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U.S. Department of Justice

Criminal Division

Assistant Attorney General

Washington, D.C. 20530

April 14, 1995

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL *[Signature]*
FROM: JO ANN HARRIS *[Signature]*
Assistant Attorney General
SUBJECT: Anti-Lobbying Act Guidelines

We have reviewed the attached guidelines prepared by the Office of Legal Counsel and concur in their explication of the Anti-Lobbying Act, 18 U.S.C. § 1913.

Attachment



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D. C. 20530

April 14, 1995

**MEMORANDUM FOR THE ATTORNEY GENERAL
AND THE DEPUTY ATTORNEY GENERAL**

FROM: WALTER DELLINGER 
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

SUBJECT: ANTI-LOBBYING ACT GUIDELINES

The attached OLC guidelines are based on a 1989 opinion of the Office, issued by then Assistant Attorney General William P. Barr, and on long-standing Criminal Division practice. The guidelines explain that the Anti-Lobbying Act, 18 U.S.C. § 1913, does not prohibit officials from supporting an Administration's legislative program through direct communications with Congress; through communications with the public in speeches, writings, and appearances; or through most forms of private communications to members of the public. The Act, however, does bar high-expenditure campaigns in which members of the public are expressly urged to write their Senators or Representatives.



U.S. Department of Justice
Office of Legal Counsel

Washington, D.C. 20530

April 14, 1995

GUIDELINES ON 18 U.S.C. § 1913

The Anti-Lobbying Act, 18 U.S.C. § 1913, prohibits officers and employees of the executive branch from engaging in certain forms of lobbying. If applied according to its literal terms, section 1913 would have extraordinary breadth, and it has long been recognized that the statute, if so applied, might be unconstitutional. The Office of Legal Counsel has interpreted the statute in light of its underlying purpose "to restrict the use of appropriated funds for large-scale, high-expenditure campaigns specifically urging private recipients to contact Members of Congress about pending legislative matters on behalf of an Administration position." Memorandum for Dick Thornburgh, Attorney General, from William P. Barr, Assistant Attorney General, Office of Legal Counsel, "Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts," 13 Op. O.L.C. 361, 365 (1989) (prelim. print) (citation and footnote omitted) ("1989 Barr Opinion"). Although there has never been a criminal prosecution under the Act since its adoption in 1919, the Criminal Division and its Public Integrity Section have frequently construed the Act in the context of particular referrals. The principles that the Criminal Division has developed over time provide guidance to the meaning of the statute that is necessary in order for the Act to provide reasonably ascertainable guidance to those to whom it applies.

Section A below describes officials whose lobbying activities are not inhibited by the Anti-Lobbying Act. Section B describes the kind of lobbying permitted under the Act. Section C describes the kind of lobbying prohibited by the Act. Section D describes a further restriction that agencies may wish to observe, although they are not required to do so under the Act. Section E describes additional prohibitions imposed by typical "publicity or propaganda" riders, as interpreted by the Comptroller General, although identifying the precise restrictions, if any, applicable to any particular agency requires an examination of that agency's appropriations act.

A. The Department of Justice consistently has construed the Anti-Lobbying Act as not limiting the lobbying activities personally undertaken by the President, his aides and assistants within the Executive Office of the President, the Vice President, cabinet members within their areas of responsibility, and other Senate-confirmed officials appointed by the President within their areas of responsibility.

B. Under the Anti-Lobbying Act, government employees MAY:

- communicate directly with Members of Congress and their staffs in support of Administration or department positions. The Act does not apply to such direct communications.
- communicate with the public through public speeches, appearances and published writings to support Administration positions -- including using such public fora to call on the public to contact Members of Congress in support of or opposition to legislation.
- communicate privately with members of the public to inform them of Administration positions and to promote those positions -- but only to the extent that such communications do not contravene the limitations listed in Section C below.
- lobby Congress or the public (without any restriction imposed by the Anti-Lobbying Act) to support Administration positions on nominations, treaties, or any non-legislative, non-appropriations issue. The Act applies only to lobbying with respect to legislation or appropriations.

