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Tobacco, Local Control [1]

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Sally Herndon Malek, MPH
Manager, North Carolina Project ASSIST
Division of Health Promotion
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sally_malek@mail.ehnr.state.nc.us

Biosketch

Sally Herndon Malek is Manager of Project ASSIST in the North Carolina Department of Environment, Health, and Natural Resources, Division of Health Promotion. She has been with the project since its inception, and served as the Chair of the Project ASSIST Training Subcommittee on a national level from 1991 - 1996.

Sally serves as Chair of the Association of State and Territorial Health Officers' (ASTHO) Tobacco Prevention and Control Network. She has served as a Network officer since its inception in 1994 and was ASTHO's representative to the planning committee for the national conference entitled "Communities for Tobacco Free Kids: Drawing the Line" held in Chicago in 1996.

Sally received her MPH from the University of North Carolina School of Public Health in 1981, and has worked at the state level on health promotion/disease prevention programs in Maine and North Carolina.

Sally works in public health to build coalitions for positive, strategic change. Her greatest accomplishment and her greatest challenge has been in "mobilizing community support in North Carolina to reduce tobacco use among children, pregnant women, and helping tobacco users who want to quit". She helped see a Maine Public Health Association through its first year and affiliation with APHA in 1985. She provided the North Carolina Division of Health's staff support to a Legislative Study Committee that led to the funding of the first statewide health promotion program in North Carolina in 1988. Sally was honored to receive the Hod Ogden Award in 1991 from the Centers for Disease Control and Prevention and the ASTHO Affiliate ASTDPHE.

Sally enjoys sea kayaking, hiking and reading in her spare time.

Just the fax from



To: *Jerry MAND*
Company: *WHITE HOUSE*
Fax #: *202-456-6027*
From: *PETER ZOLLO*
Date: *7-24-97*

of Pages: 2
(including cover sheet)

Comments:

Full County Press

Fax Cover Sheet

To: Terry Mande

Company: _____

Fax: 202-456-6027

Date: July 24 Time: 14:39pm

No. Of Pages (Including Cover Sheet): 2

From: Donna Grande

Title: Director

Fax No.: (520) 321-7988

Please notify us immediately if this information is not properly received by calling (520) 321-7989.

Additional Comments:

Bio as requested.

PROJECT ASSIST

For A Healthier North Carolina

Division of Adult Health • P.O. Box 27687 • Raleigh, North Carolina 27611-7687
(919) 733-1881 • FAX (919) 733-0488

FAX

Date:

July 24, 1997

Please Deliver Attached To:

Name:

Terry Mande
Myra Wisotzky

Fax No.:

202-456-6027
770-456-6027
488-5844

This message is being sent from:

SALLY HERNDON MALEK, M.P.H.

Division of Health Promotion

Fax # (919) 733-0488

We are transmitting 2 page(s), including cover letter. If transmission is not complete please call (919) 733-1340.

Message:

American Stop Smoking Intervention Study

GREGORY N. CONNOLLY, D.M.D., M.P.H.

**Director, Massachusetts Tobacco Control Program
Department of Public Health
250 Washington Street, Floor 4
Boston, MA 02108
Tel.: 617-624-5900
Fax: 617-624-5921**

Gregory Connolly is the Director of the Massachusetts Tobacco Control Program. He is a graduate of Holy Cross College, Tufts Dental School and Harvard School of Public Health. He is a national leader on tobacco and health, has testified before Congress on numerous occasions and appears regularly on major national news networks. He is a U.S. appointee to the World Health Organization's expert panel on smoking and health and has helped train public health officials in Asia and Eastern Europe to control tobacco use.

Dr. Connolly is credited with passage of the 1986 federal law on smokeless tobacco. He has published over thirty scientific articles on this topic and was awarded the Surgeon General's Medallion for National Leadership by Dr. C. Everett Koop in 1987.

Gregory N. Connelly, D.M.D., M.P.H.

Director, Massachusetts Tobacco Control Program:
Massachusetts Department of Public Health

- Dr. Connelly is a national leader on tobacco and health and has testified before Congress on numerous occasions, and has appeared regularly on major national news networks.
- He is a U.S. appointee to the World Health Organization's expert panel on smoking and health and has helped train public health officials in Asia and Eastern Europe to control tobacco use.

Randy Schwartz, M.S.P.H.

Director, Division of Community and Family Health
Maine Bureau of Health

- Mr. Schwartz is a nationally recognized leader in public health education and health promotion with wide ranging contributions to the advancement of public health practice and is widely published in peer reviewed journals on issues of public health policy, planning and program.
- Mr. Schwartz has provided expertise on numerous national expert panels, workgroups and advisory committees, including Healthy People 2000 Tobacco Workgroup, diverse National Cancer Institute and Centers for Disease Control and Prevention review committees, and served as a consultant for the National, Heart, Lung and Blood Institute and Stanford Health Promotion Resource Center regarding tobacco control and program diffusion within the states.

Biography

Donna Grande, M.G.A.

Donna Grande is the director of the Full Court Press program of the Coalition for a Tobacco-Free Arizona, which is funded by a 5-year grant of \$3.2 million from the Robert Wood Johnson Foundation. The program is designed to impact youth tobacco use and result in a 10 percent reduction in teen prevalence rates in Tucson by the Year 2000.

Before coming to Tucson to direct this program, Ms. Grande was the project officer for the American Stop Smoking Intervention Study (ASSIST) for Cancer Prevention funded by the National Cancer Institute of the National Institutes of Health in Washington, D.C. Ms. Grande joined the NCI in 1991 to manage the 17 state demonstration program worth \$114 million. At the NCI she provided guidance and direction on establishing broadbased coalitions and developing tobacco control strategies at both the state and local levels. Within four years, the program grew from approximately 25 coalitions to over 250 coalitions in the 17 states.

