MAY 23 1969

UNITED STATES CIVIL SERVICE COMMISSION

From the Office of:
Robert E. Hampton

John —

Attached is a copy my memo to Cole & draft to the Pres. which I did not sign. I talked to Dr. Burns this morning about the memo and decided not to sign it since the course of action appears to be in concrete. However, the changes in the message

11-1

UNITED STATES CIVIL SERVICE COMMISSION

From the Office of:
Robert E. Hampton

may soften the impact of this on the rest of the govt.

I only send the memo to the Pres. to you for information.

RH

11-2

May 23, 1969

MEMO FOR MR. KENNETH R. COLE, JR.
Special Assistant to the President
The White House

I have some changes to suggest which are of major importance even though they involve only a few words.

1. In the last paragraph on page 1 the following statement appears: "... postal workers !.. work for pay that may be barely adequate." This opens up a large subject indeed. Under Public Law 90-206 the President in the next several weeks must issue an Executive order establishing new pay rates for more than two million Federal workers, including those in the postal service. The new rates have been the subject of intense discussions with Federal unions. The Administration proposes to hold the increase for the great bulk of postal employees to 4.1 per cent, while the unions are urging Congress to increase this percentage to 20 per cent or so. Obviously the wording in the draft message would completely undercut our efforts to hold the increase to a reasonable amount. Therefore, I strongly urge that this statement be deleted.

2. The next sentence may imply that the Federal personnel system, applying to most agencies, cannot match the benefits and training programs of private industry. Actually most departments other than the postal service have worked out good training and benefit programs. To cure this problem, I suggest that the words "and in other Federal agencies" be inserted after "the worker in private industry."

11-3

3. The last paragraph on page 5 should be reworded as follows: "Because of the unique character of the Postal Service and my proposal to operate it as a corporation, employees will have true collective bargaining rights. Postal employees in every part of the United States will be given a statutory right to negotiate directly with management over wages and working conditions."

   This change will make this provision more possible to live with in relation to the rest of government's 2.3 million employees.

4. The following sentence should be added to the end of the next to last paragraph on page 5: "Employees will retain their civil service annuity rights, veterans' preference, and other benefits."

Robert E. Hampton
Chairman

11-4

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

CHAIRMAN

May 23, 1969

MEMORANDUM FOR THE PRESIDENT

Subject: Postal Reform

Yesterday I had the opportunity to review your Message to the Congress and discuss with others the legislative proposal on the above subject.

There is no question about the urgent need to improve the functioning of the postal establishment. I fully support the legislative concept of a corporate form for the postal establishment with the type of funding provided.

I do have serious questions, however, about the propriety of certain statements proposed for you to make to the Congress and deep concern with the potential impact on the rest of the federal service by the provisions for collective bargaining in the draft legislation.

I have sent Ken Cole suggested changes in the wording of the Message deleting that wording which I think might undermine the amount proposed for the July 1 postal pay increase.

My concern with the personnel provisions of the draft legislation is such that I think I should call it to your attention.

Any new plan for personnel relations with one-fourth of the Federal civilian workforce is of such importance as to warrant careful consideration. Basically, the proposed bill would leave the employees of the new Postal Service in a rather strange position. For <u>some</u> purposes (Veterans' Preference, fringe benefits, etc.) they would be subject to the same general personnel legislation that applies to all other 2.3 million employees. This would include appeal rights to the Civil Service Commission in certain instances. For <u>other</u> purposes (pay, appointment, promotion, etc.) they would <u>not</u> be subject to general personnel legislation, but determinations would be made thru a collective bargaining process --- without the right to strike but with a method for resolving impasses --- under the Taft-Hartley Act.

In lieu of this proposed undesirable mixture of Federal and private personnel systems, I see two possible alternatives:

1. Go all the way in cutting the ties to the Federal personnel system, designate employees of the new corporation as clearly non-Federal, and provide that <u>all</u> conditions of employment will be bargained under the Taft-Hartley Act, EXCEPT THE RIGHT TO STRIKE.

11-5

2. Or designate the employees as Federal and retain them under the governmentwide personnel system, but repeal the several restrictive personnel statutes that apply solely to the Post Office Department.

I feel very strongly that the employees of the Postal Corporation should not be Federal employees at all if such key personnel matters as pay and promotions are to be handled through a system of labor management relations under the Taft-Hartley Act as proposed in the bill. This new labor relations system runs directly counter to the system now in use in the rest of the Federal Service, even with the changes and improvements now in the final planning stage for your issuance. If these employees are to be half-in and half-out of the general government personnel system (as proposed) the differences in policy would create immense pressures and problems for the Administration. The Secretary of Defense alone has responsibility for more than one million civilian employees, more than half in industrial operations.

It might be that complete exclusion of the employees of the Corporation from the Federal service would further jeopardize the chances of successful passage of this bill. If that is the case, and I think it is, the inclusion of these employees in the <u>total</u> general Federal personnel management system should significantly enhance the chances of the bill's passage with its other very important features.

I am convinced that it is possible to work out a proposal which would retain the primary features of the corporate concept, establish a realistic base for personnel management reform, and keep the postal employees within the framework of the total federal personnel system including labor relations policy applicable to the federal service generally.

I would welcome the opportunity to develop this approach with the Postmaster General.

Robert E. Hampton
Chairman

11-6

THE WHITE HOUSE

WASHINGTON

May 23, 1969

MEMORANDUM FOR

DR. BURNS
✓MR. EHRLICHMAN
MR. KEOGH
MR. NELSON

FROM KENNETH R. COLE, ~~JR.~~ KRC

SUBJECT: PROPOSED MESSAGE TO CONGRESS ON POSTAL REFORM

Attached for your information are comments received on the proposed Presidential message to Congress on Postal Reform.

10-1

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

CHAIRMAN

May 23, 1969

MEMO FOR MR. KENNETH R. COLE, JR.
Special Assistant to the President
The White House

Postal Reform Message

I have some changes to suggest which are of major importance even though they involve only a few words.

