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B-155667 January 21, 1965

Number: B-155667

Date: 1965-01-21

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The Honorable Thomas B. Curtis House of Representatives

Dear Mr. Curtis:

This is in response to your letter of December 23, 1964, requesting that we review the position taken in our letter of December 15, 1964, to you concerning the propriety of Post Office Department activities in promoting a fund drive of the Eleanor Roosevelt Memorial Foundation.

Briefly stated, in view of the purposes for which the Foundation was established by the Congress; of the fact that the assistance furnished by the Department was virtually at no expense to appropriated funds; and time the utilization of the services of Federal employees during official working hours for the collection of charitable contributions throughout the Government has been a long-established practice recognized as a proper exercise of administrative discretion, we concluded that the Post Office Department determination to cooperate as it did in the fund drive did not warrant objection by our office.

In requesting that we reconsider our conclusion, you state your complete agreement with the concept of permitting Federal employees to solicit their own people for Community Chest and other charitable drivers. But you suggest that the nature of the questioned Post Office Department activities, i.e., display of posters on Department trucks and in Post Office lobbys, and a special one-time delivery of third class mail for the benefit of the Foundation, is a far cry from the solicitation of funds from Federal employees. You point out that the latter is clearly permissible through custom and understanding and is no more than any private employer permits, whereas the Post Office Department situation cited goes way beyond anything permitted before by the Federal Government and would never be permitted by any private corporate employer with responsibility to its stockholders. You add t hat you are distributed by the implications inherent in the exercise of administrative discretion on the ground that the law is silent, as a bases for violating a bases and understood principle that Federal funds, facilities, and employees' time can only be used for purposes designated by law. And, you question the propriety of allowing a majority of Federal employees to bind their co- employees, through the National Association of Letter Carriers in this case, to a campaign of the nature involved here.

We, of course, agree with your basic general promise that Federal funds, facilities and employers' time are available only for purposes authorized by law. The questions you pose, therefore, must be considered in the light of whether the activities at issue were authorized by law; but we believe it is not

necessary that each and every authorized governmental employee activity be specifically designated by statue. In the instant situation, guided by the nature of the charitable organization involved and of its establishment by the congress and particularly by the fact that the employee contributions of time were on a voluntary basis with no incurrence of expense to appropriated funds, we concluded that the Federal participation was not sufficiently different from activities long considered authorized without specific statutory sanction as to require objection on legal grounds. Nor do we consider, as you suggest, that the specific authority granted concerning cancellation element dies serves to restrict the permissible area of administrative discretion with regard to employee duty.

Of course, as you indicate, a line has to be drawn somewhere. Where that line should be with regard to any given situation is essentially a matter of judging the propriety of the administrative discretion exercised in terms of the authority vested by the Congress in agency ease to conduct their agencies' activities. The heads of departments and agencies of the Government have broad discretion with respect to the performance of duty by their employees. See 5 U.S.C. 22 which authorizes the head of each department to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and elements, the distribution and performance of its business. . . ." See, 2 Comp. Dec. 173, 21 id. 203, 28 Comp. Gen. 111, 30 id. 5211, 32 id. 189. As we stated in our earlier letter to you, Government cooperation in charitable fund raising campaigns has been a long-established authorized practice, notwithstanding lack of specific legislation. The requisite comment thereto of the Congress has been implied. Basically, our conclusion in the instant situation was, and remains, that there was not sufficient difference between the Post Office Department activities and those traditionally allowed, to declare a failure of congressional consent. Any such declaration under the surrounding circumstances would be highly conjectural on our part and, therefore, particular since there were not appropriated funds misused, we did not deem it appropriate to substitute our judgment for that of the administrative officials involved.

In connection with the establishment of criteria to serve as guidelines in future cases, we believe, in view of the prevailing rule by the accounting officers of the Government that the head of an agency has considerable discretion in the management and control of the agency's employees, that the matter is more properly a subject for congressional consideration or for consideration by the President, with a view to establishing an overall policy for the executive departments and agencies, than for consideration by this office.

Absent any specific legislation or overall executive branch policy on the subject, this Office must continue to review agency actions in this area in the light of all of the surrounding circumstances and to afford considerable weight on the side of administrative propriety, unless clear abuse of discretion or misapplication of appropriated funds is evident.

With reference to your comments concerning the statement in our letter of December 15 that the National Association of Letter Carriers conceived the endeavor and along with the Eleanor Roosevelt Memorial Foundation promoted the fund-raising drive, the fact that the Association and the Foundation participated to that extent has no bearing whatsoever on the legality of the actions of the Post Office Department in assisting with the drive. The statement

was included in our letter solely as a matter of background information.

Sincerely yours,

Joseph Campbell Comptroller General of the United States