Prior to joining the NCI, Ms. Grande was director of program development at HCR, Inc.—a management consulting firm specializing in health and health policy research. During her six years at HCR, Ms. Grande worked on a number of projects among which was the contract with the federal Office on Smoking and Health. As project director of the OSH program, she managed and developed the first and second reports to Congress for the U.S. Secretary of Health, Smoking and Health: A National Status Report; coordinated Dr. Koop's panel reviews of the Surgeon General's reports on the health consequences of tobacco use; managed meetings of the Federal Interagency Committee on Smoking or Health; and prepared testimony for Congressional briefings and responses to Congressional inquiries. In addition, Ms. Grande updated systems for the OSH clearinghouse for all smoking and tobacco related articles, reports, and technical documents.

Also at HCR, Ms. Grande worked with the U.S. Preventive Services Task Force in developing the Guide to Clinical Preventive Services and wrote and edited chapters of Disease Prevention/Health Promotion: The Facts for the Office of Disease Prevention and Health Promotion.

Donna has presented papers on tobacco or health issues nationally and internationally. She was also part of a U.S. delegation sent to meet with the Health Ministers of the former Eastern Block countries in Poland to provide advice and technical assistance on how to create tobacco use prevention strategies.

As a freelance writer, Ms. Grande has written numerous articles for newsletters, newspapers and magazines.

Ms. Grande has a bachelors of science degree in Journalism from the Scripps School of Journalism at Ohio University and a masters degree in General Administration and Marketing from the University of Maryland.

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FULL COURT PRESS BASELINE SCHOOL SURVEY

**SEVENTH, EIGHTH, ELEVENTH,
AND TWELFTH GRADE STUDENTS
IN TUCSON**

1996

Full Court Press Project Evaluation Team
Arizona Cancer Center
The University of Arizona
Tucson, Arizona



OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 2

Sally Malek, M.P.H.
ASSIST Project Manager
North Carolina Department of Human Resources

To	<u>Jerry Mande</u>	From	<u>Ken Choe</u>
Dept./Agency	<u>WH 456-6081</u>	Phone #	<u>690-7753</u>
Fax #	<u>456-6027</u>	Fax #	<u>690-7203</u>
NSN 7540-01-317-7368		5099-101 GENERAL SERVICES ADMINISTRATION	

- Ms. Malek is Manager of Project ASSIST in the North Carolina Department of Environment, Health, and Natural Resources, Division of Health Promotion.
- Ms. Malek serves as Chair of the Association of State and Territorial Health Officials (ASTHO) Tobacco Prevention and Control Network. She has served as a Network officer since it's inception in 1994 and was ASTHO's representative to the planning committee for the national tobacco prevention and control conference in 1996.

Donna Grande, M.G.A.
Director, Full Court Press program
Coalition for a Tobacco Free Arizona

- Ms. Grande currently directs the Full Court Press program, a project funded by the Robert Wood Johnson Foundation to impact youth tobacco use.
- Ms. Grande developed the first and second reports to Congress for the US Secretary of Health Smoking and Health: A National Status Report and coordinated Dr. Koop's panel reviews of the Surgeon General's reports on the health consequences of tobacco use, including preparing testimony for Congressional briefings and responses to Congressional inquiries on tobacco and health.

Peter Zollo
President, Teenage Research Unlimited
Illinois

- Peter Zollo co-founded Teenage Research Unlimited (TRU) in 1982 as the first market research firm to specialize exclusively in teenagers.
- TRU's clients account for about one-quarter of the Fortune 500 companies and include: Coca-Cola, Kellogg, Levi Strauss, Nike, Reebok, Sony Music, MTV, Rolling Stone Magazine, and M&M Mars.

Peter Zollo
President, Teenage Research Unlimited (TRU)

Peter co-founded TRU in 1982 as the first market research firm to specialize exclusively in teenagers. Peter has appeared before countless industry and corporate groups in his role of teen expert. He also has been widely published and has appeared on several network news programs, including "The CBS Evening News with Dan Rather," "Real Life with Jane Pauley," "Good Morning America" and "The CNN Morning News." *Business Week* dubbed Peter the nation's "teen marketing guru."

Peter moderates qualitative research for clients such as Nintendo of America, Levi's, Leo Burnett, Coca-Cola, Foot Locker, Reebok, Keebler, Frito-Lay and SmithKline Beecham. He also consults with the Partnership for a Drug-Free America.

Peter also has worked extensively on the issue of teenage cigarette smoking cessation and the development of counter-advertising. He is on the Columbia University School of Public Health and Tobacco Counter-Marketing Panel, and has conducted research and consulted for the State of Massachusetts in its counter campaign.

Peter authored the book *Wise Up to Teens: Insights into Marketing and Advertising to Teenagers*, published in 1995 by New Strategist Publications.

TO: Ken

**MA TOBACCO CONTROL PROGRAM
MA DEPARTMENT OF PUBLIC HEALTH
250 WASHINGTON STREET, 4TH FLOOR
BOSTON, MA 02108**

DATE: 7.24.97 PAGES: 2

TO: Gerry Mand

FAX: 202. 456. 6027

FROM: Greg Connolly's Office

TEL: 617-624-5903

FAX: 617-624-5921

Participants in Friday, July 24, 12:45pm Tobacco Meeting:

Purpose: To hear from state and local officials who have been fighting on the front lines, and to hear from experts on anti-smoking "counter-advertising" campaigns.

1. **Gregory N. Connolly**, D.M.D., M.P.H. of Massachusetts.

Gregory Connolly is **Director of the Massachusetts Tobacco Control Program**. Massachusetts, along with California, has received national recognition for reducing tobacco use, especially among young people, by enacted a tobacco excise tax that has generated funding for a statewide counter advertising campaign. Dr. Connolly is also credited with passage of the 1986 federal law on smokeless tobacco, and was awarded the Surgeon General's Medallion for National Leadership by Dr. C. Everett Koop in 1987. He has testified before Congress on numerous occasions, and appears regularly on major national news shows.