1. In the last paragraph on page 1 the following statement appears: "... postal workers ... work for pay that may be barely adequate." This opens up a large subject indeed. Under Public Law 90-206 the President in the next several weeks must issue an Executive order establishing new pay rates for more than two million Federal workers, including those in the postal service. The new rates have been the subject of intense discussions with Federal unions. The Administration proposes to hold the increase for the great bulk of postal employees to 4.1 per cent, while the unions are urging Congress to increase this percentage to 20 per cent or so. Obviously the wording in the draft message would completely undercut our efforts to hold the increase to a reasonable amount. Therefore, I strongly urge that this statement be deleted.

2. The next sentence may imply that the Federal personnel system, applying to most agencies, cannot match the benefits and training programs of private industry. Actually most departments other than the postal service have worked out good training and benefit programs. To cure this problem, I suggest that the words "and in other Federal agencies" be inserted after "the worker in private industry."

10-2

3. The last paragraph on page 5 should be reworded as follows: "Because of the unique character of the Postal Service and my proposal to operate it as a corporation, employees will have true collective bargaining rights. Postal employees in every part of the United States will be given a statutory right to negotiate directly with management over wages and working conditions."

   This change will make this provision more possible to live with in relation to the rest of government's 2.3 million employees.

4. The following sentence should be added to the end of the next to last paragraph on page 5: "Employees will retain their civil service annuity rights, veterans' preference, and other benefits."

RE Hampton

Robert E. Hampton
Chairman

10-3

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington

MAY 20 1969

Honorable Robert P. Mayo
Director, Bureau of the Budget
Washington, D. C. 20503

Dear Mr. Mayo:

I submit herewith the views of the Department of Justice with respect to the May 12th draft of the proposed United States Postal Service Act of 1969. Since the Deputy Attorney General, who would normally speak for the Department in a matter such as this, was unavailable within the time limit involved, I have reviewed the principal points stated below with the Attorney General in order that I might be assured that the views reflected in this letter were those of the Department.

There are several constitutional questions which are raised by the bill, all but two of which may be treated without extended comment. There is serious question as to the constitutionality of the provisions of section 1043(3), authorizing administrative searches without a warrant. Camara v. Municipal Court, 387 U.S. 523 (1967), held that very similar provisions enacted by ordinance of the City of San Francisco were unconstitutional, and this rule has been applied to administrative inspections under federal law. United States v. Stanack Sales Co., Inc., 387 F.2d 849 (3rd Cir. 1968). Since numerous Federal statutes presently on the books contain similar provisions, we see no necessity for deleting the provision from the bill, so long as it is recognized that there is grave doubt as to its enforceability. There is presently pending in the Department of Justice a proposed

10 - 4

Administrative Inspection Warrant Act, which would apply across the board to situations such as this, and which would bring such procedures into conformity with the above stated constitutional rule.

The provisions of paragraphs (2) and (4) of section 808(b) provide that an individual may not accept or hold a position in the Postal Service if he is "a member of an organization that he knows advocates the overthrow of our constitutional form of government" or is a member "of an organization of employees of the Postal Service that he knows asserts the right to strike against the Postal Service." Recent decisions of the Supreme Court, such as United States v. Robel, 389 U.S. 258 (1967), suggest that provisions such as this may violate the First Amendment to the Constitution. Since substantially the same provisions presently appear in 5 U.S.C. 7311(2) and (4), and since the Robel case is not on "all fours" with the situation presented by the existing bill, we do not recommend that these provisions be deleted from the bill.

With respect to section 203(c), establishing the composition of the Board of Directors of the Postal Service, a constitutional question might be raised as to whether the members of the Board are collectively the "head of a department" in the constitutional sense, with the result that they would all have to be Presidential appointees. However, since it is arguable that the two non-Presidential appointees do not share the status of a department head, but are, in the constitutional sense, "inferior officers" appointed by the Presidential appointees, we do not believe that section 203(c), if otherwise deemed sound on policy grounds, should be rewritten because of the possible constitutional objection noted above.

The recently added language curtailing the power of the President to remove the directors of the Postal Service appears to be subject to constitutional objection. The closest analogy to the Postal Service of which we know is the T.V.A.

10-5

The enabling statute of the latter was claimed to contain restrictions on the President's right of removal, which claim was litigated in Morgan v. TVA, 115 F.2d 990 (6th Cir. 1940). The Court of Appeals, dealing with that contention, said:

> ". . . if section 4(f) is to be given a construction now urged for, doubt exists as to its constitutional validity."

As a practical matter, the inclusion of the language in the bill may have little consequence since a holding that it was unconstitutional would simply eliminate the language, and the President's power of removal would be deemed to be as unfettered as it had been in the earlier draft of the bill. However, it would seem neither sound draftsmanship nor sound policy to incorporate a provision so likely to be held invalid on constitutional grounds.

The final constitutional problem raised by the bill is, in our view, the most serious one. That problem is presented by subsections (b) and (c) of section 1254, providing that final decisions of the Board announcing changes in mail rates or classifications shall be transmitted to Congress and shall become final "unless, between the date of transmittal and the end of . . . [a] 60-day period the two Houses adopted a concurrent resolution disapproving the change."

This Department has long held the view that the President is a necessary participant in any act which is basically legislative in character. It has likewise held the corollary view that, while legislative authority may be delegated under appropriate standards, once such a delegation has taken place, further control or review by Congress without Presidential participation is a violation of the separation of powers. We recognize that there are examples in existing law of provisions similar to the one in question. Moreover, this area

10-6

of the law is not one which has produced any litigated precedents, and therefore it is impossible to make statements as to what the "law" is in this field with any high degree of assurance. */ Nonetheless, no one can doubt that the basic principle of separation of powers is one that is embedded in our Constitution, and that it is likewise a salutary one which should be adhered to faithfully.

