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THE WHITE HOUSE

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March 3, 1983

MEMORANDUM FOR JAMES K. COYNE
SPECIAL ASSISTANT TO THE PRESIDENT
FOR PRIVATE SECTOR INITIATIVES

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Creating Presidential Advisory Council on Private Sector Initiatives and Propriety of Appointing Member of President's Family to Same

Attached for your consideration please find a draft Executive Order creating the President's Advisory Council on Private Sector Initiatives ("Advisory Council," Tab A). In an effort to accommodate the wishes of your office, the following changes have been made in the earlier draft:

(1) The total number of members of the Council is changed from 17 to "not less than 22."

(2) The total number of members from the public sector has been changed from 7 to "not less than 7," and the following phrase has been added at the end of that paragraph: "and other members as may be appointed thereto from time to time by the President from among other public officials who can contribute to the achievement of the objectives of the Council."

(3) The total number of members from private life has been changed from 10 to 15 members.

(4) Clarifications have been made in the language of Section 4.

As you requested, we have examined the propriety of Maureen Reagan being appointed to serve as an active member of the Advisory Council. This memorandum will confirm our earlier oral opinion that her appointment would be inappropriate, in light of the federal anti-nepotism statute, 5 U.S.C. § 3110.

Attached for your information are two opinions from the Office of Legal Counsel, Department of Justice, concerning similar issues which we considered in reaching our conclusion (Tab B). The memorandum dated February 18, 1977, addressed the issue of whether the federal anti-nepotism statute would prevent Mrs. Carter from being appointed to the President's Commission on Mental Health, a federal advisory commission. The memorandum concluded that Mrs. Carter could not serve actively on the Commission, whether or not she received compensation for her services, although she could serve in an "honorary" capacity.

The second memorandum, dated March 23, 1977, addressed the question of whether President Carter's son could volunteer his services as an assistant to a regular member of the White House staff. The memorandum concluded that he could not, even though he would not be compensated.

We have concluded that the proposed Advisory Council does not differ sufficiently from the President's Commission on Mental Health to warrant different treatment with respect to the applicability of section 3110. We therefore advise that Maureen Reagan not be appointed to the Advisory Council.

EXECUTIVE ORDER

PRESIDENT'S ADVISORY COUNCIL ON
PRIVATE SECTOR INITIATIVES

By the authority vested in me as President by the Constitution of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on private sector initiatives, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the President's Advisory Council on Private Sector Initiatives, composed of not less than 22 members, appointed by the President. The President shall select members of the Council as follows:

(1) Not less than seven members from the public sector, consisting of the Secretaries of Housing and Urban Development, Health and Human Services, Labor, Education, and Commerce, the Director of Action, and the White House Deputy Chief of Staff, and other members as may be appointed thereto from time to time by the President from among other public officials who can contribute to the achievement of the objectives of the Council.

(2) Fifteen members from private life.

(b) The President shall designate a Chairman from the membership of the Council. The Special Assistant to the

President for Private Sector Initiatives shall serve as Secretary to the Council.

Section 2. Functions. (a) The Council shall advise the President with respect to the objectives and conduct of private sector initiative policies.

(b) The Council shall work with the White House Office of Private Sector Initiatives and such other government offices as the President may deem appropriate to recommend new private sector initiatives.

(c) In performance of its advisory duties the Council shall report to the President whenever requested.

Section 3. Administration. (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Council with such information with respect to private sector initiatives as it may require for the purpose of carrying out its functions. Information supplied to the Council shall, to the extent permitted by law, be kept confidential.

(b) Members of the Council shall serve without any compensation for their work on the Council. However, they shall be entitled to travel expenses, including a per diem allowance, as authorized by law for persons serving intermittently in the government service (5 U.S.C. §§ 5701-5707).

(c) Any expenses of the Council shall be paid from funds available for the expenses of the White House Office of Private Sector Initiatives.

Section 4. General. (a) Notwithstanding any other executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended, shall be performed by the President, except that the Administrator of General Services shall, on a reimbursable basis, provide administrative support services as may be required.

(b) The Council shall terminate on December 31, 1984, unless sooner extended.

February 18, 1977

MEMORANDUM FOR DOUGLAS B. HURON
Associate Counsel to the President

Re: Possible appointment of Mrs. Carter as Chairman of the Commission on Mental Health

You have asked for our opinion on the question whether the President could appoint Mrs. Carter to be Chairman of a Commission on Mental Health proposed to be established in a forthcoming Executive Order. It is our opinion that he may not. The applicable statute is 5 U.S.C. § 3110, subsection (b) which provides:

> A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdicition or control any individual who is a relative of the public official.

The definition of the term "public official" in subsection (a)(2) expressly includes the President, and a public official's wife is among those listed in the definition of "relative" in subsection (a)(3). The term "agency" is defined in 5 U.S.C. § 3110(a)(1)(A) to include an "Executive agency" which in turn includes any "establishment" in the Executive Branch. See 5 U.S.C. §§ 104, 105. The comprehensive term "establishment" would clearly cover the Commission on Mental Health, which will be comprised of persons who will be regarded as government employees (section 7) and be authorized, through its Chairman, to conduct hearings and procure independent services pursuant to 5 U.S.C. § 3109 (sections 4 and 7(b)). See also 5 CFR 310.101. Therefore, since the President "exercises jurisdiction or control" over the Commission, his appointments to that "agency" are squarely covered by the terms of 5 U.S.C. § 3110.