2. **Donna Grande**, M.G.A. of Arizona.

Donna Grande is **Director, of Full Court Press** in Arizona -- a 5 year, \$3.5 million, program funded by the Robert Wood Johnson Foundation, to develop a successful prototype to reduce youth smoking by 10 percent. From 1991-1996, Ms. Grande ran Project ASSIST in Arizona.

3. **Sally Herndon Malek**, M.P.H. of North Carolina.

Sally Herndon Malek is **Manager of Project ASSIST** in the North Carolina Department of Health. She has been with the project since its inception. Sally serves as Chair of the Association of State and Territorial Health Officers' (ASTHO) Tobacco Prevention and Control Network.

4. **Randy Schwartz**, M.S.P.H. of Maine

Randy Schwartz is **Director of Community and Family Health**, with the Maine Bureau of Health, and has run Project ASSIST in Maine since it began in 1991. Mr. Schwartz has worked with numerous federal, state, and local tobacco control efforts.

5. **Peter Zollo** of Illinois

Peter Zollo is **President** and Co-founder of **Teenage Research Unlimited** the first market research firm to specialize exclusively in teenagers. Peter has worked extensively on teenage cigarette smoking cessation and the development of counter-advertising. He is on the Columbia University School of Public Health, Tobacco Counter-Marketing Panel, and has conducted research and consulted for the State of Massachusetts in its counter-advertising campaign.

ASSIST

NCI's American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) project, represents a joint effort among NCI, the American Cancer Society, and health departments in 17 states. During the first 24 months of the project (1991-1993), each state conducted a detailed site analysis and needs assessment. Following a careful review of these findings, each state developed its own comprehensive 5-year smoking control plan. In the intervention phase (1993-1998), each state has been implementing their plan. State programs rely on proven interventions in work sites, health care settings, schools, community groups, and mass media. Detailed guidelines and extensive training has been continually provided to ensure that all interventions used in ASSIST are consistent with current scientific knowledge. While prevention and cessation services are an integral component of any comprehensive effort, in ASSIST emphasis is placed on the strategic use of media and the adoption and implementation of those smoking control policies that support nonsmoking as the accepted community norm. ASSIST also relies on a coalition based model. To date, more than 2,000 community organizations have

North Carolina Project ASSIST Highlights and Accomplishments Spring 1997

Framework for Project ASSIST

- A public-private partnership between National Cancer Institute and American Cancer Society.
- NCI and ACS provided scientifically sound, well-defined successful model:
 - comprehensive community-based coalition
 - goals and measurable objectives
 - effective intervention guidelines
 - intense training and technical assistance
 - designed to build capacity = accountability and enhanced durability
 - evaluation and monitoring = 10% dose-response drop in consumption since 1991

North Carolina ASSIST

- Partnership: Division of Health Promotion and American Cancer Society, NC Division
- Statewide coalition of more than 150 diverse members
- Ten staffed local coalitions - twenty-three counties with more than 650 members
- Eighteen local mini-grant initiatives
- Budget of \$8.5 million over seven years
- Staff of 12.95 FTEs

Highlights of Key Accomplishments:

Building Community Support for Policies Which Promote Clean Indoor Air

- 89 local smoking ordinances passed in 1993
- Media coverage on environmental tobacco smoke rose to all-time high in 1993
- *Is Smoking Affecting Your Workplace* guide distributed to over 5000 worksites
- 55-70% of North Carolina worksites prohibit or severely restrict smoking; 50% adopted policy within three years
- Campaigns to promote voluntary adoption of smoking policies for public places (1997)

Building Community Support for Policies Which Reduce Tobacco Sales to Youth

- Community awareness campaigns on youth access to tobacco
 - one of two stores sold cigarettes to children
 - 97% of vending machine purchases unchallenged
- 1996 Cary police Department Model Merchant Education Campaign and Compliance Check Program with first-ever convictions in North Carolina
- Youth smoking is now being covered in all North Carolina media markets as a health issue (1997)
- Attorney General and Governors's support for a stronger law

Helping Smokers Who Want to Quit

- 500 health professionals trained
- 4,000 guides on Counseling Women Who Smoke distributed to health care practitioners
- 2000 smokers have quit using ASSIST's Quit and Win events in twelve communities
- Tobacco Education Program pilot in 13 high schools
- 22 providers trained in "Pathways to Freedom" which is a program for African Americans

Building Capacity for Durable Tobacco Prevention Programs

- Capacity building sub-contracts to key statewide organizations
- Youth advocacy training for over 400 youth
- Thirty-three volunteers and staff trained as media spokespersons
- 200 volunteers and staff trained in media advocacy and policy advocacy
- Twenty volunteers and staff trained in media relations
- Partnership with Governor's Council on Physical Fitness and Health for Tobacco Free Youth Soccer

Increased Media Coverage of Tobacco and Health

Media Coverage of tobacco as a health issue has increased, for example:

- *The Charlotte Observer* prepared an excellent series of articles on youth and tobacco
- The news media has increased coverage of environmental tobacco smoke as a health concern
- The North Carolina Medical Society published a Special Edition of its journal on tobacco; ASSIST was highlighted

ANDREW KETTERER
ATTORNEY GENERAL



COPY

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FAX: (207) 287-3145

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DEPARTMENT OF THE ATTORNEY GENERAL
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May 22, 1997

Jon R. Doyle, Esquire
Law Offices of Doyle & Nelson
150 Capitol Street, P.O. Box 2709
Augusta, ME 04332-2709

RE: Your Letter of April 23, 1997 Alleging Misuse of ASSIST Monies

Dear Jon:

Attorney General Ketterer received your letter and turned it over to me for response.

