, but when interpreting section 607(a) we have not viewed expenditures incurred in connection with direct contact with Members of Congress as violating this provision. (See B-178648, September 21, 1973; and B-164497(5), March 10, 1977.) Rather, the prohibition of both sections, in our view, applies only to expenditures involving appeals addressed to the public.

When interpreting section 607(a), we have consistently recognized that an agency has a legitimate interest in communicating with the Congress, as well as with the public, regarding its policies and activities. See our September 21, 1973, and March 10, 1977, decisions. This view is, we believe, necessary because of the legitimate public information functions of an agency. Thus, public officials may report on and discuss the activities and policies of their agencies and of the administration. Expenditures of appropriated funds for dissemination of information in those categories is lawful. It must be recognized that to the extent that the policy of an agency is embodied in pending legislation, discussion by officials of that policy will explicitly or implicitly refer to such legislation and will presumably support or oppose it. An interpretation of section 607(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.

We have held that the section 607(a) prohibition does apply to agency suggestions to the public that they contact their elected representatives and indicate their position on pending legislation (B-178648, September 21, 1973). See also B-128938, July 12, 1976; and B-116331, May 29, 1961, both of which involved agency exhortations to the public to contact Members of Congress regarding pending legislation. We think section 304 covers similar activities plus, perhaps, more subtle public appeals--that is, public information campaigns which, although they do not involve direct suggestions to the public that they should contact elected representatives to let them know their feelings regarding pending legislation, would tend to promote public support of or opposition to such legislation. (See S. Rept. 95-276, pp. 4 to 5, 1977.) However, in the present case we did not find information indicating more subtle public appeals that might violate the broader aspects of section 304. Nevertheless, we did find some information indicating that there may have been activities that violated sections 304 and 607(a).

The remaining pertinent anti-lobbying statutes, 18 U.S.C. 1913 and the Federal Regulation of Lobbying Act, 2 U.S.C. 261 et seq., are both criminal laws, enforcement of which is the responsibility of the Department of Justice and the courts. Section 1913 of the Criminal Code, 18 U.S.C. 1913, prohibits lobbying activities as follows:

> "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, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress through the proper official channels, requests for legislation

> or appropriations which they deem necessary for the efficient conduct of the public business.
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> Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

Because enforcement of criminal statutes is beyond our jurisdiction, we generally do not express an opinion whether they have been violated. See, for example, 20 Comp. Gen. 488 (1941); B-178648, September 21, 1973; B-128938, July 12, 1976; and B-164497(5), March 10, 1977.

We did find some information that suggests the possibility that some OSM employees may have engaged in activities that may have violated appropriations acts (sections 304 and 607 previously discussed) lobbying restrictions. However, where there was information about an action that might have constituted a violation, it was either insufficient or conflicted with other information so as to preclude us from concluding that a violation had occurred. Examples of such activities follow.

- --A previously terminated Special Assistant to the Director told us that OSM had a meeting at which it was agreed that an OSM official would go forward with a program that included contacting environmental groups to have these groups bring pressure on their Representatives to oppose S.1403. Others who attended the meeting said they did not recall such an agreement.

- --A former Assistant to the Director for Congressional and Legislative Affairs stated in a memorandum that he met with representatives of interested groups to map out a House lobbying strategy and assign tasks. All the interested groups we talked to regarding this matter said no strategy was mapped out nor were tasks assigned. However, one individual recalls that the OSM official suggested what people could do to stop S.1403 and which Member of Congress might be

persuaded to vote against S.1403. According to the memorandum, members of the House Committee on Interior and Insular Affairs were to be contacted urging them to publicly oppose S.1403 before it got too far in the House. According to documents we received from this individual, information was passed out by the OSM official listing Representatives to contact who might be persuaded to vote against S.1403 on the House side.

--The former Assistant to the Director for Congressional and Legislative Affairs said, in the same memorandum, that he and another Federal employee had met with representatives of some 30 national conservation groups and asked them to get mailings out to their local affiliates right away. The conservation groups we contacted said they could not recall whether or not they were asked.