Moreover, the legislative history of the statute shows that the prohibition in 5 U.S.C. § 3110(b) applies whether or not the appointee will receive compensation. However, we do not believe that 5 U.S.C. § 3110(b) would prohibit the President from appointing Mrs. Carter to an honorary position related to the Commission if she remained sufficiently removed from the Commission's official functions. Attached hereto is a memorandum discussing in more detail the legal basis for our conclusions.

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel

Enclosure

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel

February 17, 1977

Edwin S. Kneedler
Attorney-Adviser
Office of Legal Counsel

Legality of the President's appointing Mrs. Carter as Chairman of the Commission on Mental Health

The appointment of Mrs. Carter to be Chairman of the Commission on Mental Health proposed to be established by Executive Order would violate 5 U.S.C. § 3110, subsection (b). 1/

1/ In a memorandum to files dated October 15, 1968, former Deputy Assistant Attorney General Richman of this office suggested that 5 U.S.C. § 3110 may not apply to appointments to titled positions by the President, acting under his constitutional duty to appoint "officers of the United States." Art. II, Sec. 2. He based this suggestion on the belief that because of possible constitutional questions in limiting the President's power of appointment and because Congress was no doubt aware that President Kennedy had appointed relatives to high positions, it was unlikely that the provision was intended to reach such appointments without specific mention of this fact in the legislative history. But in fact, the Kennedy appointments were specifically discussed during the Senate hearings on the legislation, and the Chairman of the Civil Service Commission expressed the opinion, with which no member of the Committee disagreed, that the provision would prohibit appointment of a relative to a Cabinet position. Hearings on Federal Pay Legislation before the Senate Committee on Post Office and Civil Service, 90th Cong., 1st Sess. 360, 366 (1967). On the question of legislative intent, then, the 1968 memorandum appears to be wrong. The possible constitutional argument does not seem substantial in the present case.

The only possible argument that the appointment of Mrs. C rter would be lawful might be that the statute does not apply if the appointee will serve without compensation. 2/ The language of the substantive prohibition in 5 U.S.C. § 3110(b) is written in broad terms which on their face attach no significance to the matter of compensation. However, subsection (c) provides:

> An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

It might be argued that because the statutory remedy for a violation is to deny the appointee pay, the statute must be regarded as being directed only to those situations where the appointee receives compensation.

In addition there are several instances in the sparse legislative history of the provision where individual Members of Congress spoke of the provision in the context of compensated positions. For example, Representative Smith, who introduced the measure on the House floor as an amendment to a Federal pay bill, stated that a primary place one would find violations was in smaller post offices, where postmasters often refused to hire a permanent clerk unless their wives were on the eligibility list and found other ways to "maneuver to hire their relatives." 113 Cong. Rec. 28659 (Oct. 11, 1967). Other Members of Congress used words such as "hire" and "payroll" when speaking of the prohibition, again suggesting the element of compensation. Id.; 113 Cong. Rec. 37316 (Dec. 15, 1967); Hearings, supra, at 369, 371-72. However, I do not believe that the fact that Congress may have been thinking in terms of compensated services can have the effect of limiting the plainly broader reach of the language of the statute itself absent a clear indication of congressional intent to do so. That indication is lacking here.

2/ Section 7 of the proposed Executive Order provides that the Members of the Commission "may" receive compensation for their services. I assume this would permit Mrs. Carter to serve without compensation.

Indeed, there are several factors which affirmatively suggest that the statute should not be construed to apply only to situations in which the employee will receive compensation. First, the Senate Report on the legislation 3/ describes the present 5 U.S.C. § 3110 in broad terms which contain no suggestion that only compensated positions are covered, except for a reference to 5 U.S.C. § 3110(c), which denies pay to a person appointed in violation of the section. S. Rep. No. 801, 90th Cong., 1st Sess. 29 (1967). The Civil Service Commission's description of the provision in its submission to the Senate Committee, stated that the "amendment permits no exceptions." _Hearings, supra_, at 387. 4/ _See also id._ at 359.

Also, one rationale of focusing on compensated positions would apparently be that the statute's purpose is to prevent the public official from realizing any indirect financial benefit in appointing a relative. This purpose makes sense if the employee involved is the public official's spouse, as in the case of the Postmaster's wife mentioned by Representative Smith when he introduced the amendment. But the persons included in the definition of "relative" under the statute include many persons, such as first cousins, nephews, nieces, and others whose compensation would be unlikely to redound to the financial benefit of the appointing official. Thus, the prohibition must have a broader rationale.

3/ The House Report does not discuss the provision involved here.because it was added as an amendment on the House floor.

4/ The exceptions later included in the bill following the testimony of the Chairman of the Civil Service Commission only permit "temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances" and the appointment of veterans who are entitled to a preference in appointments in the civil service, 5 U.S.C. §§ 3110(d) and (e); these obviously would not apply to Mrs. Carter's appointment.

The broader rationale appears to be to prevent the detriment to the government when appointments are based on favoritism -- i.e., familial ties -- rather than merit. For example, Congressman Smith stated:

> This is bad for morale where it is practiced. Many of these relatives, including some on congressional payrolls may do a good job, but the overall interest of the Government is against the practice and those good employees can get a job in some office on their merits rather than using relationship as a leverage. 113 Cong. Rec. 28659.