In recent years, departures from the traditional legislative process have taken place in the enactment of the reorganization bills, and in the enactment of the Federal Salary Act of 1967. In each of these instances, however, Presidential participation in the legislative process was assured because it was the Executive which formulated and transmitted the plan to Congress, and the plan became law unless one House of Congress vetoed it. While this represents a departure in form from the traditional legislative process, it was nonetheless one which did not impair the traditional participation of the President in that process.

Because of the lack of decided cases on this point, it is simply not possible to say flatly that a provision such as this is "unconstitutional." Nonetheless, divorcing as much as possible questions of policy from those of law, it is the opinion of the Department of Justice that a provision such as this is very arguably unconstitutional either because it excludes the President from the legislative process, or because it represents a non-legislative interference by the Congress with the performance of an Executive function.

The problem could be solved simply by amending the provision to provide that a joint resolution, with signature by the President, would be necessary within a prescribed time interval in order to override a decision of the Board.

---

*/ While cases such as J. W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, sustained the delegation of broad power to the President, and cases such as Currin v. Wallace, 306 U.S. 1 uphold schemes whereby a private action is required to bring into play the authority delegated by Congress, none of these cases deals with the problem of conditioning administrative finality on action by Congress alone, without the participation of the President.

10 - 7

A provision of this kind would not place the initial burden on the President to decide as a matter of policy whether to propose changes in mail rates or classifications. He would enter the process, if at all, only after both Houses of Congress had expressed their will in the matter through a joint resolution disapproving proposed changes. For this reason, we feel that the bill could be amended in the manner suggested here without sacrificing the advantages of having the primary responsibility for changing postal rates and classification lie with the Postal Service and the Congress, rather than with the President.

The Department also has grave constitutional reservations about the provisions of section 810, which would establish as "an independent agency in the Executive Branch of the Government" a "Postal Disputes Panel" of nine members, three of whom are to be named by the Director of the Federal Mediation and Conciliation Service, three by the American Arbitration Association, and three by the members so selected. It seems clear that this panel would constitute the governing board or "head" of the "independent agency in the Executive Branch of the Government," and the question therefore arises whether they may constitutionally be appointed in the manner indicated. "Officers of the United States," in the sense of Article I, section 2 of the Constitution, must be appointed by the President with the advice and consent of the Senate; "inferior officers," in the sense of the same provision, must be appointed either by the President alone, by the courts, or by the heads of departments. The members of the Postal Disputes Panel, because of their manner of appointment, qualify neither as "officers of the United States" nor as "inferior officers" under this constitutional provision. Since, in our opinion, the head of an independent agency in the Executive Branch must be either an "officer" or an "inferior officer", we recommend that the language of section 810 be revised to delete the words "as an independent agency in the Executive Branch of the Government." The assurance

10-8

of impartiality and freedom from improper pressure on the part of the members of the Postal Disputes Panel is assured by the method of its composition, and that assurance would remain even with the deletion of the language in question.

Inevitably in a bill of this scope and size, serious policy questions are raised, quite apart from any constitutional issues. Whether the Postal Service should be subject to the provisions of the National Labor-Management Relations Act; whether law enforcement functions should be delegated to the Service; and whether the Service should be authorized to employ private attorneys to conduct its litigation, strike us as being such questions. Due to the time limit imposed on the Department of Justice for the submission of its views, we are unable to do more than advert to these points in this letter. However, should you desire, we would be willing to supplement this letter with more detailed comments directed to such matters.

Finally, as is likewise inevitable in a bill of this size, numerous rather technical points of drafting arise. Again, because of the time limit, we have not been able to carefully formulate a Department position with respect to many of these drafting suggestions. We transmit, for such help as they may be to you, the suggestions of the Civil and Antitrust Divisions of the Department, together with a marked-up copy of the bill itself containing additional drafting suggestions.

Sincerely,

William H. Rehnquist

William H. Rehnquist
Assistant Attorney General
Office of Legal Counsel

Enclosures

10-9

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

May 23, 1969

MEMORANDUM FOR MR. KENNETH COLE

In your memorandum of May 22 you asked the Council of Economic Advisers for its comments on the final draft of the Postal Reform Message.

We have but one specific comment to make. On page 6, the message alludes to providing for borrowing authority for the Postal Service Corporation. Specifically, it says:

> "... The Postal Service, like the Tennessee Valley Authority and similar public authorities, will be able to issue bonds as a means of raising funds needed for expansion and modernization of postal facilities and other purposes."

We feel this policy would be unwise. As long as the Corporation is Federally-owned, and its capital outlays are for facilities that will be Federally-owned, it should, in our view, borrow only from the Treasury. This is consistent with the recommendations that will probably be forthcoming shortly from the Committee to Reappraise Federal Programs. At the same time, we believe the Corporation should pay an interest rate to the Treasury comparable to that paid by other large public utilities such as American Telephone and Telegraph, with the savings in interest costs thus benefitting the taxpayers.

We thus urge that this passage be deleted.

Sincerely,

Paul W. McCracken

10-10

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

WASHINGTON, D.C. 20503

May 23, 1969

MEMORANDUM FOR MR. KENNETH COLE

Subject: Draft postal reform message

We have made suggested comments and changes on the attached draft of the postal reform message, dated May 22, 1969.

We are continuing today to work with Post Office staff on the details of the draft bill. Most of the remaining issues in the bill drafting area do not affect the message, but a few of them could. Briefly, these issues are:

(1) Whether the fulltime postal manager and his assistant should be appointed by the President or by the Board of Directors. See Justice's views letter, copy attached, on this point (page 2, second full paragraph).

(2) Whether the bill should contain language limiting the President's removal powers over the Board of Directors. Justice's views letter (pages 2 and 3) indicates such language would be a nullity and that "it would seem neither sound draftsmanship nor sound policy to incorporate a provision so likely to be held invalid on constitutional grounds."