C. Under the Anti-Lobbying Act, government employees MAY NOT:

- engage in substantial "grass roots" lobbying campaigns of telegrams, letters, and other private forms of communication expressly asking recipients to contact Members of Congress, in support of or opposition to legislation. Grass roots lobbying does not include communication with the public through public speeches, appearances, or writings. Although the 1989 Barr Opinion does not define the meaning of "substantial" grass roots campaigns, the opinion notes that the 1919 legislative history cites an expenditure of \$7500 -- roughly equivalent to \$50,000 in 1989 -- for a campaign of letter-writing urging recipients to contact Congress.

D. Although not required by the Anti-Lobbying Act, agencies may wish to observe a more general restriction with respect to officials other than those listed in Section A:

- against expressly urging citizens to contact Congress in support of or opposition to legislation. As Sections B and C taken together indicate, the Anti-Lobbying Act does not forbid

government employees from urging citizens to contact Members of Congress on behalf of an Administration position, ~~except~~ in the context of a grass roots campaign. Nevertheless, the Comptroller General, following his understanding of the Department of Justice's historical interpretation of the Act before the 1989 Barr Opinion, has construed the restriction as being triggered by explicit requests for citizens to contact their representatives in support of or opposition to legislation. Given the Comptroller General's interpretation, and given the difficulty of predicting what may be perceived as a grass roots campaign in a particular context, agencies may wish to err on the side of caution, by refraining from including in their communications with private citizens any requests to contact Members of Congress in support of or opposition to legislation.

E. The Office of Legal Counsel's published opinions do not set out a detailed, independent analysis of "publicity or propaganda" riders contained in the appropriations acts of some agencies. The Comptroller General has suggested that, under such riders, government employees also MAY NOT (1) provide administrative support for the lobbying activities of private organizations, (2) prepare editorials or other communications that will be disseminated without an accurate disclosure of the government's role in their origin, and (3) appeal to members of the public to contact their elected representatives in support of or opposition to proposals before Congress.

Agency Representatives

"Individuals who, as a part of the regular responsibilities of their agency position are assigned to represent their employing agency as a member of an interagency task force, board, council or committee."

Rules:

Because agency representatives are not WHO or EOP employees and are permitted on the White House Complex to perform only limited roles, it is important that the following rules be followed:

1) The interagency group must be formally constituted. The "interagency task force, board, council or committee" must have some formal identity -- memorialized in an executive order, directive, memorandum of understanding, mission statement from an agency head or other higher official, or similar document.

2) The interagency group must be properly funded. Because of appropriations restrictions, interagency groups must generally be supported financially by only one agency. Although agencies may contribute the time of the agency representatives, they may not jointly contribute money or equipment to support the work of the group.

3) Agency representatives may not hold themselves out to be EOP employees. Agency representatives do not count for EOP personnel matters, and remain the employees of their home agencies for all purposes:

a) Supervision An agency representative shall continue to report to and be supervised by his or her home agency. An agency representative may also report to and supervise other members of the interagency group. Under no circumstances may an agency representative report to or supervise EOP employees who are not members of the interagency group.

b) Title An agency representative may only use the following titles:

- i) home agency title
- ii) task force title
- iii) "agency representative"

Under no circumstances may an agency representative be given a title that suggests that he or she is an EOP employee or staff member. Nor may an agency representative hold him or herself out to be an EOP employee.

c) Stationery Agency representatives shall not use EOP stationery for letters or memos prepared for their signature, unless the stationery is imprinted with the name of the interagency group or the representative's affiliation with the interagency group is otherwise prominently displayed. This also applies to business cards.

d) Passes Agency representatives shall be issued "OGA" passes -- blue or brown according to the access required.