The review I conducted was quite extensive, involving not only research into federal law, but also contacts with state officials in states where very similar complaints have also been filed. Of particular help were officials at the National Cancer Institute, the federal agency administering the ASSIST grants.

Your letter of April 23rd is divided into three different areas of complaint: 1) lobbying activities; 2) lack of bidding procedures; and 3) use of ASSIST dollars for targeted client purposes. These will be addressed in turn.

1. **Lobbying Activities.** In general, you allege that Maine's ASSIST project violated federal law by attempting to influence state legislators. Because of this alleged activity, you are requesting that both this Office and the State Auditor's Office "launch an immediate investigation" to "determine the responsibility of State officials who knew of, condoned, or encouraged illegal lobbying practices." As set forth below, the evidence you have submitted does not appear to support this claim.

A closer look at federal law reveals that these allegations do not violate any specific provisions of federal law and certainly do not warrant investigation by the

Jon R. Doyle, Esquire
May 22, 1997
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Attorney General's Office.¹ A review of federal law reveals the following: Federal ASSIST monies are channelled through the National Cancer Institute in the form of grants to 17 states. The federal law regarding such grants, found at 42 U.S.C. §§ 284 - 289, does not include any prohibitions against lobbying. Other federal laws which prohibit recipients of federal funds from lobbying legislators deal exclusively with lobbying members of Congress. *See, e.g.*, 31 U.S.C. § 1352. Recent language in the Federal Appropriations Bill for Fiscal Year 1997 (which would therefore *not* apply to any material presented in your letter) does prohibit "any activity designed to influence legislation or appropriations pending before the Congress or any state legislature. *See* P.L. 104-208, No. 9A, November 1996, Sec. 503(a) and (b) (pp. 825-26). This new requirement appears to have been communicated to the ASSIST programs by memo dated March 31, 1997 (a copy of which is attached).

You have cited the Federal Acquisition Regulations and OMB Circular A-122 as federal "laws" which prohibit lobbying. The application of these rules is explained in a memo from the Office of the General Counsel, DHHS, dated January 30, 1996 (a copy of which is attached):

Prior to October 1, 1995, costs associated with lobbying were treated differently with respect to different types of contractor organizations. Commercial organizations were covered by the cost principle at FAR 31.205-22, which disallowed costs of legislative lobbying at the federal or state levels, but permitted lobbying of local legislative bodies. Non-profit organizations were subject to the cost principles of OMB Circular A-122, which contained restrictions on allowable lobbying costs identical to those applicable to commercial organizations. State and local governments were covered by OMB Circular A-87, which placed no restrictions on the use of contract funds for lobbying. FASA § 2151(e)(1)(B) eliminates distinctions based upon type of contractor organization and requires disallowance of "[c]osts incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State."

¹ I do not claim to speak for the State Auditor's Office. You are, of course, free to forward this material to them for their own independent review. However, it appears that the evidence of financial "wrongdoing" presented by your letter might, at best, serve to flag a future audit item, one that would be conducted in the regular course of business of State auditing.

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May 22, 1997
Page 3

I have also attached copies of memoranda from DHHS dated January 6, 1995 and September 8, 1995 which provide earlier explanations of applicable federal law.

Turning to your examples of "illegal" lobbying efforts, there are four documents² which could, at first glance, represent possible "lobbying" by local ASSIST groups. These documents are attached and addressed below.

(1) The first is a letter from Representative Elizabeth Mitchell to Meredith Tipton, the Director of Public Health for the City of Portland, dated April 25, 1996. While it is true that Portland Public Health received ASSIST monies, local governmental agencies were not prohibited from "lobbying" at the time this activity took place as the contract with Portland Public Health was entered into before October 1, 1995. See "Encumbered ASSIST Contracts," Part 3 of "Survey of DHS ASSIST Files." Moreover, Ms. Tipton certainly had a right to discuss public health issues with a state representative as Director of Public Health for the City of Portland.

(2) The next document is arguably more direct in terms of showing activity which might be considered lobbying.³ First, the memo from "Phyllis" (who I understand to be Phyllis Wolfe) to members of the Executive Committee of the Greater Portland ASSIST Coalition, dated June 4, 1996, is arguably suggestive of lobbying activity. The memo indicates a meeting between "Karen and I" and Representative Elizabeth Mitchell. Apparently Representative Mitchell had expressed an interest in working with the Portland Public Health on some legislative issues. The paragraph discussing this matter goes on to discuss the "sponsoring" of legislation.

This memo is somewhat enigmatic as the regulations do *not* prohibit speaking to a legislator if it is the legislator who makes the contact. Furthermore, the discussion as to what the actual future activity might be in terms of "lobbying" is unclear at best. Finally, and importantly, the Greater Portland ASSIST Coalition is an entity created by the City of Portland through its ASSIST contract with the State.

² This is not to say that some of the other documents you have provided me may not also provide such examples. However, the four documents I have chosen to discuss are certainly illustrative of your concerns.

³ I am using the term "lobbying" in the most generic, commonly-understood sense for purposes of making a point. If there appeared to be actual violations of state or federal law prohibiting "lobbying," it would then be necessary to apply the actual legal definition of lobbying under federal or state law. We have not done this, for as explained in this letter, there is not sufficient evidence to find that any "illegal" lobbying has taken place.

To the extent Portland's contract with the Bureau of Health predates October 1, 1995, the "anti-lobbying" audit regulations and rules do not apply.

