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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548



LM103759

August 10, 1977

B-164105

The Honorable Lawrence Coughlin
House of Representatives

Do not disseminate to public reading room

Dear Mr. Coughlin:

This is in response to your request for our opinion on whether certain material appearing in the May 1976 issue of a newsletter entitled "Breeder Briefs" violated Federal anti-lobbying statutes. The newsletter provides information on the Clinch River Breeder Reactor Project (CRBRP), which project is funded in part by the Energy Research and Development Administration (ERDA).

The material which prompted your request appears on page 2 of the newsletter under the heading "Express CRBRP Support, Van Nort Urges," attributed to Mr. Peter S. Van Nort, General Manager of the Project Management Corporation, and is set forth below:

"Peter S. Van Nort, PMC General Manager, urges supporters around the nation to express their views on the need for the Clinch River Breeder Reactor Plant Project.

"We have been informed that critics have called upon groups around the country to contact their Congressmen and say "vote against the breeder." It's time that we use the same strategy," he said. Project opponents in Congress are planning amendments to fiscal year '77 authorization legislation and other tactics which would delay the project.

"Van Nort notes that the view of a small number gets distorted in the minds of national leaders because 'we are too conservative about speaking out on the issues. We need to make our Congressmen aware that the overwhelming number of people support the breeder. The Nation's future depends on it.'"

You ask specifically whether the above comments violate "18 U.S.C. 1913, 31 U.S.C. 628 or any other Federal statute." 18 U.S.C. § 1913 prohibits and provides penal sanctions for the use of "money appropriated

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by any enactment of Congress" for certain lobbying activities without express authorization. 31 U.S.C. § 628 prohibits the use of appropriated funds for other than their intended purpose. Also pertinent is section 607(a) of the Treasury, Postal Service, and General Government Appropriation Act, 1977, Pub. L. No. 94-363 (July 14, 1976), 90 Stat. 963, 978, which provides:

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress." (Emphasis added.)

The identical provision is found in section 607(a) of the Treasury, Postal Service and General Government Appropriation Act, 1976, Pub. L. No. 94-91 (August 9, 1975), 89 Stat. 441, 459.

In interpreting "publicity and propaganda" provisions such as section 607(a), we have consistently recognized that any agency has a legitimate interest in communicating with the public and with legislators regarding its policies and activities. If any policy or activity of an agency is affected by pending or proposed legislation, discussion by officials of that policy or activity will necessarily, either explicitly or by implication, refer to such legislation and will presumably be either in support of or in opposition to it. An interpretation of section 607(a) which strictly prohibited expenditures of public funds for dissemination of views on pending legislation would consequently preclude virtually any comment by officials on administration or agency policy or activities, a result we do not believe was intended.

We believe, therefore, that Congress did not intend, by the enactment of section 607(a) and like measures, to preclude all expression by agency officials of views on pending or proposed legislation. Rather, the prohibition of section 607(a), in our view, applies primarily to expenditures involving appeals addressed to the public suggesting that they contact their elected representatives and indicate their support of or opposition to pending or proposed legislation, i.e., appeals to members of the public for them in turn to urge their representatives to vote in a particular manner. These general considerations form the basis for our determination in any given instance of whether there has been a violation of section 607(a). See, e.g., B-128938, July 12, 1976, copy enclosed.

In this context, the comments attributed to Mr. Van Nort seem clearly designed to urge members of the public to contact their Congressmen in

support of the CRBRP and related legislation. Thus, assuming the cited statutes are otherwise applicable, publication of the comments would appear highly questionable. However, the statutory prohibitions have one element in common--they are directed at the use of appropriated funds rather than the lobbying activities themselves. An essential prerequisite to a violation of these statutes, therefore, is the use of appropriated funds in connection with the activities in question. Based on the information we received from ERDA, it appears that appropriated funds were not involved, either in the publication of the newsletter or in the payment of Mr. Van Nort's salary. Accordingly, we do not believe the statutes have been violated.

We would caution that the interpretation of 18 U.S.C. § 1913, because of its penal sanctions, is the responsibility of the Justice Department and the courts, and we would generally refrain from expressing an opinion on it. Our conclusion should therefore be viewed as relating primarily to section 607(a). However, since appropriated funds do not appear to have been involved, it seems unlikely that the Justice Department would pursue the matter further.

The material that follows, which formed the basis for our conclusion, was submitted by ERDA on June 10, 1977, in response to specific questions we presented. We are including this material essentially as provided, as background information in order to be responsive to all aspects of your request.

