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B-150038 November 2, 1962

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Honorable Karl E. Mundt United States Senate

Dear Senator Mundt:

This is in response to your letter of September 29, 1962, transmitting a copy of a report brought to your attention by a constituent and requesting our opinion as to whether circulation of the report by the Department of Agriculture constituted a violation of the principles of lobbying and a misuse of Federal funds.

We have not been able to trace to the Department of Agriculture the specific document furnished with your letter. However, 1,300 copies of the identical text covered in four pages instead of two were prepared by the Department as a press release and distributed as follows:

Number

Parties who have a standing request to receive certain types of press releases -- Senators, members of the House, educational institutions, farm organizations, grain associations, other Federal agencies, banks, commercial firms, and others 555

Agricultural Stabilization and Conservation Service -- Washington officials, State offices, And commodity offices 350

Press and other public information outlets 240

Department files and Office of the Secretary Of Agriculture 140

Total distributed 1,285

Unaccounted for-attributed mainly to counting errors 15

Total produced 1,300

The cost of preparing these 1,300 copies, which were printed by stencil amounted to $21.78. We were advised by Department officials that the cost of distributing a press release is not readily determinable from Department records since, for example, a large number of releases are delivered by messenger or mail along with other material issued by the Department.

Section 509 of Public Law 87-125, approved August 3, 1961, 75 Stat. 283, provided as follows:

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by an individual, corporation, or agency included in this or any other Act, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the Congress."

It does not appear that the document in question may be said to have been designed to support or defeat legislation pending before the Congress, unless we consider that the statutory inhibition was intended to cover such matters as, for example, the broad category of Agricultural legislation without reference to any specific bill or proposal pending before the Congress. In any event, we have taken the position that it does not appear that the section 509 could reasonably be construed as precluding high Administration officials from either explaining or urging support of the Administration's program in their speeches or from issuing statements to the press in which they state the Administration's position concerning pending legislative matters. To so construe the section would bring it in direct conflict with the legitimate interest and responsibility of a governmental agency in keeping the public informed as to its various programs. Section 509, in precluding the use of appropriated funds for publicity or propaganda purposes designed to support or defeat legislation pending before the Congress, would appear to be directed toward precluding activities and expenditures of an extraordinary nature not related to the normal operating functions of an agency. Admittedly, the line separating legitimate activity in this regard and activity which would require the conclusion that a prescribed lobbying campaign was, in fact, involved is a finely drawn one. However, we do not believe that the normally expected statements, such as are here involved, of a cabinet officer expounding an Administration theme and the wider audience achieved through the issuance of a press release constitute publicity or propaganda within the meaning of the section.

Accordingly, we do not believe there is any basis upon which this Office would be justified in concluding that there has been a misuse of Federal funds.

The only other statutory provisions which might be for consideration in the matter are those contained in section 1913 of title 18, United States Code, as follows:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, shall 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 other-wise, 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 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."

"Whoever, being an officer or employee of the United States or of any department of 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."

This statute contains fine and imprisonment provisions which are criminal in nature and which may be enforced only through judicial action. It is not within our authority to enforce the penal provisions of such statutes. Because the questions as they relate to section 1913 are properly for consideration by the Department of Justice, we do not believe it would be appropriated for us to render an opinion as to whether the document in question violates this statute.

We will, if you desire refer this matter to the Department of Justice for its consideration. In this connection, however, we invite your attention to the Congressional Record for May 15, 1962 (daily), pages 7807 and 7809, which contains the views of the Department of Justice concerning the applicability of section 1913 in the case of a letter sent to Members of the Congress by the Director of the Peace Corps urging support for Peace Corps legislation.

Sincerely yours,

Joseph Campbell Comptroller General of the United States