(3) Whether the President should be involved in the rate-making process if it is determined that Congress should have a veto over disputed mail rates and also the question of the form of the congressional veto over such rates. See the Justice views letter (pages 3, 4, and 5) on this point. As we read Justice's suggested alternative, it would call for the postal service to notify the Congress of disputed rates and to provide a waiting period during which Congress, if it disagreed with the postal service recommendations, could enact a joint resolution to override the Board's decision. Such a resolution would, of

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course, be subject to Presidential approval or disapproval. Another alternative would be to adopt the Reorganization Act procedure which calls for the President to submit proposed rate changes to the Congress, and either House of Congress could disapprove the President's recommendation within a stated time period.

(4) What civil service rights and benefits should be retained by postal workers. This is presumably part of the questions which we understand Chairman Hampton is raising directly with White House staff.

In addition to issues which may affect the language of the message, we are still working with Post Office to resolve a number of other significant issues which relate to the bill itself. These include:

(1) The relationship of the postal service to the budget and apportionment processes, and the question of whether the postal service should have "backdoor" borrowing authority.

(2) The question of whether the members of the postal disputes panel must be appointed by the President (as officers of the United States)or by the head of a department (as inferior officers), or whether it would be constitutionally acceptable to have them appointed in the manner proposed in the bill; namely, three named by the Director of the Federal Mediation and Conciliation Service, three by the American Arbitration Association, and three by the members so selected. See Justice Department views memorandum on this subject (pages 5 and 6).

(3) Whether postal employees who are terminated from the postal service within some limited period after the corporation is established should have priority for Federal employment in positions for which they are qualified.

We will work to resolve the above issues with the Post Office staff during the course of today and will take any unresolved issues to the Director for appropriate next action at the end of the day.

Wilf Rommel

Wilf Rommel
Assistant Director for
Legislative Reference

Attachments

10-12

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington

MAY 2 3 1969

Honorable Robert P. Mayo
Director, Bureau of the Budget
Washington, D. C. 20503

Dear Mr. Mayo:

I submit herewith the views of the Department of Justice with respect to the May 12th draft of the proposed United States Postal Service Act of 1969. Since the Deputy Attorney General, who would normally speak for the Department in a matter such as this, was unavailable within the time limit involved, I have reviewed the principal points stated below with the Attorney General in order that I might be assured that the views reflected in this letter were those of the Department.

There are several constitutional questions which are raised by the bill, all but two of which may be treated without extended comment. There is serious question as to the constitutionality of the provisions of section 1043(3), authorizing administrative searches without a warrant. Camara v. Municipal Court, 387 U.S. 523 (1967), held that very similar provisions enacted by ordinance of the City of San Francisco were unconstitutional, and this rule has been applied to administrative inspections under federal law. United States v. Stanack Sales Co., Inc., 387 F.2d 849 (3rd Cir. 1968). Since numerous Federal statutes presently on the books contain similar provisions, we see no necessity for deleting the provision from the bill, so long as it is recognized that there is grave doubt as to its enforceability. There is presently pending in the Department of Justice a proposed

10-13

Administrative Inspection Warrant Act, which would apply across the board to situations such as this, and which would bring such procedures into conformity with the above stated constitutional rule.

The provisions of paragraphs (2) and (4) of section 808(b) provide that an individual may not accept or hold a position in the Postal Service if he is "a member of an organization that he knows advocates the overthrow of our constitutional form of government" or is a member "of an organization of employees of the Postal Service that he knows asserts the right to strike against the Postal Service." Recent decisions of the Supreme Court, such as United States v. Robel, 389 U.S. 258 (1967), suggest that provisions such as this may violate the First Amendment to the Constitution. Since substantially the same provisions presently appear in 5 U.S.C. 7311(2) and (4), and since the Robel case is not on "all fours" with the situation presented by the existing bill, we do not recommend that these provisions be deleted from the bill.

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The recently added language curtailing the power of the President to remove the directors of the Postal Service appears to be subject to constitutional objection. The closest analogy to the Postal Service of which we know is the T.V.A.

10-14

The enabling statute of the latter was claimed to contain restrictions on the President's right of removal, which claim was litigated in Morgan v. TVA, 115 F.2d 990 (6th Cir. 1940). The Court of Appeals, dealing with that contention, said:

> ". . . if section 4(f) is to be given a construction now urged for, doubt exists as to its constitutional validity."

As a practical matter, the inclusion of the language in the bill may have little consequence since a holding that it was unconstitutional would simply eliminate the language, and the President's power of removal would be deemed to be as unfettered as it had been in the earlier draft of the bill. However, it would seem neither sound draftsmanship nor sound policy to incorporate a provision so likely to be held invalid on constitutional grounds.

The final constitutional problem raised by the bill is, in our view, the most serious one. That problem is presented by subsections (b) and (c) of section 1254, providing that final decisions of the Board announcing changes in mail rates or classifications shall be transmitted to Congress and shall become final "unless, between the date of transmittal and the end of . . . [a] 60-day period the two Houses adopted a concurrent resolution disapproving the change."

This Department has long held the view that the President is a necessary participant in any act which is basically legislative in character. It has likewise held the corollary view that, while legislative authority may be delegated under appropriate standards, once such a delegation has taken place, further control or review by Congress without Presidential participation is a violation of the separation of powers. We recognize that there are examples in existing law of provisions similar to the one in question. Moreover, this area

10-15

of the law is not one which has produced any litigated precedents, and therefore it is impossible to make statements as to what the "law" is in this field with any high degree of assurance. */ Nonetheless, no one can doubt that the basic principle of separation of powers is one that is embedded in our Constitution, and that it is likewise a salutary one which should be adhered to faithfully.

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The problem could be solved simply by amending the provision to provide that a joint resolution, with signature by the President, would be necessary within a prescribed time interval in order to override a decision of the Board.