The Civil Service Commission's submission to the Senate Committee described the provision as a prohibition against favoritism, Hearings, supra, at 387, and the discussion in the course of the hearings focused on favoritism as such and the possible detriment or loss of "efficiency" to the Government when a family member is appointed. Id. at 359, 365-68, 372. Obviously the injury to the Government in terms of the reduced quality of the services it receives is the same whether or not it pays compensation to the employee who is appointed because of familial ties rather than merit. 5/ Therefore, I do not believe that the purposes sought to be furthered by the statute require or even suggest that its plain language should be construed so as not to apply to employees who receive no compensation. I have been informally advised by the Office of the General Counsel at the Civil Service Commission that while the issue has apparently not arisen in the past, the Commission would construe 5 U.S.C. § 3110 to apply even where the employee receives no compensation.

5/ Another possible purpose of the section might be to prevent public officials from rewarding their relatives with appointments; but such a reward could be in the form of the prestige of an appointment as well as compensation.

It has also been suggested that the prohibition may not apply here because the Commission will be funded out of appropriations available to the President under the Executive Office Appropriations Act of 1977 for "Unanticipated Needs," which may be expended for personnel "without regard to any provision of law regulating employment and pay of persons in the Government service." 90 Stat. 968. However, I do not believe that the quoted language makes 5 U.S.C. § 3110 inapplicable.

This language was included in the appropriation for the Executive Office under the heading "Emergency Fund for the President" in the Executive Office Appropriation Act of 1968, 81 Stat. 118 (which was in effect when 5 U.S.C. § 3110 was enacted) and in prior appropriations act as well. Then, as now, the separate appropriations available for the White House Office under the same act contained a virtually identical provision for obtaining personnel services without regard to laws governing employment and pay. 81 Stat. 117; 90 Stat. 966. Although there is no mention in the legislative history of 5 U.S.C. § 3110 of the effect of the appropriations act language, the application of the prohibition in the present 5 U.S.C. § 3110 to appointments by the President was fully discussed in the Senate hearings. In fact, in response to an inquiry from Senator Yarborough, Chairman Macy of the Civil Service Commission stated that had it been in effect, the provision would have prevented President Franklin Roosevelt from appointing his son as a civilian White House aide, as the President apparently had done. Hearings, supra, at 366. Chairman Macy even suggested that the prohibition should be inapplicable to the President in order to maintain his discretion in making appointments. Id. Nevertheless, the Senate Committee chose to amend the House bill expressly to include the President among the "public officials" covered by the bill, and the section was enacted in this form. In view of this legislative history, the language in the appropriation for the White House Office, which merely has been carried forward from prior years, should not be construed to override the express prohibition in 5 U.S.C. § 3110. 6/

6/ By memorandum dated November 14, 1972, Assistant Attorney General Roger Crampton of this office advised the White House that 5 U.S.C. § 3110 does apply to appointments to the White House staff, although the appropriations acts were not considered in the memorandum.

The result should be no different with respect to the almost identical language in the appropriation for "Unanticipated Needs," from which the Commission will be funded.

For the reasons stated, 5 U.S.C. § 3110(b) prohibits the President from appointing Mrs. Carter as Chairman or a member of the proposed Commission.

On the other hand, although the matter is not wholly free from doubt, I do not believe that 5 U.S.C. § 3110 would prohibit Mrs. Carter from holding an essentially honorary position, such as Honorary Chairman, related to the Commission's work. Subsection (b) as enacted prohibits appointments to a "civilian position" in an agency over which the public official has jurisdiction or control. The term "civilian position" appears to have been intended to cover all positions occupied by an "officer" or "employee" of the United States under the civil service laws and to exclude positions in the military. See Hearings, supra, at 363-64, 365.

For purposes of Title 5 of the United States Code, an officer or employee is a person who is (1) appointed in the civil service by an officer or employee; (2) engaged in the performance of a Federal function under authority of law; and (3) subject to the supervision of an officer or employee while engaged in the performance of his duties. 5 U.S.C. §§ 2104 and 2105. Presumably the President's designation of Mrs. Carter as an Honorary Chairman of the Commission would constitute an appointment for purposes of the first of the factors mentioned above. However, it would seem that Mrs. Carter's role as Honorary Chairman could be fashioned in such a manner that she would not necessarily be engaging in a Federal function when she lends her prestige, insights, and support to the Commission's work. 7/ To accomplish the

7/ It could also be argued that as an Honorary Chairman Mrs. Carter would not be subject to the supervision of an officer as contemplated in the third factor mentioned above. This argument is of doubtful validity, however, in view of the President's authority to appoint an Honorary Chairman and establish and direct that person's official duties, however insubstantial they may be.

required detachment from the Commission's Federal function, Mrs. Carter should at least have no formal authority or duties relating to the Commission's work and avoid being the moving force behind its operations -- e.g., in selecting staff, convening meetings, conducting hearings, establishing policy, or formulating recommendations. This would not, however, prohibit Mrs. Carter from attending meetings or hearings (although perhaps she should not do so on a regular basis), submitting her ideas to the Commission for consideration, or offering her support and soliciting support from others for the Commission's work. It is my understanding that First Ladies have in the past assumed this type of advocate's role in connection with Government programs in which they were especially interested, and it would seem to make no difference here that Mrs. Carter may have an honorary title that really only serves to highlight her interest.

