

JUN 18 1974

MEMORANDUM TO HONORABLE WILLIAM E. CASSELMAN II
Legal Counsel to the Vice President

Re: Draft Standards of Conduct for the Office of the
Vice President

This responds to your request of May 31, 1974, to Mr. Ulman for our views on the draft Standards of Conduct for the Office of the Vice President.

It appears that for general purposes you believe that employees of the Vice President's staff should legally be treated generally in the same manner as employees of the Executive Office of the President. In that regard we note that your draft Standards of Conduct, with minor exceptions, tracks 3 CFR Part 100, the Standards of Conduct applicable to agencies in the Executive Office of the President, all of whose employees are plainly in the executive branch. In that connection you state in section 1(c) that "the standards set forth herein reflect prohibitions and requirements imposed by the laws of the United States." This is true, of course, as regards 18 U.S.C. 202, 203 and 205, which apply to employees both in the executive and legislative branches. On the other hand, 18 U.S.C. 207 (post-employment prohibitions), 18 U.S.C. 208 (acts affecting a personal financial interest), and 18 U.S.C. 209 (salary of officials and employees payable only by the United States), apply solely to employees in the executive branch. This raises a legal issue of importance. If a criminal prosecution were brought against a particular employee on the Vice President's staff for an alleged violation of 18 U.S.C. 207, 208, or 209, the employee could raise the question that these prohibitions are inapplicable because he is paid from funds appropriated to the legislative branch (assuming that to be the case), and because the Vice President under the Constitution is primarily in the legislative branch. We need not, however, reach this difficult question because there is nothing to prevent the Vice President by regulations from imposing the same general standards on all his employees, whether they are in the executive or legislative branch, as are imposed by the President under 3 CFR Part 100 on employees in the component agencies of the Executive Office of the President. Indeed, we think that this is a

salutary policy. But even if criminal sanctions may not be imposed on the Vice President's employees to the extent that some or all of them are in the legislative branch, there are other lesser sanctions which might be invoked such as reprimand, dismissal, or other forms of appropriate action designed to discourage any conduct that may result in, or create the appearance of, potential conflict by employees in the Vice President's office. (See section 25.)

For the foregoing reasons we do not believe that the authority of 18 U.S.C. 207, 208 and 209 should be cited as though they were clearly in point. Rather they might better be referred to merely as a source reflecting the underlying purpose and spirit of the particular standard of conduct involved.

This approach would call for technical changes as follows:

P. 8, line 5:

Add "cf." prior to 18 U.S.C. 208.

P. 10, lines 7, 9:

On line 7, delete the words "pursuant to § 208 of Title 18, United States Code." Add after the word "employee" on line 9 of p. 10 the following: (cf. 18 U.S.C. 208).

P. 10, lines 14-16:

Delete the words on lines 14-15 "pursuant to the provisions of section 208 of Title 18, United States Code" and on line 16, "or section 208 of Title 18."

P. 12, lines 6, 13, 19-20:

Add the word "cf." prior to the statutory references "(18 U.S.C. 207(a))," "(18 U.S.C. 207(b))," and "18 U.S.C. 209."

P. 14, lines 15-16:

Delete the words "207 of Title 18, United States Code" and add in their place "10(a) (2), (3) hereof."

P. 15, lines 2-3:

Delete the words "for in sections 205, 207, or 208 of Title 18, United States Code," and add in their place, the word "herein."

P. 15, line 10:

Add the word "cf." prior to "18 U.S.C. 209."

P. 26, lines 16-17; p. 27, line 4:

Add the word "cf." prior to "18 U.S.C. 207(a)" on p. 26, and prior to "18 U.S.C. 207(b)" on p. 27.

P. 32, last line:

Delete the words "18 U.S.C. 208 or."

In addition to these technical suggestions, your attention is called to the following matters:

Sec. 4(b), p. 3, 3 lines from bottom:

Add after the word "Commission," the words "and the Department of Justice."

Sec. 4(d), p. 4, line 4:

Consider shortening the period of notification to "30" days.

Sec. 13(b) (3), p. 17, lines 4 to 12:

This subsection would permit reimbursement for travel and subsistence expenses in connection with official Government duties from a professional organization such as the American Medical Association. Such reimbursement may raise the question as to an unlawful augmentation of appropriations. See 46 Comp. Gen. 689 (1967); 37 Comp. Gen. 776 (1958). Moreover, we question the policy of such a provision from the viewpoint of appearance. The AMA is a recognized lobbying organization whose activities and position are frequently controversial. It is often interested in important legislation being considered by the Congress. In some instances, the Vice President may decide to take a position regarding such legislation. We do not think that employees in his office should be in a position where it could appear that they are under obligation to the Association. Possibly there is less likelihood of such appearance problems where the American Bar Association is concerned, but that too is not entirely remote as, for example, concerning "no-fault" insurance legislation. For this reason we would suggest deleting proposed section 13(b)(3).

Sec. 21(a)(2), (3), p. 26:

Prior to the word "matter" (7 lines from bottom and on last line), add the word "particular."

Sec. 22, p. 29:

We note that the draft does not contain a provision like that contained in 3 CFR 100.735-22(o), which expressly prohibits employees in the agencies in the Executive Office of the President from engaging in political activities under the Hatch Act and activities barred by 18 U.S.C. 602, 603, 607, and 608. The Hatch Act applies only to employees in the executive branch (with an exception for employees paid from the appropriation for the office of the President). 5 U.S.C. 7324. This raises an issue somewhat like that involving 18 U.S.C. 207, 208, and 209, discussed above. However, application of the Hatch Act is basically a matter for the Civil Service Commission, and we are reluctant to comment on the issue without the benefit of the views of the Commission. We have not consulted the Commission, but suggest that you may wish to consult it. Should any problem arise in this area, we will be happy to assist.

We think that all employees in the Office of the Vice President would be subject to the provisions of 18 U.S.C. 602, 603, 607, and 608. Those provisions are applicable to all employees of the United States. Failure to bring these sections to the attention of employees may lull them into a sense of false security, and possibly even be misleading where the other prohibitions listed in 3 CFR 100.735-22 would apply to employees in the Office of the Vice President.

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