(3) A memorandum of January 18, 1995 from Joanne Bean, ASSIST Coalition Chairperson, to "Senator Judy Paradis, Senator Joan Pendexter and Jadine O'Brien" is suggestive of lobbying. This memo thanks the two Senators for agreeing to participate in a panel discussion on "How to Work Effectively With Legislators." It then goes on to discuss the types of topics to be discussed at this panel discussion. It could be argued that the purpose being served by ASSIST in this instance is purely educational in nature, thus is not lobbying. However, even if one were to find some suggestion of lobbying in this memorandum, it is my understanding that Ms. Bean was a volunteer chair of the statewide ASSIST Coalition for a Tobacco Free Maine, an entity set up as an advisory group to the Bureau of Health and so is not a separate private (non-governmental) entity⁴. As this letter appears to come from a "state" organization, rather than a private business entity, the federal laws and audit regulations do not appear to prohibit this activity. The same reasoning applies, of course, to the letter of May 16, 1995 from Ms. Bean to Senator Ferguson and Representative Nadeau.

The above is a summary of material you have offered to support your claims of widespread violations of federal anti-lobbying law and regulation. While claims of such violations are taken seriously, there simply does not seem to be sufficient evidence of any wrongdoing that would require investigation by the Attorney General's Office. Further, to the extent that there are any violations, such would be the subject matter for a future audit, as there do not appear to be (and you do not claim) "violations" which would be the subject of any civil or criminal laws enforceable by the Attorney General's Office.⁵

2. **Lack of Bidding Procedures.** You also contend that, generally, proper bidding procedures were not followed in ASSIST sub-contracts. There appears to be no evidence of this beyond what you describe as "anomalies" in the list of ASSIST contracts. Your assertion appears to be that such "anomalies" represent some type of illegal, or at least inappropriate, activity on the part of the Bureau of Health.

⁴You will note the address for this letter is 151 Capitol Street, State House Station 11, Augusta, which is the address for the Bureau of Health.

⁵ You have made some vague allegations regarding alleged failures to follow Maine's Lobbyist Disclosure law, 3 MRSA §§ 312-A - 322. Given that the definition of "lobbyist" requires that the person be specifically paid for such activity, and must do it in excess of eight hours per month, it is difficult to discern from the material you have presented if this law has been violated.

However, my review of your charges reveal that there is both a plausible and legal explanation for these sub-contracts.

Any discussion of this area should begin with a quick review of the law. You are indeed right in stating that State law requires "a bidding process." These statutes are found in the Rules Governing the Competitive Bid Process, 5 M.R.S.A. §§ 1825-A - 1825-I. The Bureau of Purchases has adopted rules pursuant to these statutes. See Chapter 110, Rules for the Purchase of Services and Awards (a copy of which is attached).

Importantly, while many contracts for the purchase of services by the State are sent out to bid, the Contract Review Committee also allows contracts to be encumbered if they qualify for sole source or emergency procurement. See Rules for the Purchase of Services and Awards, Section 2(A). See also 5 M.R.S.A. § 1825-B(2). For instance, contracts are not required to go out to bid if they are (a) the subject of a waiver pursuant to § 1825(B)(2) or a sole source contract; (b) the subject of a \$1,200 contract, which each agency of State government has the authority to award without going through Contract Review; or (c) the subject of an RFP in one year, but in other years the agency had contract extensions and thus was not required to go out to bid.

To give one specific example: Your letter makes reference to the contracts with Goerlitz & Associates, Inc., complaining both about the lack of disclosure regarding the monetary payments made to this agency for the services of the "Winston Man," and for the lack of any bidding procedure for this particular contract. Regarding the bidding process, Goerlitz & Associates, Inc. was approved by the Contract Review Committee as a sole source contract. By Requisition for Special Services dated July 12, 1994, DHS justified its request for a sole source contract by noting the uniqueness of the services of the "Winston Man." As set forth in DHS's justification memorandum:

David Goerlitz is one of only a handful of living former cigarette advertising models who smoked. He has developed a programmatic approach to educating the public in general, and youth and policy makers in particular, which uniquely meets the goals of the NCI ASSIST project and the Maine State ASSIST project. No other such presenter is available at this time.

Thus, such a contract seems in accord with State purchasing law and policies regarding use of sole source contracts.

Overall, then, it is difficult to substantiate your charges based upon the material provided in your letter. Given the lack of any evidence that any State laws

Jon R. Doyle, Esquire
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Page 6

have been violated, your invitation for this Office to engage in a contract-by-contract review would be both unproductive and unwarranted.

3. **Use of ASSIST Dollars for Targeted Client Purposes.** In this section of your letter you allege that "State tax dollars" were used to attempt to deprive attorneys (specifically, attorneys employed by Doyle & Nelson; Preti Flaherty; and Allen Associates) of their clients. To substantiate this you point to a speech given by Randy Schwartz on January 7, 1992 "in which he suggests that health care clients should review who their legal advisors are and select other lawyers." While you are understandably concerned about these alleged representations, and hint at possible legal action against those who make such statements, I am unable to find any violation of any statute or regulation.

I believe the above to be a thorough response to your concerns. To the extent you continue to have concerns, I think it important to again point out that the Contract Review Committee remains charged with its responsibility to oversee the proper award of contracts, the Division of Audit has the responsibility to audit any ASSIST monies awarded to private non-profits under OMB Circular A-122, and the Commission on Governmental Ethics and Election Practices is available to consider any substantive claims of violations of the State's lobbying laws.

Thank you for your time.

Sincerely,



Christopher C. Leighton
Assistant Attorney General
Dir., Health & Institutional Services Unit

CCL:bjw

cc: Andrew Ketterer, Attorney General

LAW OFFICES OF
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April 23, 1997

Andrew Ketterer, Esq.
Attorney General
Department of the Attorney General
6 State House Station
Augusta, ME 04333

Dear Drew:

This letter will follow-up our recent conference concerning the use by the Department of Human Services ("DHS") and its personnel of ASSIST monies. As we reviewed the ASSIST files it became clear that there were three areas of possible failure to follow the law and inappropriate conduct. Generally, those include inappropriate use of the monies for lobbying purposes; failure to follow the state's established procedure for bidding contracts or any parallel federal procedures; and an inappropriate use of monies and/or personnel to influence clients of law firms representing tobacco companies.

