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B-144323 November 4, 1960

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Honorable Joseph S. Clark United States Senate

Dear Senator Clark:

Further reference is made to your letter of October 24, 1960, acknowledged October 25, concerning the legality of using certain materials in Departmental releases which might cause the releases to be considered as campaign documents.

You referred to us a copy of a release entitled "Some Facts About Senator Kennedy's Program for "Supply Management" for "securing full parity of income for the American Farmer" put out by True D. Morse, Acting Secretary of the Department of Agriculture, on October 3, 1960, and made available by the Department on request. You also referred to advice you had received that Secretary of Commerce Mueller has given Commerce Department circulation in Departmental releases to certain campaign speeches which he has made to date on behalf of the Vice President, which speeches were reportedly printed on Commerce Department letterhead stationery. You have requested that we advise you as to the legality of promulgating such releases, and what Laws and administrative regulations cover the situations involved.

We have not found any pertinent administrative regulations, nor does it appear that there are any specific prohibitory statutes on the subject. The Hatch act makes it unlawful for any person employed in the Executive branch of the Federal Government to use his official authority of influence for the purpose of interfering with an election or affecting the results thereof. But the Hatch Act by its terms specifically excludes, among others, heads and assistant heads of Executive departments. 5 U.S.C. 118i. Section 612 of Title 18, United States Code, the only other specific prohibitory statute that might be involved, makes it a crime to publish or transport in interstate commerce information concerning candidates for the office of President or Vice President of the United States and others without inclusion of the names of those responsible. As the names of the officials responsible for the releases in question appear thereon, it is evident that section 612 has not been violated. Likewise, the prohibition against the use of appropriated funds to influence the members of Congress with respect to legislation (18 U.S.C. 1913) is clearly not for application. However, there is a general requirement that:

"Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others." (R.B. 2678; 31 U.S.C.628)

The basic authority of the Department of Agriculture is contained in section 511, Title 5, United States Code:

"There shall be at the seat of government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of the word, and to procure, propagate and distribute among the people new and valuable seeds and plants."

And the Department of Agriculture and Farm Credit Administration Appropriation Act, 1961, 74 Stat. 232, provides under the heading "MARKETING RESEARCH AND SERVICE":

"Marketing research and agricultural estimates: For research and development relating to agricultural marketing and distribution for analysis relating to farm prices, income and population, and demand for farm products, and for crop and livestock estimates, $16,515,000 * * *."

From the above language, we are of the opinion that appropriated funds were available to the Department for the purpose of examining into Senator Kennedy's proposals. Also, it may be mentioned incidentally that the House Committee on Government Operations recommended in Report No. 2219, House of Representatives, 86th Congress, 2d Session, at page 13:

"III. That the Department of Agriculture begin without delay a comprehensive and objective study of the major methods which are being used or proposed for the major methods which are being used or proposed for the purpose of price support and production adjustment in order that the most complete an accurate factual data possible concerning the advantages and disadvantages of each such proposed method or combination of methods will be available before the next session of Congress. In this study, the Department should give careful consideration to the probable effectiveness of each such method in promoting the following objectives:

"(1) and adequate supply of food and fiber for consumers at fair prices";

"(2) protection of our agricultural resources";

"(3) reasonable costs to the taxpayers"'

"(4) fair income for farmers";

"(5) proper utilization for agricultural production."

"In the event there is any significant difference of opinion within the Department of Agriculture concerning the advantages or disadvantages of particular methods of price support or production adjustment, minority as well as majority views should be included in published results of the study. Data prepared by specialists in particular program areas for this study should not be revised or deleted because of policy considerations."

Accordingly, we do not believe there is any basis upon which this office could raise legal objection to the release of the Department of Agriculture.

With respect to release of speeches made by the Secretary of Commerce, we have been informed by Department officials that a scrupulous distinction is made between those speeches which are considered political and those considered as nonpolitical. As an example, we were advised that from October 24 through the 26th the Secretary, gave four speeches to various local civic organizations which speeches, although billed by the organizations as nonpolitical, were not reproduced. And that in view of the political nature of the speeches, the Secretary's expenses were paid for by the Republican National Committee rather than from appropriated funds.

We asked for and received copies of several of the Secretary's speeches which were considered to have been delivered in the performance of his functions as Secretary and therefore considered nonpolitical in nature. It is difficult to determine the criteria used or that which should be used for distinguishing between political and nonpolitical speeches. Speeches by cabinet officers and other high Government officials, accompanied by press releases, have long been a standard practice. It is, perhaps, to be expected that a statement which in a non-election year would be considered a normal exposition of administration policies may be considered a political statement in an election year.

The answer to your questions, therefore, narrows down to whether in any particular case a speech or a release by a cabinet officer can be said to be so completely devoid of any connection with official functions or so political in nature that it is not in furtherance of the purpose for which Government funds were appropriated, thereby making the use of such funds to cover the costs related to the speech and its release unauthorized. This is extremely difficult to determine in most cases as the lines separating the nonpolitical from the political cannot be precisely drawn.

Consequently, where a determination is made by a cabinet officer, or an assistant that a release is made in connection with official duties and there is some basis for such a determination, we do not feel that we would be warranted in questioning the expenses incurred in making the release. As a practical matter, even if we were to conclude that the use of appropriated funds for any given speech or its release was unauthorized, the amount involved would be small, and difficult to ascertain; and the results of any corrective action might well be more technical than real.

Sincerely yours,

FRANK H. WEITZEL Assistant Comptroller General of the United States