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The Honorable Howard W. Cannon, Chairman Committee on Rules and Administration United States Senate

Dear Mr. Chairman:

This refers to your letter of July 1, 1976, in which you request our advice as to the legality of providing "government-rented mobile radio telephones" to be installed in privately owned automobiles of members of the Senate.

After a thorough review of the matter, we have found no law or decision of this Office bearing directly on the question of installing mobile radio telephones in privately owned automobiles of officers or employees of any branch of the Government nor were we able to locate the specific General Services Administration (GSA) regulation to which the Legislative Counsel referred in his letter to you with your submission. In considering the propriety of the proposed installation as a matter of Government policy, we therefore looked to several analogous statutes.

Attention is directed to section 7, Act of August 22, 1912, 37 Stat. 414, as amended, U.S.C. 679 (1970). This statute provides as follows:

"Except as otherwise provided by law, no money appropriated by any Act shall be expended for telephone service installed in any private residence or private apartment or for tolls or other charges for telephone service from private residences or private apartments, except for long-distance telephone tolls required strictly for the public business, and so shown by vouchers duly sworn to an approved by the head of the department, division, bureau, or office in which the official using such telephone or incurring the expense of such tolls shall be employed: Provided, That the cost of installation and use of telephones in residences leased or owned by the Government of the United States in foreign countries for the use of the Foreign Service may be allowed from Government funds, under such regulations as may be prescribed by the Secretary of State, except that the restrictions in this section relating to long-distance tolls shall also apply to telephones installed in such official residences."

While this prohibition does not, per se, apply to the installation of telephones in private automobiles, we believe the same policy considerations which led to enactment of 31 U.S.C. 679 applicable.

An early decision of the Comptroller of the Treasury, G3 Ms Comp. Dec. 575, November 12, 1912, construed the intent of the statute, now codified as 31

U.S.C. 679, supra as follows:

"Section 7 of the Legislative, Executive and Judicial Appropriation Act, set out in your letter, was not passed as I understand for the purpose of requiring government employees to bear the expenses of telephone messages on public business, but on the contrary, its plain intent was that the Government should not be chargeable with the cost of private and personal messages of such employees. The provision in question was passed to secure the latter purpose and grew out of the fact that a large number of public officers here in the District of Columbia had installed in their private residences telephones at Government expense under the guise of their use for public purposes, when in truth the Government had provided them with sufficient telephones in their public offices to transact all the public business.

"Under such circumstances as exist here at the seat of Government the clause in question needs no interpretation, but where a forest ranger must necessarily use a telephone on official business and us it from his station in the forest, which happens also to be the place where he lives, I think it would be a perversion of the intent of the law to hold that those in charge of this service are without authority to install a telephone for such public use in such a building because of the said provision of law. If, however, the official desires to use said instrument for his own personal convenience at any time, the service should be charged for at so much per message, which would insure that the Government would not be paying for the private telephoning of such official.

"It is not intended to hold herein that telephones may be installed and operated at Government expense in all residences which an official happens to also use as an office or official headquarters. The intent of Congress, as above set out, must be kept in mind in all cases, and no opportunity made for an official, under the guise of public business, to have a telephone for his private use paid for out of public funds, but on the contrary this rule should not be so rigid as to compel an officer or employee to pay for public telephoning from his private purse."

We recognize that a mobile radio telephone installed in the private automobile of a Senator may be used primarily or even only for the transaction of public business. Nevertheless, we have disallowed installation of telephones in quarters occupied as private residences even though the telephones were extensively used for the transaction of public business. See, e.g., 4 Comp. Gen. 19 (1924); 7 id. 451 (1928). In 10 Comp. Gen. 428 (1931) and 11 id. 365 (1932), installation of telephones in residences of foreign service officers and in an embassy were denied (prior to the amendment enacted by the Act of april 30, 1940, 54 Stat. 175 specifically exempting such structures from the proscription of the Acts of August 23, 1912). See also 11 comp. Gen. 87 (1931); 15 id. 885 (1936); 21 id. 230 (1941); 21 id. 907 (1942); 26 id 668 (1947); 33 id. 530 (1954); 35 id. 28 (1955); and, May 19,1976 (copy enclosed). Exceptions have generally been made only when the private residence in question was the only location available under the circumstances for the conduct of official business. Cf, 4 Comp. Gen. 891 (1925) permitting an isolated lighthouse keeper to have a telephone installed in his combined office and home at Government expense. While it could be argued that a Senator driving along a highway is equally isolated or prevented from having ready access to telephone facilities for transaction of urgent business, we think it unlikely that he would be so dependent on a mobile telephone except on rare occasions. In this connection, we have been informally advised that the GSA has denied similar requests by Government officials in the

Executive Branch, holding tht 31 U.S.C. 679, supra, precludes such instalation. We also not that GSA telecommunications and public utiltites regulations concerning the provision of "special service and equipment" (41 C.F.R. 101-35.308.9)) emphasize that agencies must review the cost of such items in the light of their actual need for them. While the regulations are silent about mobile phones, they indicate that special devices such as Bell Boys will be provided only for emergency activities and in unusual operating situations.

In summary, while there is no specific statutory prohibition against purchase of mobile radio telephones for installation in private automobiles, we would be inclined to apply the policy considerations set forth in the decisions implement 31 U.S.C. 679 to preclude this use of appropriated funds. (Of course this does not offset the allowance for telephone calls and related services authorized for payments form the constingent fund of the Senate by 2 U.S.C. 58 (Supp. IV, 1976), The fund would be available for the actual cost of official telephone calls, regardless of the location of the telephone from which they were made. We must defer to your Committee, however, any determination that the contingent fund is also available for installation of the telephone equipment proposed.

Notwithstanding the above, we believe that if Congress feels that installation of mobile phones in its members' private automobiles is desirable, it should enact such authority into positive law, including in such legislation a statutory resolution to the questions raised by the Legislative Counsel.

We trust the foregoing information will be helpful.

Sincerely yours,

R. F. Keller Comptroller General of the United States

Enclosure