Let me address the areas in the following fashion:

1. Lobbying activities. It clearly was understood from the outset by DHS and our Legislature that taxpayer dollars which were dispensed under DHS direction were not to be used to unlawfully and improperly fund lobbying activities. That is not only the law, but it has been a given and an understanding amongst all of us who have been involved in this matter for a number of years. The supplemental documents which we filed with you clearly indicate that the state, its employees and importantly grantees of ASSIST funds used monies to lobby. (The legislation this year which was sponsored by a Maine legislator to repeal the limited local preemption provisions in the statute is but one example. That attempt has its genesis in the Portland ASSIST Program and is documented in our notebook entitled Survey of DHS ASSIST Files.)

We believe that you should launch an immediate investigation in conjunction with the State Auditor's Office to determine the responsibility of state officials who knew of, condoned or encouraged illegal lobbying practices and determine what steps the State of Maine should take to put an immediate end to these activities.

RECEIVED
ATTORNEY GENERAL

APR 25 1997

The ASSIST Project is a seven (7) year program in which the State of Maine will receive \$4.6 million as part of the federal government's anti-smoking program. ASSIST is a collaborative effort of the National Cancer Institute and the American Cancer Society. ASSIST funds make it from the federal government to the National Cancer Institute to the Maine Department. (If you desire, we can supply you with a copy of the master contract for that purpose.) The Maine DHS then distributes the tax dollars to fund activities of various groups that may (or may not) apply to it for funding. We've given you some material which outlines a number of these proposals and copies of required reports which are filed to detail how the funds were spent. These documents clearly demonstrate that the funds will be, have been or will be in the future used to engage in lobbying activities to influence state and local officials to adopt tobacco-related legislation. While we may agree on the original goals of the ASSIST Project in terms of reduction of youth smoking, DHS cannot pursue these goals in the manner that clearly violates the law.

I believe a number of the noted activities are also in violation of federal law, as outlined in the Federal Acquisition Regulations and OMB Circular A-122. Further, in March of 1993, the National ASSIST Project Office issued to all states receiving ASSIST funds a "White Paper on Policy" explaining the lobbying prohibitions under the Federal Acquisition Regulations and OMB Circular A-122. A copy of that is enclosed with this letter. The White Paper states, in part, that federal funds cannot be used to "attempt to influence the introduction or enactment of ... state legislation through communication with any member or employees of the ... state legislature," to conduct "public education campaigns which include urging the public to contact state ... legislators," or to urge "state legislators to implement increases in tobacco taxes ... or encouraging the public to do so." As discussed below, these restrictions were extended to local lobbying activities in 1995. While these kinds of activities are prohibited by federal law, the ASSIST groups have engaged in these very activities throughout the past year and will most likely be engaging in the same lobbying activities in 1997 as they are currently on LD 211 (enacted) and LD 1691.

An investigation conducted by your office and the State Auditor's Office is necessary because the contracts executed between the State of Maine and the ASSIST groups give certain enforcement power to the State of Maine. These powers include withholding payment of federal funds if an ASSIST group violates any federal or state law, requesting repayment of the federal funds received for activities that violate any federal or state law and canceling a contract if an ASSIST group fails to comply with the terms of the contract.

Since the DHS is allowing the ASSIST groups to engage in lobbying activities that are in direct violation of federal law, examination of these unlawful actions must be conducted by a responsible, independent office such as the State Auditor that does not have a vested interest in the administration of the ASSIST Project.

In addition to the federal funds illegally spent lobbying the state legislature, the Maine DHS Health ASSIST Project has expressly encouraged these ASSIST groups to lobby for the adoption of local tobacco-related ordinances. The Federal Acquisition Streamlining Act of 1994 extended the prohibition on the use of federal funds to include lobbying of local government officials. It is our understanding that ASSIST staff actively promotes the adoption of local tobacco-related ordinances to municipal officials. They have continued to make presentations to the local municipal officials where they distribute packets of information including model tobacco control ordinances, summaries of other ordinances, statistical data and other information that will enable those municipalities to adopt local tobacco control ordinances and to actually engage in state lobbying activities. If you take a look at Tab 5 in the notebook that we left you and the attachments from DHS files therein, I think the thrust of the activity is more than clear. It becomes even more clear when you look, as we did, at the seven file boxes full of similar information.

Our review of records at the Lobbyist Registrars Office does not indicate that the vast majority of ASSIST fund recipients that may have engaged in lobbying activities have registered as lobbyists and or filed lobbyist disbursement reports. I will supply you with a separate list of those organizations.

The Department of Human Services has a very real, important and legal oversight rule for the monies which it handles and that role assumes an even more important position when members of its Department knowingly, willing and openly encourage inappropriate lobbying activities.

2. Lack of bidding procedures. In the notebook at Tab 3 there is a list of encumbered ASSIST sub-contracts. You will note that many of those, even though they are for thousands of dollars, were not put out to bid. I believe under Maine statutes, not only does the law require a bidding process, but it is the customary procedure. There are several anomalies in the list, for example the American Lung Association of Maine which was RFP'd on one occasion and not on two occasions. I just had the incongruous situation the other day at the work session on the tobacco bills when Jacqueline Ellis, an ASSIST contractor who has been contracted to provide tobacco education curricula "volunteered" her services to assist the committee in making recommendations concerning tobacco curricula without any disclosure at all of her role and her previous payments and the intention of those payments. It is similarly outrageous when Dave Goerlitz, the Winston man, is asked to come to Maine and every impression is given that he is making his appearances on an uncompensated basis, for the Department of Human Services to have paid him \$79,000 for appearances, documentary and some special events. It's clear to me as I look through that list of encumbered ASSIST sub-contracts that those persons who were a part of the "palace guard" were favored with contracts and you will see numerous \$1,200 contracts in which absolutely no resort was made to any bidding process. Some people were paid \$30 per hour, \$25 per hour, \$300 per day, \$250 per day. It's

certainly well out of sync with Maine's economy. I think a hard look ought to be taken at each and every one of these contracts by your office and the State Auditor to determine whether they are in compliance with the statute.