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10-16

A provision of this kind would not place the initial burden on the President to decide as a matter of policy whether to propose changes in mail rates or classifications. He would enter the process, if at all, only after both Houses of Congress had expressed their will in the matter through a joint resolution disapproving proposed changes. For this reason, we feel that the bill could be amended in the manner suggested here without sacrificing the advantages of having the primary responsibility for changing postal rates and classification lie with the Postal Service and the Congress, rather than with the President.

The Department also has grave constitutional reservations about the provisions of section 810, which would establish as "an independent agency in the Executive Branch of the Government" a "Postal Disputes Panel" of nine members, three of whom are to be named by the Director of the Federal Mediation and Conciliation Service, three by the American Arbitration Association, and three by the members so selected. It seems clear that this panel would constitute the governing board or "head" of the "independent agency in the Executive Branch of the Government," and the question therefore arises whether they may constitutionally be appointed in the manner indicated. "Officers of the United States," in the sense of Article I, section 2 of the Constitution, must be appointed by the President with the advice and consent of the Senate; "inferior officers," in the sense of the same provision, must be appointed either by the President alone, by the courts, or by the heads of departments. The members of the Postal Disputes Panel, because of their manner of appointment, qualify neither as "officers of the United States" nor as "inferior officers" under this constitutional provision. Since, in our opinion, the head of an independent agency in the Executive Branch must be either an "officer" or an "inferior officer", we recommend that the language of section 810 be revised to delete the words "as an independent agency in the Executive Branch of the Government." The assurance

10-17

of impartiality and freedom from improper pressure on the part of the members of the Postal Disputes Panel is assured by the method of its composition, and that assurance would remain even with the deletion of the language in question.

Inevitably in a bill of this scope and size, serious policy questions are raised, quite apart from any constitutional issues. Whether the Postal Service should be subject to the provisions of the National Labor-Management Relations Act; whether law enforcement functions should be delegated to the Service; and whether the Service should be authorized to employ private attorneys to conduct its litigation, strike us as being such questions. Due to the time limit imposed on the Department of Justice for the submission of its views, we are unable to do more than advert to these points in this letter. However, should you desire, we would be willing to supplement this letter with more detailed comments directed to such matters.

Finally, as is likewise inevitable in a bill of this size, numerous rather technical points of drafting arise. Again, because of the time limit, we have not been able to carefully formulate a Department position with respect to many of these drafting suggestions. We transmit, for such help as they may be to you, the suggestions of the Civil and Antitrust Divisions of the Department, together with a marked-up copy of the bill itself containing additional drafting suggestions.

Sincerely,

William H. Rehnquist

William H. Rehnquist
Assistant Attorney General
Office of Legal Counsel

Enclosures

10-18

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WE 89 file

THE GENERAL COUNSEL
POST OFFICE DEPARTMENT
WASHINGTON, D. C. 20260

May 23, 1969

MEMORANDUM FOR MR. KENNETH R. COLE, JR.
SPECIAL ASSISTANT TO THE PRESIDENT
THE WHITE HOUSE

Dear Ken:

The Postmaster General has reviewed Chairman Hampton's suggestions on the postal reform message, and believes that the following changes would be appropriate in the light of Mr. Hampton's comments.

The phrase "and they work for pay that may be barely adequate" should be deleted from the final paragraph on page 1.

The phrase "and in other Federal agencies" should be inserted at the point suggested by Mr. Hampton.

The final paragraph on page 5 should be deleted, and the following paragraphs substituted therefor:

> "Employees will retain their Civil Service annuity rights, veterans preference, and other benefits.
>
> "The Postal Service is unique in character. Therefore there will be, for the first time in history, true collective bargaining in the postal system. Postal employees in every part of the United States will be given a statutory right to negotiate directly with management over wages and working conditions."

Mr. Harlow suggested that the paragraph dealing with Postmaster General O'Brien be changed. A redraft of that paragraph, and the following two paragraphs on page 4 of the message, is attached. Logically, this seems to us to belong on page 4, but it could be used at the end of the fourth paragraph on page 1, immediately before the "Career Opportunities" heading, if you consider such a change desirable.

10-19

In the second paragraph on page 2, the phrase "postal expenditures have exceeded postal revenues" might well be improved by saying "the postal system has cost more than it has earned."

The Postmaster General would like to make the following changes in the highlights on page 5: substitute "creation of a separate Postal Service wholly owned by the Federal Government" for the second item.

Substitute for the third item "new and extensive collective bargaining rights for postal employees."

Sincerely,

Dave

David A. Nelson

Enclosure

cc: Mr. Ehrlichman
Mr. Huston

 10-20

Insert Page (1)

Two years ago, Lawrence F. O'Brien, as Postmaster General, recognizing that the Post Office was in "a race with catastrophe", made the bold proposal that the postal system be converted into a government-owned corporation. Based on Mr. O'Brien's recommendations, a Presidential Commission was established to make a searching study of our postal system, and after considering all the alternatives, the Commission likewise recommended a government corporation. Last January, President Johnson endorsed that recommendation in his State of the Union message.

One of my first actions as President was to direct Postmaster General Winton M. Blount to review those and other proposals. He has made his own first-hand study of the problems besetting the postal service, and after a careful analysis has reported to me that only a complete reorganization of the postal system can avert the steady deterioration of this vital public service.

I am convinced that such a reorganization is essential. The arguments are overwhelming and the support is bi-partisan. Postal Reform is not a partisan political issue, it is an urgent national requirement.

10-21

The Postal Service Act of 1969 provides for:

- removal of the Post Office from the Cabinet
- creation of an independent Postal Service wholly owned by the Federal Government
- new and extensive collective bargaining rights for postal employees
- bond financing for major improvements
- a fair and orderly procedure for changing postage rates, subject to Congressional review
- regular reports to Congress to facilitate Congressional oversight of the postal system
- a self-supporting postal system.