General comments

"[T]he CRBRP Project is a cooperative effort between the Energy Research and Development Administration (ERDA) and approximately 740 United States electric utility systems. These utility systems are contributing in excess of \$257 million to the Project. They are represented in the CRBRP Project by the Breeder Reactor Corporation (BRC) and the Project Management Corporation (PMC).

"The Breeder Reactor Corporation is the utility organization established to provide utility advice at the top management level to the Project and to serve as liaison between the utilities and the Project. BRC keeps the utilities apprised of project status by holding regular information meetings and by providing for various types of written reports, including Breeder Briefs.

"The Project Management Corporation is the working-level organization established by the utilities to administer their interests in the Project. PMC carries out its function by day-to-day monitoring of Project progress, managing the disbursement of utility funds, disseminating information to BRC and to the utilities as requested by BRC, and arranging for the participation of utility personnel in the Project.

"ERDA's role in the Project is to provide overall project management and the necessary project funding in excess of that provided by the utilities. ERDA has established a Project Office in Oak Ridge, Tennessee, to provide day-to-day management of all project activities with the exception of those activities described above that are the sole responsibility of PMC."

1. GAO question: Legal authority for publication of the newsletter.

ERDA response:

"Breeder Briefs is published as one of the ways in which PMC fulfills a contractual obligation to BRC to disseminate information about the Project.

"Article XIV (a) of Modification No. 1 to Contract No. AT (49-18)-12-1 between BRC and PMC recognizes that BRC will serve as 'primary liaison between the Project and the electric utility industry and the public, and in this respect shall use its best efforts to help assure the broad dissemination of Project data and information . . . PMC and BRC shall consult regularly with respect to programs for dissemination of such data and information.' Under this provision BRC has requested PMC to assist in performing the information dissemination function and PMC has accepted that responsibility."

2. GAO question: Source of funding for the newsletter (publication and distribution).

ERDA response:

"The printing and distribution of Breeder Briefs is funded by BRC from its Reserve for Expenses which BRC retains from utility contributions to cover its reasonable costs and expenses as provided in Article IV(b) of Modification No. 1 Contract No. AT(49-18)-12-1. * * *"

3. GAO question: Is the newsletter published by Government personnel?

ERDA response:

"The newsletter is written by the Information Division of the CRBRP Project Office and published under contract by a private printing firm. All division personnel are either employees of PMC or TVA. The PMC employees are paid from PMC's operating budget which is funded by utility contributions. In accordance with paragraph D-4.2 of Appendix D of Modification No. 1 to Contract No. AT(49-18)-12 between ERDA, TVA, CE and PMC, the TVA employees in the Information Division are assigned to and receive direct supervision from the General Manager of PMC when working on the newsletter. The salaries of the TVA personnel are paid by TVA from nonappropriated TVA funds and TVA is reimbursed by PMC for such expenses out of PMC's operating budget. Neither ~~PMC's operating funds nor TVA's nonappropriated funds~~ are federally-appropriated.

"Paragraph D-2.1 of Modification No. 1 provides that, with certain exceptions not relevant here, TVA's direct and indirect expenses incurred in connection with TVA's Project Activities shall be reimbursed by ERDA. Contract No. AT(49-18)-12, as originally entered into, provided for PMC to reimburse TVA for all such direct and indirect expenses. After Modification No. 1 was executed PMC has continued to reimburse TVA for its expenses without interruption. Paragraph 4.1.12 of Modification No. 1 provides that 'PMC shall be responsible for paying, or arranging for payment of, salaries and related costs of all PMC personnel and utility industry personnel assigned to the integrated Project management organization.' Even though paragraphs D-2.1 and 4.1.12 appear to be in conflict,

it was assumed by Project officials that under paragraph 4.1.12 PMC had authority for reimbursing TVA for the expenses of TVA personnel assigned to the Project, and under paragraph D-2.1 ERDA was to reimburse TVA for all other expenses incurred by TVA in connection with the Project. That assumption appears to have been confirmed by TVA's General Counsel in a letter dated April 21, 1977, to PMC's Comptroller."

4. GAO question: If published by non-Government personnel, has ERDA provided any instructions regarding the publication or content of the newsletter?

ERDA response:

"ERDA has provided no instruction to PMC or BRC regarding publication or distribution of Breeder Briefs."

5. GAO question: If published by non-Government personnel, are there any procedures for review and/or approval of the newsletter by ERDA, and if so, were they followed for the May 1976 issue?

ERDA response:

"There are no procedures per se for review of the newsletter by ERDA. However, specific articles concerning or quoting ERDA personnel may be coordinated with the person(s) about whom the article is written."