3. Use of ASSIST dollars for targeted client purposes. I think the most outrageous happenstance that we discovered in our review of the ASSIST documents was the speech given by Randy Schwartz on January 7, 1992 (repeated, I believe, on instances thereafter, at least either in whole or in part) in which he suggests that health care clients should review who their legal advisers are and select other lawyers. Schwartz followed that up in the state's annual filing with the federal ASSIST Program by listing Maine tobacco lobbyists and their "selected" clients which in the case of Doyle & Nelson, Preti, Flaherty and Allen Associates included our health care related organization clients. Many of us have been subject to anecdotal information concerning attempts to require our clients to leave us (all those attempts presumably funded by federal and state dollars) but I had not realized the magnitude of the attempt until we reviewed this information which was regularly filed with the federal government. In the case of Allen Associates, Carol Allen clearly was told that she lost the Maine Teachers Association (now Maine Education Association) because of her representation of tobacco clients; I personally was told that there were attempts to remove me as the head of the United Way campaign about three years ago because of my representation of tobacco clients; my partner Craig Nelson who serves on one of the affiliated boards of the Kennebec Health System was told by several persons that he should resign and there was some pressure to do that until I intervened. (I spoke with the President of the Maine Lung Association, Dr. Stephen Sears, who heads up this years anti-smoking effort and told him that if his organization or any unknown members of that organization persisted that we would sue them both collectively and individually.) I believe, too, that Preti, Flaherty, Beliveau and Pachios have lost clients as a result of these activities and their representation of tobacco companies. I am absolutely outraged that state tax dollars can be used to attempt to deprive attorneys engaged in private practice of their clients. I certainly don't mind clients leaving, although that is always a blow, but I do mind and I think it is inappropriate, for government to actively be involved in that process.

I think this matter should be very vigorously pursued, not only because of my own self interest and that of my associates, but because it sets an entirely inappropriate precedent for government to interfere in some private affairs.

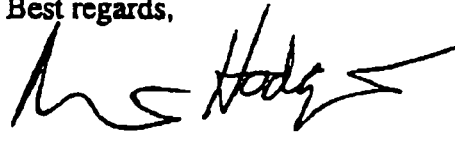
- 5 -

APRIL 23, 1997

I stand ready to work with you or your staff with respect to the questions which have arisen here and to supply you with any information we have which would bear upon our statements.

Thanks for your attention.

Best regards,


for Jon R. Doyle

JRD/als
Enclosures

17-State Federal Program Cuts Smoking, Draws Fire

By John Mintz
Washington Post Staff Writer

Finally, a federal program that works—that's the way anti-tobacco activists describe an unconventional three-year-old project that claims to have reduced cigarette smoking by 10 percent in the 17 states where it operates.

The program's success suggests it is preventing hundreds of thousands of premature deaths from smoking, federal officials say. They say the program has cost tobacco companies sales of 800 million packs of cigarettes, worth hundreds of millions of dollars.

So it's only natural that the tobacco industry and its allies attack the program, called the American Stop Smoking Intervention Study (ASSIST). The industry has used lawsuits and public records laws to divert health workers' energies, say anti-smoking crusaders. Some Republicans in Congress have said they want to derail the project, run by the National Cancer Institute (NCI), because they believe it is improper.

The tobacco industry's struggles with ASSIST wouldn't be affected by any agreement cigarette firms may reach in ongoing negotiations, revealed this week, with state attorneys general and individuals over anti-tobacco lawsuits. But

the industry's battles over ASSIST do illustrate how expensive and time-consuming its legal problems are.

The \$25 million-a-year ASSIST program, which operates at the local level in the 17 states, including Virginia, aims to make smoking an expensive hassle by advocating smoke-free buildings, curbs on tobacco sales to youth and—strikingly, in this anti-tax era—higher excise taxes on cigarettes.

But ASSIST's critics in Congress, in the tobacco industry and at conservative foundations say the program violates the law by using federal

See SMOKING, A14, Col. 1

A14 SATURDAY, APRIL 19, 1997 8

U.S. Anti-Smoking Project Attacked From Many Sides

SMOKING, From A1

funds to lobby state legislatures and municipalities.

"This is an abuse of taxpayer money to take sides in a partisan debate," said Rep. Ernest J. Istook Jr. (R-Okla.). "It's government running roughshod."

Cancer institute officials deny spending U.S. funds on political activities, but acknowledge enlisting a private partner, the American Cancer Society, to lobby law rs. The so-

ciety's files aren't subject to open-records laws because it receives no ASSIST funds.

Anti-tobacco crusaders say such unconventional methods are justified by the stakes—smoking is involved in 419,000 deaths in this country every year, and 3,000 U.S. teenagers start the habit each day, according to federal data.

ASSIST advocates say forcing smokers to take their habit outside public buildings and hitting them in the wallet by raising cigarette taxes

are among the only successful ways ever found to discourage smoking. "It forces smokers to confront themselves," said John Slade, a New Jersey addiction expert.

Federal statisticians use monthly Tobacco Institute data on numbers of cigarette packs sold to retail outlets in each state to highlight the program's success. The data show that since the program began in 1993, per capita cigarette consumption in the 17 ASSIST states has fallen 10 percent, compared with that in the 32 non-ASSIST states, excluding California, which has its own program. Tobacco industry executives say that doesn't account for people smuggling cigarettes into the higher-tax ASSIST states; ASSIST officials and statistics experts say such smuggling has only a small impact.