9-1

Background with respect to the current status of the Postal Service Bill

1. The bill as presently proposed and drafted has been confirmed and coordinated with both Messrs. O'Brien and Kappel, and according to Mr. Blount they are in complete agreement and prepared to enthusiastically support the bill. Bryce Harlow has indicated that the testimony by Mr. O' Brien is essential to the life of the bill and that any change at this point must be coordinated with and approved by O'Brien.

2. Mr. Blount has spoken directly with Attorney General Mitchell and has indicated that the Attorney General does not intend to pursue the substance of the bill any further than that which was contained in Mr. Rehnquist's memorandum. Mr. Mitchell has further indicated that he does not intend to propose substantive revisions.

3. Dr. Burns has at this time signed off on the bill. Mr. Blount has made substantial progress with respect to briefing members of Congress as to the bill in its present form and feels that any change at this point would be most detrimental. He personally feels very strongly in favor of the bill as proposed.

9-2

The bill provides for establishment of a separate United States Postal Service, wholly owned by the United States Government, and charged with responsibility for operating the nation's postal service on a self-supporting basis, under professional management.

The bill would take the Postmaster General out of the President's Cabinet, and would provide for a completely non-political postal system.

The Postal Service would be governed by a nine member Board of Directors, seven of whom would be appointed by the President with the advice and consent of the Senate. The seven Presidentially appointed Directors would name a Chief Executive Officer and a General Manager, both of whom would also be members of the Board.

Wages and conditions of employment for postal employees would be established by the Postal Service. Postal employees would retain their Civil Service annuity rights. Labor-management relations would be subject to the Labor-Management Relations Act of 1947 and the Landrum Griffin Act.

A fair and impartial procedure would be established for resolving negotiating impasses, and, as a last resort, binding arbitration would be authorized.

The Postal Service would be empowered to borrow money for the capital improvements needed to modernize the system and for other purposes.

Proposals for changes in the rate structure would be heard by expert rate commissioners, who would be independent of operating management. Determinations of the rate commissioners could be modified by the Presidentially appointed members of the Board, if they considered it in the public interest to do so. Decisions of the Board on postal rate questions would be subject to Congressional review.

1. Presidential involvement in Postal Rate Setting

The bill provides that final decision of the Board on changes in mail rates or classifications would be transmitted to Congress and would become final unless between the date of transmittal and the end of 60 days of continuous session, the two Houses adopt a concurrent resolution disapproving the charge. No Presidential involvement would be provided.

The issues are (a) whether it is politically wise for the President to become involved in postal rate setting and (b) whether or not this procedure violates the principle of separation of powers.

The Post Office believes it would be unwise for the President to become involved. Justice, while deferring on the political question, raises arguable constitutional questions, as follows:

-- The President is a necessary participant in any act basically legislative in character.

-- Once a delegation of legislative authority has taken place, further control or review by Congress without Presidential participation is a violation of the separation of powers.

-- The bill's provision is very arguably unconstitutional either because it excludes the President from the legislative process, or because it represents a non-legislative interference by the Congress with the performance of an Executive function.

(This area of the law is not one which has produced any litigated precedents and, therefore, it is impossible to make definite statements as to what the law is in this field.)

The Post Office Department citing the precedent of the Alien Registration Act (under which the Attorney General transmits deportation suspension actions to Congress for possible veto without Presidential intervention), argues that Congressional review of postage rate changes is not basically legislative in character. From the standpoint of getting postal reform legislation enacted, and enlisting the support of volume mailers, the POD believes that a provision for Congressional review is essential, and that the participation of the President in such a procedure would subject the President to political pressures (as in the Transpacific Route case) from which he ought to be insulated.

9-4

If Presidential involvement is deemed wise or necessary, the alternative to the POD position would be a procedure parallel to the reorganization plan procedure, under which the President would transmit rate changes to the Congress, which could be rejected by a resolution, of either house. (POD would prefer ~~joint~~ concurrent resolution.)

The Post Office believes that both alternatives are unacceptable because they would unnecessarily involve the President and in addition, argues that the second alternative would make it easier to reject rate changes.

A. Retain bill's rate-making procedures__________
B. Disapproval of rate change by joint resolution rather than concurrent resolution______
C. Use reorganization plan procedures__________

9-5

2. Presidential Appointment Power

The bill provides that seven members of the Postal Service Corporation's Board of Directors shall be appointed by the President for staggered one-year terms. The President would choose the chairman from among the seven. The seven members would appoint an eighth member who would serve as Chief Executive Officer. Those eight would then appoint a ninth member who would serve as Chief Operating Officer.

Justice points out that if the members of the Board are collectively the "head of a department" in the constitutional sense, they would all have to be appointed by the President. On the other hand, since it can be argued that the two non-Presidentially appointed members are "inferior officers" in the constitutional sense, Justice does not believe the bill should be rewritten because of possible constitutional objection, if otherwise deemed sound on policy grounds.

The policy issue is the degree to which Presidential control should be attenuated, consistent with desirable independence of the Postal Service Corporation. As now structured, the bill would limit that control very substantially.

The alternatives are:

-- appointment of all nine Board members by the President
-- appointment of a seven-member Board by the President, with the Board appointing the two officers who would not be Board members.

A. Retain bill's current appointment provisions ______
B. Presidential appointment of all nine Board members ______
C. Presidential appointment of a seven-member Board, which would select two operating officers not Board members ______

9-6

3. President's Removal Power

This bill provides that the seven members of the Board of Directors of the Postal Service Corporation appointed by the President may be removed by him for "inefficiency, neglect of duty or malfeasance of office."

It is generally recognized that the President's constitutional power of removal of executive officials cannot be limited by statute. Justice cites Morgan v. TVA, 115F 2d 990 (6th Cir. 1940), and concludes that as a practical matter the inclusion of the language in the bill may have little consequence, but that it would seem neither sound draftsmanship nor sound policy to retain a provision so likely to be held constitutionally invalid.