MAR 2 5 1977

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Employment of relatives who will serve without compensation

Following our meeting with Bob Lipshutz on March 17, you have asked for my views as to whether 5 U.S.C. § 3110, which prohibits a public official from appointing or employing a relative in a civilian position in an agency over which he has jurisdicition or control, applies in situations in which the relative will serve without compensation.

This question was recently presented to the Office of Legal Counsel in connection with the proposed appointment of Mrs. Carter to be Chairperson of the Commission on Mental Health. After researching the legislative history of the statute, we concluded that the statute applied to uncompensated positions and advised by memorandum dated February 18 against the contemplated appointment of Mrs. Carter.

Subsequently, a question was raised as to whether the President's son could be given office space and support services in the West Wing of the White House in connection with his part-time work for the Democratic National Committee. We orally advised Mr. Lipshutz's office that funds appropriated for the White House Office should not be used for this purpose.

Finally, the Office of Legal Counsel was asked whether there would be any legal objection to the President's son volunteering his time to work as an assistant to a regular member of the White House staff. Mr. Lipshutz's office specifically requested that the Office of Legal Counsel consider the points raised in a letter from the General Counsel of the Civil Service Commission to the Vice President's transition staff on December 29, 1976, which concluded that 5 U.S.C. § 3110 does not prohibit the President or Vice President from appointing relatives to their personal staffs. After re-examining the matter, we concluded that 5 U.S.C. § 3110 does apply to positions on the President's staff.

In this connection, a memorandum prepared by Ed Kneedler of the staff of the Office of Legal Counsel and sent to Mr. Lipshutz on March 15, 1977, noted that the Chairman of the Civil Service Commission informed the Senate Committee during hearings on the nepotism provision in 1967 that had it been in effect, the provision would have prevented President Roosevelt from appointing his son as a civilian aide in the White House. No member of the committee disputed the Chairman on this point. This comment by the head of the agency charged with administering laws relating to Federal employment generally is particularly persuasive on the application of the statute to the President's son here, especially in view of the fact that Congress specifically rejected the Chairman's suggestions to exempt Presidential appointments from the prohibition now contained in 5 U.S.C. § 3110.

Similarly, we concluded that the argument that there would be constitutional difficulties in applying the statute to positions on the President's staff was not substantial. This was in accord with the position taken by the Office of Legal Counsel in a 1972 memorandum, which assumed that the statute applied to the White House staff and found no constitutional infirmity in its doing so.

At your request, I have now re-examined the specific issue of whether the statute applies to uncompensated positions. It is my conclusion that it does. The reasons for my conclusion are discussed in the attached legal memorandum which I recommend that you forward to Bob Lipshutz with the attached cover letter.

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Employment of relatives who will serve without compensation

You asked for my views as to whether 5 U.S.C. § 3110, which prohibits a public official from appointing or employing a relative in a civilian position in an agency over which he has jurisdiction or control, applies in situations in which the relative will serve without compensation.

The prohibition in 5 U.S.C. § 3110 is stated in subsection (b):

> A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

As is evident, compensation is not mentioned in the definition of the substantive offense. The prohibition applies broadly to all "civilian positions."

In context, the term "civilian position" appears to have been intended to refer to positions occupied by persons who would generally be regarded as "officers" or "employees" of the United States. See Hearings on Federal Pay Legislation before the Senate Committee on Post Office and Civil Service, 90th Cong., 1st Sess. 357, 363, 365 (1967) [hereinafter Hearings]. 1/ Under the civil service laws generally, a person is regarded as an employee if he is appointed in the civil service, if he performs a Federal governmental function pursuant to law, and if he works under the supervision of an officer or employee when he performs his duties. See 5 U.S.C. §§ 2104 and 2105. A person who satisfies these criteria is regarded as an officer or employee whether or not he receives compensation. This is reflected, for example, in the statutory definition of a special Government employee for purposes of the conflict of interest laws -- "an officer or employee of the executive or legislative branch of the United States Government . . . who is retained, designated, appointed, or employed to perform, with or without compensation," for not to exceed 130 days per year. 18 U.S.C. § 202(a) (emphasis added). See also Federal Personnel Manual, Chapter 735, Appendix C at pp. 4-5. 2/ Thus, on its face, the prohibition

1/ The description of the substantive offense uses the word "employment." Also, a public official is defined as an officer, employee, a member of the uniformed service or any other individual in whom is vested the authority to appoint or employ or recommend individuals for appointment or employment in connection with "employment" in an agency.

2/ In this connection, you will recall that we advised that Charles Kirbo should be regarded as a special Government employee if he performs governmental functions even though he serves without compensation.

in 5 U.S.C. § 3110(b) would appear to apply to compensated as well as uncompensated positions.

The argument that it does not apply to uncompensated services is based on subsection (c), which reads:

> An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

The argument is that because Congress has provided that a person appointed or employed in violation of subsection (b) is not entitled to pay, Congress must not have intended the prohibition in subsection (b) to apply where the appointed relative will receive no compensation and where the sanction provided will therefore have no bite. I believe this reads too much into the sanction provision.