The legal struggles over ASSIST are perhaps a sign of what awaits Food and Drug Administration officials, whose own crackdown on youth smoking began Feb. 28. But while the public knows of the FDA's tobacco initiative, relatively few people have heard of ASSIST, the largest U.S. effort of its kind.

"ASSIST is the most effective thing the federal government's ever done on tobacco," said Stanton Glantz, a health statistician and anti-tobacco activist. "Cutting smoking 10 percent is gigantic. If you work at Philip Morris [Cos.] and have a 1 percent market share rise, you're a hero."

"NCI has a program that works," said Michael Cummings, a cancer epidemiologist in Buffalo. "ASSIST is one of the best public-health investments for our dollar."

But Walker Merryman, vice president of the Tobacco Institute, said ASSIST violates laws against taxpayer funds paying for lobbying. It doesn't matter that it uses private groups to lobby, he said.

"The fine-grain distinctions elude me," he said. "This is wink-and-nod politics. . . . ASSIST people get public money, and when they're asked to account for it, they whine" about industry harassment.

Tobacco industry officials also commend the research of another ASSIST critic—the Washington-based Capital Research Center, a conservative group that, according to published reports, is partly funded by Philip Morris. (Neither the company nor the center would comment on the center's financing.) The center has published essays saying ASSIST "diverts millions of dollars to advocacy group politics" and calling the American Cancer Society a "left-of-center" group that cares little about sick people.

The percentage of smoking Americans has been cut in half since the 1960s as the public has learned more about tobacco's dangers. But health officials trying to speed the no-smoking trend have been increasingly frustrated by the failure of almost all smoking cessation efforts, such as hypnosis therapies, nicotine patches and stop-smoking hot lines.

In the 1980s, NCI researchers hit on a new strategy: Instead of addressing smokers one by one, they would focus on "changing the social environment" in which people decide to smoke, said ASSIST's chief, Marc Manley.

That means dispatching political activists to try to change laws affecting tobacco and tax rates. The program springs from an activist impulse in public health advocacy, one that also leads health workers to give drug addicts clean hypodermic needles to fight AIDS, officials say.

Anti-tobacco crusaders also see ASSIST as a way to refocus energies away from Congress, where, they say, tobacco lobbyists hold sway, and toward localities.

California activists were the first to move. In 1988, they got a state referendum passed raising cigarette taxes and directing funds to anti-smoking campaigns. Tobacco use there has dropped 26 percent in seven years.

ASSIST is the federal follow-up to California's success. It gives the state health departments about \$1 million a year to organize an array of anti-smoking activities by 220 local coalitions—for example, campaigns

to persuade cities to ban vending machines, or police to carry out "stings" using underaged youth as cigarette buyers.

But in recent years, the tobacco and grocery industries have flooded the 17 ASSIST states with demands for information about the program. "Because they have to fight this industry, it's hard for government health employees to get anything done," said Julia Carol, a California-based anti-smoking activist who tracks the legal battles for ASSIST.

At the Virginia Health Department, for example, some employees and ASSIST contractors so fear tobacco industry lawsuits that they don't discuss sensitive matters in memos or e-mail, people on the project say. They say tobacco firms track

their meetings and correspondence by filing public records requests.

"Everybody's worried," said Carter Steger, an American Cancer Society representative who co-manages the Virginia project with state officials. "Instead of stopping kids from smoking, we've become paper-pushers."

In Minnesota, a grocery industry group, in coordination with tobacco representatives, filed a 500-page complaint against the state health agency and 15 activist groups, alleging ASSIST money was used for lobbying and other improper purposes.

After months of litigation, a state ethics board exonerated 14 groups, and the 15th was found to have made a \$40 bookkeeping error.

"Paranoia set in" when the legal papers arrived, said Jeanne Weigum, a Minnesota activist who works with ASSIST.

In Colorado, after the state health agency released 13,000 pages of documents in response to public records requests, a pro-tobacco industry foundation filed numerous state and federal complaints against Colorado's health department and Walter "Snip" Young, its director of prevention programs. The complaints alleged government money was improperly used to plan a state referendum in 1994 to raise cigarette taxes.

The referendum, backed by a who's-who of Colorado's doctors, failed. The tobacco industry spent \$4.5 million, the most ever spent in the state on such a measure, to defeat it.

"For six months, my staffers and I did almost nothing but respond to legal briefs," Young said.

Eventually, state ethics officers concluded that Young committed minor violations, such as spending 10

minutes of state time preparing for a cancer conference. They also found the health department improperly paid membership dues to a coalition planning to launch the referendum. Young said the stress caused him to lose 20 pounds, and he later quit state government.

ASSIST officials insist they have assiduously barred spending on improper political activity. "We've explained in exquisite detail what federal funds can be spent on, and what they can't," said the NCI's Manley.

Pro-tobacco industry lawyers cite dozens of documents they say illustrate improper ASSIST lobbying throughout the country.

The documents don't contain any obvious evidence that federal money was used. But the documents show ASSIST officials advocate political activity internally—in fact, it's a pillar of the entire project.

A handbook for anti-tobacco activists written by a Washington state group partly funded by ASSIST shows that ASSIST knows how close to the line it works. The handbook included a sample letter to legislators that added in small type, "Tobacco-Free Washington/Project Assist is not suggesting you write this letter. No federal funds can be used for direct lobbying."

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The Charlotte Observer

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CAROLINAS YOUTH

Sold on Smoking

Even as more N.C. teens started smoking, the state legislature weakened the law aimed at preventing them from getting tobacco. A four-part series revealed the problem, explored possible solutions and — through the voices of teenagers — told the stories of a tobacco state's youngest smokers.

DAY ONE



SUNDAY: N.C. smoking law lax

DAY TWO



MONDAY: Why more teens are smoking

DAY THREE



TUESDAY: Smoking not a priority for schools

DAY FOUR



WEDNESDAY: Stricter law proposed