The Post Office argues that the limitation on removal power is consistent with the underlying concept that the Postal Service should be insulated to the greatest degree possible from political influences so that it may be run like a business enterprise.

A. Retain removal power limitation ____________

B. Delete it ______________________________

POSTAL

4. Expenditure Control

Currently, funds of government agencies, including government corporations (with the exception of TVA's power activities which are exempt by statute), are subject to the apportionment and reserve authority of the Budget Director -- which permits monitoring and control of budget spending once it is authorized.

The bill would exempt the Postal Service Corporation from the apportionment and reserve authority for all of its expenditures.

During periods when Congress imposes overall expenditure ceilings or when inflation or wartime emergencies make use of that authority particularly important, the Postal Service Corporation would be free to spend as it sees fit, while other government programs would have to be cut. This would place the President in an extremely difficult position. The exemption could also set a precedent for future legislation dealing with Government corporations. POD would argue that because of its unique function as a public utility no such precedent would be set.

Mr. Blount believes that if modernization of the Postal Service is to proceed at the required pace, it must be free of apportionment control and the vicissitudes of government financial controls. Dr. Burns agrees.

Alternatively, the exemption could be removed from the bill or the exemption could be deleted but the bill could give the President statutory authority to exempt the Postal Service when it is in the public interest. (The President is now authorized annually to exempt Defense appropriations).

A. Retain the exemption __________
B. Delete the exemption __________
C. Delete the exemption, but give the President authority to exempt __________

9-8

Arguments Against Apportionment (Proposed §1003(f) of BOB) (Anti-Deficiency Act)

- Apportionment is designed for economical use of appropriated funds, and to prevent deficiencies (31 U.S.C. §665(c)).

- Greatest portion of Postal Service expenditures will be from its own revenues, not appropriations.

- Apportionment opens Postal Service expenses to political intervention. It unnecessarily complicates cash budgeting.

- Apportionment even for a limited period (*e.g.*, 2 years) sets precedent for indefinite extension of apportionment authority.

- Other controls on Postal Service -- to wit, break-even operations -- control expenditures more effectively than apportionment. These controls are not in effect in government departments, which are not supported by their own revenues.

- TVA, in its power operation, has authority to use its own revenues without apportionment, in exactly the same terms as our proposed statute. No indication of any fiscal or budgetary problems resulting from TVA's authority.

9-9

THE WHITE HOUSE

WASHINGTON

May 22, 1969

MEMORANDUM FOR

POSTMASTER GENERAL BLOUNT
SECRETARY KENNEDY
CHAIRMAN HAMPTON
CHAIRMAN MCCRACKEN
DR. ARTHUR BURNS
MR. BRYCE HARLOW
MR. JOHN EHRLICHMAN

Attached is the final draft of the Postal Reform Message. The President plans to send this message to Congress on Tuesday, May 27. In order to meet this timetable, it is necessary for us to have your comments no later than noon, Friday, May 23.

Would you please forward them to my office or advise me by telephone. If I have not heard from you at this time, I will assume that you concur with the message as presented here.

Ken

Kenneth R. Cole, Jr.
Special Assistant
to the President
456-2384 or 2152
(gov't code 145)

Attachment

8-1

TO THE CONGRESS OF THE UNITED STATES:

Total reform of the nation's postal system is absolutely essential.

The American people want dependable, reasonably priced mail service, and postal employees want the kind of advantages enjoyed by workers in other major industries. Neither goal can be achieved within the postal system we have today.

The Post Office is not keeping pace with the needs of our expanding population or the rightful aspirations of our postal workers.

Encumbered by obsolete facilities, inadequate capital, and outdated operating practices, the Post Office Department is failing the mail user in terms of service, failing the taxpayer in terms of cost, and failing the postal worker in terms of truly rewarding employment. It is time for a change.

CAREER OPPORTUNITIES AND WORKING CONDITIONS

For many years the postal worker walked a dead-end street. Promotions all too often were earned by the right political connections rather than by merit. This Administration has taken steps to eliminate political patronage in the selection of postal employees; but there is more -- much more -- that must be done.

Postal employees must be given a work environment comparable to that found in the finest American enterprises. Today, particularly in our larger cities, postal workers labor in crowded, dismal, old fashioned buildings that are little short of disgraceful -- and they work for pay that may be barely adequate. Health services, employee facilities, training programs and other benefits enjoyed by the worker in private industry are, all too often, unavailable to the postal worker. In an age when machines do the heavy work for private companies, the postal worker still shoulders, literally, the burden of the nation's mail. That mail fills more than a billion sacks a year; and the men and women who move those sacks need help.

8-2

Postal employees must have a voice in determining their conditions of employment. They must be given a stake in the quality of the service the Department provides the public; they must be given a reason for pride in themselves and in the job they do. The time for action is now.

HIGHER DEFICITS AND INCREASING RATES

During all but seventeen years since 1838, when deficit financing became a way of life for the Post Office, postal expenditures have exceeded postal revenues.

In this fiscal year, the Department will drain over a billion dollars from the national treasury to cover the deficit incurred in operating the Post Office. Over the last decade, the tax money used to shore up the postal system has amounted to more than eight billion dollars. Almost twice that amount will be diverted from the Treasury in the next ten years if the practices of the past are continued. We must not let that happen.

The money to meet these huge postal deficits comes directly out of the taxpayer's pocket -- regardless of how much he uses the mails. It is bad business, bad government, and bad politics to pour this kind of tax money into an inefficient postal service. Every taxpayer in the United States -- as well as every user of the mails -- has an important stake in seeing that the Federal Government institutes the kind of reform that is needed to give the nation a modern and well managed postal system. Without such a system Congress will either have to raise postage rates far above any level presently contemplated, or the taxpayers will have to shoulder the burden of paying postal deficits the like of which they have never seen before.