On its face subsection (c) only provides that an individual appointed or employed in violation of subsection (b) is not entitled to and may not receive pay; its language is not well-suited to support an inference that the withholding of pay also erases the underlying substantive violation. Although the legislative history is not illuminating on this point, the purpose of subsection (c) appears to have been to insure that an individual appointed in violation of the section does not have a right to retain payments or to bring an action in the Court of Claims to recover pay for services he performed prior to the time that his violation was uncovered. <u>See Federal Personnel Manual</u>, Chapter 310, ¶ 3-2.

Absent a specific provision such as subsection (c), persons employed in violation of 5 U.S.C. § 3110(b) may have come within the general rule that a person erroneously appointed by agency officials does not have to pay back his salary to the Government if there is no evidence of fraud or bad faith in the appointment. 28 Comp. Gen. 514 (1949);

see also 45 Comp. Gen. 432 (1966). A person erroneously appointed has no right to continue to hold his job even if he is entitled to retain payments under these decisions. The special provision in subsection (c) denying a right to retain payments should therefore not be interpreted to preclude other sanctions, such as removal, absent some evidence that it was also intended to have this reach. There does not appear to be a basis for inferring this intent.

It is important to note that the express sanction in subsection (c) has not been construed to be exclusive. For example, although subsection (c) imposes no penalty on the appointing official, the Civil Service Commission's Federal Personnel Manual, Chapter 310, ¶ 3-2, provides that "public officials who violate civil service regulations governing employment of relatives are subject to applicable penalties on this account" -- apparently referring to the possibility of administrative discipline. Removal of an individual employed in an uncompensated position would presumably also be an appropriate sanction or remedy, even though the statute does not expressly provide for removal.

For the foregoing reasons, I believe the most that can be said about the provision for withholding of pay in subsection (c) is that Congress may have been thinking primarily in terms of compensated services. There are also several instances in the sparse legislative history of the provision in which individual Members of Congress spoke of it using words such as "hire" and "payroll," again suggesting that the principal frame of reference was compensated services. 113 Cong. Rec. 28659 (Oct. 11, 1967); id. at 37316 (Dec. 15, 1967); Hearings, supra, at 369, 371-72.

However, there are several factors which affirmatively suggest that the broader language of subsection (b) should not be construed to apply only to situations in which the employee will receive compensation. First, the Senate Report on the legislation 3/ describes the present 5 U.S.C.

3/ The House Report does not discuss the provision involved here because it was added as an amendment on the House Floor.

§ 3110 in broad terms which contain no suggestion that only compensated positions are covered, except for a reference to the provision in subsection (c) denying pay to a person appointed in violation of the section. S. Rep. No. 801, 90th Cong., 1st Sess. 28 (1967). Referring to subsection (c), the report states that any person found to have been appointed or employed in violation of the section "would be required to be removed from the payroll." Id. Use of the word "payroll" again might appear to suggest that Congress was focusing on compensated positions. But the requirement that a person be "removed from the payroll" may in the present context just as readily be thought to be another way of saying that the person's employment must be terminated. In this regard, the report notes that "a saving provision is included which will permit the continued employment of a relative appointed by a public official prior to the effective date of the provision." Id. (emphasis added). The word "employment" could refer to both compensated and uncompensated services.

The Civil Service Commission also described the substantive prohibition in subsection (b) in broad terms in its submission to the Senate Committee considering the legislation -- stating that the "amendment permits no exceptions" -- although the matter of compensation was not specifically mentioned. Hearings, supra, at 387. See also id. 357, 359. 4/

4/ The exceptions later included in the bill following the testimony of the Chairman of the Civil Service Commission only permit "temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances" and, in some circumstances, the appointment of veterans who are entitled to a preference in appointments in the civil service. See 5 U.S.C. §§ 3110 (c) and (e).

The argument that the nepotism statute should be construed to apply only to compensated positions may also rest on a view that the statute was aimed at preventing public officials from feathering their families' nests. But this supposed purpose ignores the fact that a person can enjoy substantial non-economic benefits in working for the Federal Government, in terms of power, prestige, and experience that may be of value at a later time. If the purpose of the nepotism statute were only to prevent public officials from bestowing benefits on their relatives, even this goal would not be fully served by withholding compensation.

However, aside from the purpose to prevent the appointment process from being used for private benefit, it appears that the statute was also intended to protect the Government against the receipt of possibly inferior services from those whose opportunity to work for the Government stems from favoritism rather than merit. For example, the principal sponsor of the legislation, Congressman Smith, stated:

> This is bad for morale where it is practiced. Many of these relatives, including some on congressional payrolls may do a good job, but the over-all interest of the Government is against the practice and those good employees can get a job in some office on their merits rather than using relationship as a leverage. 113 Cong. Rec. 28659.

Similarly, Congressman Udall stated that the nepotism statute is "the strongest possible guarantee against any abuse of Federal appointive authority _and_ any preference in Federal positions that is adverse to the public interest." The Civil Service Commission's submission to the Senate Committee described the provision as a prohibition against favoritism, _Hearings_, _supra_, at 387, 5/ _see also_ _Lee_ v. _Blount_, 345

5/ The Civil Service Commission's formal statement read in part:

(Footnote cont'd on p. 7)

F. Supp. 585, 587-88 (N.D. Cal. 1972), and the discussion in the course of the hearings focused on favoritism as such and the possible loss of "efficiency" in the operation of Government when people are chosen to perform services for the Government on a basis other than merit. Hearings at 359, 365-68, 372. The potential injury to the Government in terms of the reduced quality of the services it receives is the same whether or not it pays compensation to the employee who is appointed because of familial ties rather than merit. Therefore, I do not believe that the purposes sought to be furthered by the statute indicate that the facially all-inclusive language of the prohibition should be interpreted as not applying to individuals in uncompensated positions.