6. GAO question: What was the approximate cost of the May 1976 issue of the newsletter (publication and distribution)?

ERDA response:

"Total publication and distribution costs for the May issue of Breeder Briefs were \$561.00."

7. GAO question: Describe the distribution of the May 1976 issue (total number of copies printed and approximate number or portion distributed to Government employees and to non-Government individuals or entities).

ERDA response:

"A total of 4,000 copies of the May 1976 Breeder Briefs were printed. Of the total printing, approximately 140 were distributed to government personnel and the remainder were distributed to nongovernment personnel. Government agencies receiving copies of the May newsletter included TVA, ERDA, the Nuclear Regulatory Commission, the Federal Energy Administration, the Environmental Protection Agency, and the General Accounting Office. Nongovernment recipients included utilities, CRBRP consultants and contractors, news media, Tennessee community and business leaders, educational institutions, and private citizens by request."

8. GAO question: What is the source of the quotation attributed to Mr. Van Nort (speech, other publication, comment directly to newsletter staff, etc.)?

ERDA response:

"The quotations in the newsletter were obtained from discussions between Mr. Van Nort and the Breeder Briefs staff."

A final question we raised with ERDA concerns Appendix F to Modification 1, Contract No. AT(49-18)-12, covering, among other things, the General Manager's salary, which you mentioned in your request. We obtained copies of the original 1973 contract and Modification 1, dated May 1976, and reviewed pertinent provisions. As in the case of the contract provisions dealing with TVA personnel (see ERDA response to question 3 above), these contract provisions appear somewhat confusing. Section 4.1.12 provides that PMC shall be responsible for paying, or arranging for payment of, salaries and related costs of utility industry personnel assigned to the integrated project management organization. Section F-6.1 provides that ERDA will reimburse Commonwealth Edison (CE) for all direct and indirect Project-related expenses.

According to an ERDA official, the parties have interpreted these provisions to mean that PMC will reimburse CE for salaries of assigned personnel out of utility contributions as long as those contributions remain (estimated to 1982). When the utility funds have been depleted, ERDA will be responsible for reimbursement under section F-6.1. At

present, PMC is still making the reimbursements out of the utility contributions. ERDA's explanation, set forth below, makes it clear that, as a matter of fact, the General Manager is not being paid, directly or indirectly, with appropriated funds:

"According to paragraph F-1.1 of Appendix F to Modification No. 1 to Contract No. AT(49-18)-12, Commonwealth Edison (CE) shall see 'That there are made available to PMC, at Project cost, individuals qualified to serve and/or perform, as required, the functions of General Manager, and such additional functions as PMC and CE shall agree upon from time to time.' The individuals made available by CE are to be at Project cost, although CE has agreed in paragraph F-6.2 to contribute \$2 million (above and beyond its contribution to design and build the CRBRP) as a credit against CE's billings for work or services performed by CE under the contract. A credit of \$14,891.00 is being deducted currently on a monthly basis for invoices under Appendix F.

"Mr. Van Nort is a CE employee assigned to PMC to perform the functions of General Manager. His salary is paid by CE. CE is reimbursed by PMC for the salaries of Mr. Van Nort and other CE personnel assigned to PMC, subject to the above-noted credit. PMC makes such reimbursements out of its operating funds derived from utility contributions. No federally appropriated funds are involved. * * *

"Contract No. AT(49-18)-12, as originally entered into, provided in paragraph F-1.1 that CE would make available to PMC, at Project cost, individuals to serve fulltime in various positions including General Manager of the Project. Paragraph F-6.1 provided for PMC to reimburse CE for all direct and indirect expenses incurred by CE in connection with Project Activities. Paragraph F-6.1 of Modification No. 1 provides for ERDA to reimburse CE for such expenses. After Modification No. 1 to Contract No. AT(49-18)-12 became


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effective, PMC continued to reimburse CE for its expenses without interruption. Project Office officials assumed that, as was the case with TVA * * * under paragraph 4.1.12 of Modification No. 1 PMC has authority to reimburse CE for expenses of CE personnel assigned to the Project and under paragraph F-6.1 ERDA is to reimburse CE for other expenses incurred by CE in connection with the Project. * * *"

We reviewed the above information independently but found no reason to question its accuracy. We therefore reiterate our conclusion that the publication of the May 1976 newsletter, "Breeder Briefs" did not constitute a violation of Federal anti-lobbying statutes since no appropriated funds were involved.

We hope the foregoing information is helpful.

Sincerely yours,


Deputy Comptroller General
of the United States

Enclosure