Neither alternative is acceptable. The nation simply cannot afford the cost of maintaining an inefficient postal system. The will of the Congress and the will of the people is clear. They want fast,

8-3

dependable and low-cost mail service. They want an end to the continuing cycle of higher deficits and increasing rates.

QUALITY POSTAL SERVICE

The Post Office is a business that provides a vital service which its customers, like the customers of a private business, purchase directly. A well managed business provides dependable service; but complaints about the quality of postal service under existing procedures are widespread. While most mail ultimately arrives at its destination, there is no assurance that important mail will arrive on time; and late mail -- whether a birthday card or a proxy statement -- is often no better than lost mail.

Delays and breakdowns constantly threaten the mails. A complete breakdown in service did in fact occur in 1966 in one of our largest cities, causing severe economic damage and personal hardship. Similar breakdowns could occur at any time in many of our major post offices. A major modernization program is essential to insure against catastrophe in the Post Office.

A modern postal service will not mean fewer postal workers. Mail volume -- tied as it is to economic activity -- is growing at such a rate that there will be no cutback in postal jobs even with the most dramatic gains in postal efficiency. Without a modernized postal system, however, more than a quarter of a million new postal workers will be needed in the next decade simply to move the growing mountain of mail. The savings that can be realized by holding employment near present levels can and should mean more pay and increased benefits for the three quarters of a million men and women who will continue to work in the postal service.

8-4

OPPORTUNITY THROUGH REFORM

While the work of the Post Office is that of a business enterprise, its organization is that of a political department. Traditionally it has been run as a Cabinet agency of the United States Government in which politics has been as important as efficient mail delivery. Under the present system, those responsible for managing the postal service do not have the authority that the managers of any enterprise must have over prices, wages, location of facilities, transportation and procurement activities and personnel policy.

Changes in our society have resulted in changes in the function of the Post Office Department. The postal system must be given a non-political management structure consistent with the job the postal system has to perform as a supplier of vital services to the public. Times change, and now is the time for change in the postal system.

Two years ago, Lawrence O'Brien, as Postmaster General, recommended that the Post Office be taken out of the Cabinet and made a government-owned corporation. A Presidential Commission was then established to make a searching study of our postal system, and after considering all the alternatives, the Commission likewise recommended a government corporation. Last January, President Johnson endorsed that recommendation in his State of the Union message.

One of my first actions as President was to direct Postmaster General Winton Blount to review these and other proposals. He has made his own first-hand study of the problems besetting the postal service, and after careful analysis has reported to me that only a complete reorganization of the postal system can avert the steady deterioration of this vital public service.

I am convinced that such a reorganization is essential. The arguments are overwhelming and the support is bi-partisan. Postal reform is not a partisan political issue, it is an urgent national requirement.

8-5

I am, therefore, sending to the Congress reform legislation entitled the Postal Service Act of 1969.

POSTAL SERVICE ACT OF 1969

The reform that I propose represents a basic and sweeping change in direction; the ills of the postal service cannot be cured by partial reform.

The Postal Service Act of 1969 provides for:

- removal of the Post Office from the Cabinet
- creation of a postal service corporation wholly owned by the Federal Government
- new and extensive rights and benefits for postal employees, including the right of collective bargaining
- bond financing for major improvements
- a fair and orderly procedure for changing postage rates, subject to Congressional review
- regular reports to Congress to facilitate Congressional oversight of the postal system
- a self supporting postal system.

The new government-owned corporation will be known as the United States Postal Service. It will be administered by a nine-member board of directors selected without regard to political affiliation. Seven members of the board, including the chairman, will be appointed by the President with the advice and consent of the Senate. These seven members will select a full-time postal manager and a second full-time executive who will also serve on the board.

For the first time in history, there will be true collective bargaining in the postal service. While retaining their Civil Service pension rights, veterans' preference and other benefits enjoyed under existing law, postal employees in every part of the United States will be given a statutory right to negotiate directly with management over wages and working conditions.

8-6

A fair and impartial mechanism -- with provision for binding arbitration -- will be established to resolve negotiating impasses and disputes arising under labor agreements.

For the first time, local management will have the authority to work with employees to improve local conditions. A modernization fund adequate to the needs of the service will be available. The postal worker will finally take his rightful place beside the worker in private industry.

The Postal Service will become entirely self-supporting, except for such subsidies as Congress may wish to provide for specific public service groups. The Postal Service, like the Tennessee Valley Authority and similar public authorities, will be able to issue bonds as a means of raising funds needed for expansion and modernization of postal facilities and other purposes.

Proposals for changes in classes of mail or postage rates will be heard by expert rate commissioners, who will be completely independent of operating management. The Board of the Postal Service will review determinations made by the Rate Commissioners on rate and classification questions, and the Presidentially appointed members of the Board will be empowered to modify such determinations if they consider it in the public interest to do so.

Congress will have express authority to veto decisions on rate and classification questions.

The activities of the Postal Service will be subject to Congressional oversight, and the Act provides for regular reports to Congress. The Postal Service and the rules by which it operates can, of course, be changed by law at any time.

TOWARD POSTAL EXCELLENCE

Removing the postal system from politics and the Post Office Department from the Cabinet is a sweeping reform.

8-7

Traditions die hard and traditional institutions are difficult to abandon. But tradition is no substitute for performance, and if our postal system is to meet the expanding needs of the 1970s, we must act now.

Legislation, by itself, will not move the mail. This must be done by the three-quarters of a million dedicated men and women who today wear the uniform of the postal service. They must be given the right tools -- financial, managerial and technological -- to do the job. The legislation I propose today will provide those tools.

There is no Democratic or Republican way of delivering the mail. There is only the right way -- the modern, efficient, financially self-supporting way -- the only way the American people understand or will tolerate.

This legislation will let the postal service do its job the right way, and I strongly recommend that it be promptly considered and promptly enacted.

THE WHITE HOUSE,

8-8