I understand that an additional problem has arisen in determining what constitutes employment in a civilian position under the statute, especially when a member of the President's family is involved. Perhaps a few illustrations will best serve to delimit the statute's reach.

It seems clear that Mrs. Carter is not prohibited by 5 U.S.C. § 3110 from carrying on the traditional duties of First Lady in directing the operation of the Executive Residence, making arrangements for entertainment, etc. Nor, in my view, are Mrs. Carter and the President's other relatives prohibited from representing the President at certain official functions or from going abroad in the land as his personal emissary to assess local problems, as Chip Carter

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5/ (Footnote cont'd from p. 6)

> In our opinion favoritism in the appointment and advancement of relatives, or favoritism in any form whatsoever shall have no place in the Government service, whether it be in the competitive civil service or outside of it.

did on his trip to Buffalo. On these occasions, members of the President's family appear essentially on the President's behalf, not in an official capacity or position. Finally, 5 U.S.C. § 3110 would not appear to prohibit members of the President's family from rendering personal advice to the President on one or another subjects. In this regard, you may recall that we concluded that Charles Kirbo would not be a Federal employee solely by virtue of his giving personal advice to the President.

These types of activities should be distinguished, however, from the day-to-day work of the White House Office, such as answering correspondence or telephone calls, which is more clearly a governmental function of the kind ordinarily performed by regular members of the White House staff. It might be argued that Chip Carter is acting on the President's personal behalf when he performs these functions, just as he is when he is a personal emissary of the President at official functions. But this argument proves too much, because everyone in the White House Office in a sense acts on behalf of the President. The argument just suggested would therefore permit the President's relatives to hold any position in the White House Office, despite the legislative history to the contrary.

The distinction just outlined between regular staff functions and the traditional activities of members of the First Family on the President's personal behalf may be difficult to apply in certain close cases, but the distinction is clear in principle and, in my view, required by the terms 5 U.S.C. § 3110. 6/

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel

6/ It is also supported by the only decision of the Comptroller General construing the statute. The Comptroller

(Footnote cont'd on p. 9)

6/ (Footnote cont'd from p. 8)

General concluded that a replacement designated by a fourth class postmaster to perform his duties when he was on sick or annual leave did not have to be regarded as being appointed or employed in a civilian position under 5 U.S.C. § 3110. The decision noted that the replacements are not officially appointed, they render services on a "temporary intermittent basis," the same replacement is not always designated, and since the postmaster retained the only position in a fourth class office when he was on leave, there was no position for his replacement to occupy. 47 Comp. Gen. 636, 638 (1968). A member of the President's family acting as his personal emissary for a given occasion does so on a "temporary intermittent basis," without regular assignment, and does not occupy a position as such. A relative permitted to be employed doing office work, even without a formal appointment, does not meet these requirements.

THE WHITE HOUSE

WASHINGTON

February 23, 1983

MEMORANDUM FOR MICHAEL K. DEAVER

FROM: JAMES K. COYNE

SUBJECT: Scheduled Meeting - John Gardner

Prior to Jay Moorhead's departure, we developed a list of former Private Sector Initiatives Task Force members and Volunteer Sector constituents with whom I should arrange courtesy calls.

Jay and I included Brian O'Connell and John Gardner, President and Chairman, respectively of "Independent Sector" on this courtesy call list. Brian contacted me and scheduled the March 2nd meeting.

Jay and I, of course, were well aware of the partisanship that Mr. Gardner (and Brian to a lesser degree) has maintained toward the Administration. But, in light of the Independent Sector's considerable influence and our desire to persuade them to support the Administration's goals, we included them on the courtesy call list.

THE WHITE HOUSE

WASHINGTON

February 19, 1983

file

MEMORANDUM FOR MICHAEL DEAVER

FROM: CRAIG L. FULLER CLF

SUBJECT: Job Search Club Funding

I have spoken with Secretary Donovan about the Job Search Club Funding that has been proposed by the Private Sector Initiative Office. Ray is well aware of the project and the job search projects going on around the country.

He will meet with Jim Coyne and his staff to determine how Labor can best support the effort. He believes that a $2 million commitment might be high, but he is willing to consider providing financial support.

I suggest a quick follow-up meeting with Secretary Donovan to get the effort started and perhaps it can build over time.

THE WHITE HOUSE

WASHINGTON

February 9, 1983

CF
do you want to handle?

MEMORANDUM FOR MICHAEL K. DEAVER

FROM: JAMES K. COYNE

SUBJECT: JOB SEARCH CLUB FUNDING.

As we discussed, the Job Search Club is a partnership between business and labor unions to aid displaced workers. This effort is being coordinated by the National Alliance of Business and my office with the intention of providing technical assistance and resources to the workers.

The Department of Commerce has agreed to provide the program with $300,000 and we have approached the Department of Labor for $2 million of the $6 million Secretary's discretionary fund as provided under Title III of the Job Training Partnership Act. The money will be used to provide seed money to management and labor at 20-30 company sites to begin the program.