In testimony given before the Subcommittee on Energy and the Environment, House Committee on Interior and Insular Affairs, March 31, 1980, the Director, OSM, said that suggestions by an OSM employee to have interested groups lobby their Representatives to defeat S. 1403 were not implemented. While our review revealed no conclusive information that any of the suggestions to conduct unlawful lobbying activities were ever implemented, some of the above information tended to show that some of the suggestions may have been implemented.

During the review, we interviewed the former Assistant to the Director for Congressional and Legislative Affairs to obtain his recollection of the memorandums he wrote. After our interview, we sent him a summary of the interview and asked him to make any changes necessary to make the summary factually correct. Upon advice of his lawyer, he has refused to provide us confirmation of what he told us during the interview. Also, he does not plan to furnish us with more specifics regarding the statement in his memorandum " * * * to map out a House lobbying strategy and assign tasks." In addition, he has not furnished us with a statement of what records he kept of meetings and what became of them.

In your letter you also requested us to

--determine whether OSM employees permitted public interest group representatives to

obtain access to and use of Government FTS telephones and computers for lobbying and

--determine whether certain public interest groups were registered lobbyists.

We found no indications that OSM employees permitted public interest group representatives to use OSM FTS telephones or computers for lobbying.

During the March 31, 1980, House Subcommitte hearings, some concern was expressed that OSM had a "hot line" to an interest group. We found no evidence of such a direct line to any interest group. According to OSM's Assistant Director for Management and Budget, except for two toll-free lines used to provide coal mine operators with information on certain exemptions from coverage under a new regulatory program and advice on how to comply with quarterly fee payments to the abandoned mine land reclamation fund, the only special telephone equipment used by OSM is a recording and answering device for announcing job vacancies.

A draft letter was prepared for signature by representatives of five interest groups requesting Senators "* * * to resist any consideration of S.1403 on the Senate floor at this time and to vote against the bill if it does come up for a roll-call." We subsequently verified with two Senators' offices that the letter was sent out in final to the Senators and dated July 31, 1979. According to every interest group we contacted, the letter was not designed by nor did it originate in OSM. These interest groups said that OSM never drafted any letters for them but that environmental groups themselves drafted letters and sent them around to other groups for approval.

As requested, we contacted the Office of the Clerk in the House and the Senate Office of Public Records to ascertain whether the five organizations were registered as lobbyists as required by Federal law. We found that two of the five organizations were not registered lobbyists and that none of the individuals who worked for these organizations were registered. However, we did not ascertain whether these organizations are subject to the registration requirements because this is a matter on which we have no audit authority.

CONCLUSION

We found documents in OSM's files indicating that OSM was actively involved in trying to defeat S.1403. Most activities, however, did not, in our opinion, violate the lobbying restrictions discussed above. The former Assistant to the Director for Congressional and Legislative Affairs memorandums indicate that OSM was directly lobbying Members of Congress to defeat S.1403, action that we do not consider to be in violation of Federal law. The memorandums also indicate that OSM had met with interested groups, action which, in and of itself, also does not constitute a violation of Federal laws.

Some information suggests that OSM urged interested groups to lobby their Representatives to prevent S.1403 from going any further in the House. However, while some of the records we reviewed and some interviews we had tend to support the conclusion that some OSM employees may have engaged in unlawful activities to promote public opposition to S.1403, we do not believe that information is sufficient for us to conclude that violative activities did take place.

AGENCY COMMENTS AND OUR EVALUATION

Interior officials stated that there is no basis to conclude that OSM employees violated Federal laws prohibiting lobbying activities. They stated that the general tone of the draft report was misleading because several statements, if taken out of context, could leave the reader with the impression that there may have been wrongdoing even though the evidence did not support such a conclusion.

We agree with Interior officials that the evidence is not conclusive. However, some of the information tends to indicate that some actions on the part of OSM employees may have constituted unauthorized use of appropriated moneys.

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Our review was performed primarily at OSM headquarters in Washington, D.C. We reviewed various documents at OSM's files and talked with former and present OSM employees. We also discussed the allegations with officials of many

different interest groups. With the exception of the former Assistant to the Director for Congressional and Legislative Affairs, all parties fully cooperated in our review.

Unless you publicly announce the contents of this report, we plan no further distribution of the report until 10 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Comptroller General
of the United States