Al Angrisani and Secretary Donovan want to discuss the matter but have not received the necessary notice from the Administration that the White House is behind the program.

Fuller likes the idea and promised the get to Donovan but has been out of town. Angrisani is eager to spend the money elsewhere if we do not get to Secretary Donovan ASAP. I think a telephone call from you to Donovan would get the process moving.

Background material attached.

APPROVE OK DISCUSS ______

2/18
- discussed w/ Sec Donovan
- he agreed to meet w/ Coyne & assist
$2 m high
CF

NAB - 2:00 Friday

CONCEPT PAPER
FOR A
PRIVATE SECTOR INITIATIVES DISPLACED WORKER PROJECT
A COLLABORATIVE APPROACH
EXECUTIVE SUMMARY

PURPOSE

The purpose of this proposal is to assist the efforts of the President's Advisory Council on Private Sector Initiatives to design and implement an effective program which will assist displaced workers to transition to new employment opportunities. The design of this proposal utilizes the tri-partite partnership of business, labor and government to pilot test a range of program options to accomplish this task.

A key component of the project is the Job Search Club, a proven self-help technique, administered primarily through the efforts of the affected company and union, fully supported by other private sector organizations.

BUSINESS/LABOR GOVERNMENT COOPERATION - A JOINT APPROACH

The National Alliance of Business and the Human Resources Development Institute, in cooperation with the Potomac Institute for Economic Research, will work with affected companies and unions to develop efficient worker assistance programs at the local level. They will augment the Job Search Club developed by the President's Private Sector Initiative Task Force.

The Departments of Labor and Commerce will assist in this tri-partite effort by providing resources, technical oversight and direction.

IMPLEMENTATION

The project proposes to provide services from 20 to 30 company sites. NAB, HRDI and PIER will work as a team to carry out the project through the following activities:

- Develop guidelines for, and select company/union sites for project implementation.
- Collaborate with the company/union to develop a worker assistance program consonant with company/union needs and requirements.

- Work with local service delivery groups and the private sector to provide resources and otherwise suppor the company/union effort.
- Provide technical assistance and oversight throughout the duration of the project to assure maximum success.
- Coordinate with the state government to ensure model replication in other affected areas.

PROGRAM COMPONENTS

As indicated earlier, an important component of the project is the Job Search Club. Experience with such programs indicates that other services provided to workers are important adjuncts to its success. The team would encourage the company and union to consider the delivery of other services as well, such as:

- Intensive job development and placement
- Referral to retraining programs where appropriate.
- Counseling and provision of short term classes.

TIME CONSTRAINTS

It is imperative that all participants in this project be prepared to begin as soon as possible. Of particular importance is that the project be in operation at several sites prior to the jointly/sponsored business/labor/government Conference on Displaced Workers to be held in Pittsburgh in early April.

PRELIMINARY BUDGET

I. Requested from Department of Labor

	20 Sites	30 Sites
A. Funds available to sites pending Governor's request:		
$75,000 for program costs per site	$1,500,000	$2,250,000
plus $15,000 for technical assistance from NAB/HRDI team per site	$ 300,000	$ 450,000
for $90,000 per site		
DEPARTMENT OF LABOR TOTAL	$1,800,000	$2,700,000

II. Department of Commerce Funds for Job Search Club Assistance

	20 Sites	30 Sites
A. Travel expenses for technical assistance teams for initial site visits and follow-up feasibility visits.		
2 trips per site x 2 people x $500	$ 40,000	$ 60,000
B. Contract with Potomac Institute for Economic Research for materials developed, Job Club start-up assistance and evaluation of 5 sites	$ 260,000	$ 285,000
DEPARTMENT OF COMMERCE TOTAL	$ 300,000	$ 345,000

III. Funding match required from non-federal sources, including company, union, state and local in-kind and financial contributions (match)

	20 Sites	30 Sites
Funding match required from non-federal sources, including company, union, state and local in-kind and financial contributions (match)	$1,500,000	$2,250,000
GRAND TOTAL - ALL SOURCES	$3,600,000	$5,295,000

THE WHITE HOUSE

WASHINGTON

February 2, 1983

MEMORANDUM FOR MICHAEL K. DEAVER

FROM: JK JAMES K. COYNE, SPECIAL ASSISTANT TO THE PRESIDENT, PRIVATE SECTOR INITIATIVES

SUBJECT: ADVISORY COUNCIL CHAIRMAN

Per your discussion with Michael Castine, we have drafted a list of possible candidates for the chairmanship of the Private Sector Initiatives Advisory Council.

William Edgerly - State Street Bank, Boston
Bob Beck - Prudential
Bob Dee - Smith/Kline
Ed Spencer - Honeywell
Sandy Trowbridge - National Association of Manufacturers
Nick Brady
Drew Lewis

I would be willing to discuss these candidates if you are not familiar with them.

ACTION ____________________

file PSI

THE WHITE HOUSE

WASHINGTON

January 27, 1983

MEMORANDUM FOR MICHAEL DEAVER

FROM: JAMES MEDAS JM

SUBJECT: PSI CHAIRMANSHIP

Retired Republican Governors

Milliken (MI)
Ray (IA)
Thone (NB)
Dreyfus (WI)
Clements (TX)
Hammond (AK)
White (AR)
Quie (MN)
List (NV)
Rhodes (OH)
Dalton (VA)
Romney (MI)
Evans (OR)

Incumbent Republican Governors

Deukmejian (CA)
DuPont (DE)
Thompson (IL)
Orr (IN)
Treen (LA)
Bond (MO)
Kean (NJ)
Olsen (ND)
Atiyeh (OR)
Thornburgh (PA)
Janklow (SD)
Alexander (TN)
Snelling (VT)
Spellman (WA)
Sununu (NH)
Branstad (IA)

THE WHITE HOUSE

WASHINGTON

p81

January 13, 1983

MEMORANDUM FOR MICHAEL DEAVER

FROM: MICHAEL P. CASTINE, ACTING DIRECTOR MPC
PRIVATE SECTOR INITIATIVES

SUBJECT: JOB FAIRS.

Attached is a front page article from today's Washington Post on the WDCA-TV Job Fair in case you have not read it.

The President filmed a P.S.A. spot for this event as well as for four other simultaneous job fairs. (Buffalo, Birmingham, Kansas City, and Cincinnati). Also, he will conference call the television stations this evening to reiterate his support for the effort.

Note: The Washington, D.C. Job Fair expects to generate over 2,000 jobs.

CC: D. Gergen
L. Speakes
M. Baroody

ALEXANDRA PANTELIDES
... makes plea for graduates

JOHN DUNDAS
... ready to go to work

TV Program Tries to Aid Jobless in Finding Work

By Karlyn Barker
Washington Post Staff Writer

The job-seeker, a former social services administrator out of work since a year ago last June, stared into the television camera. He had 40 seconds to make his employment pitch.

"Hello. My name is John Dundas," he said, pausing nervously before giving a brief employment history. "I'm 52 years of age. I'm strong, vigorous and ready to go to work."

Tonight, Dundas and a dozen other out-of-work Washington area residents will deliver "Hire Me" spots on a "Job Fair" broadcast on Channel 20 (WDCA-TV). The program, to be broadcast from 8 p.m. to 10 p.m., also will feature tips on job hunting and retraining, phone calls from employers pledging jobs and employes seeking them (a computer will match them up) and taped and live personal appeals for work.

The sign-of-the-times show is the first of its kind in this area, but similar televised job-a-thons have been held in Columbus, Des Moines, Louisville, Milwaukee and Wheeling.

One is planned for Boston; a San Francisco station makes "Hire Me" spots a regular feature of its newscasts, and some news-

See JOBS, A27, Col. 1

Unemployed Make Pitch for Work On TV Program

JOBS, From A1

papers have offered free employment-wanted ads.

"The number one problem in our community, as it is everywhere, is unemployment," said Farrell Meisel, Channel 20's program manager. "This is truly what local television should be doing."

Meisel says Taft Broadcasting Co., which owns Channel 20 and six other stations, decided an on-air job fair would be a good project, especially after its Columbus station held one in September and placed more than 500 job-seekers.

Taft's stations in Cincinnati, Kansas City, Birmingham and Buffalo will also air similar programs tonight. Channel 20 has coordinated its efforts with Maryland, Virginia and District of Columbia employment offices and is picking up the tab on computer, phone bank and filming costs, worth well over $20,000, according to the station.

President Reagan has given the program a boost by taping promotional spots and an appeal for private sector employers to hire the jobless. D.C. Mayor Marion Barry also has taped a jobs appeal for the program, and Govs. Harry Hughes of Maryland and Charles Robb of Virginia have endorsed it.

Another job hunter who will appear on the show is Therman Coles, 35, a Vietnam veteran who said, "I've seen it from the other side of the counter, and now I'm seeing it from this side of the counter." Coles was a program director for job-placement training, counseling others on how to make a good impression at interviews until last August when he lost his job after government CETA regulations were rewritten, making it harder for his employer to get funds.

"I never thought I'd be in this situation myself," said Coles, a Silver Spring resident who has two daughters, 18 and 12. Like Dundas, he taped a "Hire Me" spot for the show at the Maryland Employment Security Administration's Wheaton Plaza office this week.

Post
1-17-83

"I have a B.A. in political science, a law degree from Howard [University] and am completing work, hopefully by June, on an MBA," said Coles.

Dundas, who lives in the Rockville area and is the father of two, ages 11 and 20, is experiencing unemployment for the first time since he graduated from high school. A Korean War veteran with a degree in psychology, and nearing a master's in sociology, he's finding it hard to find work in his social services field.

Not everyone featured on the program will be unemployed. Alexandra Pantelides, 22, of Annapolis, has two jobs, as a waitress and clerical assistant, both a far cry from the personnel career she hoped for last June when she graduated from college with honors.

"I'm told it's hard to find a job in personnel with so little experience," she said. "I wish more people were willing to give graduates a chance."

Also taping spots for the show were Norm Kaufman, regional director for operations for Hardee's Food Systems; Jack Hix, recruiting manager for Tracor, Inc., which does defense contracting for the Navy; and Angelita Moreno, personnel director for Applied Management Sciences. Hardee's is looking for assistant managers. Tracor has 200 to 300 openings for electronic, electric and mechanical engineers. Applied Sciences has 25 openings for economists, statisticians, clerks and secretaries.

With their help and job pledges from other employers, the program will be trying to make a small dent in the region's unemployment. For Dundas and others, that's reason enough to hope.

"I'm going to go to work, somehow, someway . . . soon," he says.