

DOCUMENT RESUME

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[Alleged Lobbying of Members of Congress by Commerce Department Employees]. CED-77-110; B-129874. July 27, 1977. 5 pp.

Report to Rep. Charles E. Grassley; by Robert F. Keller, Deputy Comptroller General.

Contact: Community and Economic Development Div.

Budget Function: Community and Regional Development: Area and Regional Development (452).

Organization Concerned: Department of Commerce: Consumer Affairs Div.

Congressional Relevance: Congress. Rep. Charles E. Grassley.

Authority: Consumer Protection Act of 1977; H.R. 6805 (95th Cong.). 18 U.S.C. 1913. B-164497(5) (1977). B-114839 (1976). B-129874 (1976).

An investigation was made of what the Consumer Affairs Division of the Department of Commerce has done to promote the passage of the Consumer Protection Act of 1977 to determine if a violation of the antilobbying statute had occurred.

Findings/Conclusions: The President's Advisor on Consumer Affairs asked the Department of Commerce to contact members of the House of Representatives to ascertain their positions on the proposed bill. The assignment was carried out by the Consumer Affairs Division. GAO held that statutes do not prevent Government officials from communicating their views to Congress in regard to pending legislation in the public interest. Direct lobbying is generally allowed by 18 United States Code 1913.
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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-129874

JUL 27 1977

The Honorable Charles E. Grassley
House of Representatives

Dear Mr. Grassley:

You requested on May 23, 1977, that we determine what the Consumer Affairs Division, Department of Commerce, has done to promote passage of the Consumer Protection Act of 1977, H.R. 6805, and if their actions violate the anti-lobbying statute (18 U.S.C. 1913).

After interviewing Commerce Department officials, we orally advised your office on June 16, 1977, that the Department did not violate the act. Details of this matter are summarized as follows.

The Counselor Designate to the Secretary of Commerce for Congressional Affairs informed us that Mrs. Esther Peterson, the President's Advisor on Consumer Affairs, asked the Department to contact all Members of the House of Representatives to ascertain their positions on H.R. 6805 and their need for additional information. The Counselor Designate said the White House often asks him to contact Members of Congress to inquire about their positions on legislation proposed by the executive branch. At that time, his office did not have the staff available to make the contacts. Accordingly, the Director, Consumer Affairs Division, was directed to telephone the offices of the 435 Members of the House of Representatives with the following questions.

--If the Congressperson has had an opportunity to focus on the Consumer Protection Bill this year?

--Does the Congressperson think that he/she will support the bill this year?

Categorize the response as either (a) for, (b) leaning for, (c) undecided, (d) leaning against, or (e) against.

--If the response is anything other than for and if he/she has focused on the bill, find out what provision or provisions in the bill keep the Congressperson from supporting the legislation?

The Counselor Designate said that the offices of six Representatives requested additional information and that a list of these Members was forwarded to the President's Advisor on Consumer Affairs.

Our analysis of Commerce Department actions does not indicate a violation of 18 U.S.C. 1913.

Section 1913 provides that:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, request for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than \$500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

Although we traditionally take the position that it would be inappropriate for us to comment on the applicability of a penal statute, we have commented on section 1913 in previous correspondence. In a letter dated March 10, 1977, to Representative John L. Burton (B-164497 (5)), we said, regarding lobbying expenditures of the United States Railway Association:

"It thus appears that a primary purpose of section 1913 was to prohibit Government officials from making appeals to the public to in turn contact their representatives with respect to legislation (the same type of activity we have considered to be in violation of the 'publicity and propaganda' provision in the appropriation statutes) * * * In informal contacts with the Justice Department, we were advised that the Department views section 1913 as prohibiting the type of 'indirect lobbying' described above. With regard to direct contact with Members of Congress, the Department stated in a 1962 letter:

"'Personal contacts with Members of Congress by executive officers are both sanctioned and required by article II, section 3 of the Constitution, which provides in significant part that the President "shall from time to time * * * recommend to their [Congress] consideration such measures as he shall judge necessary and expedient." The power to recommend measures to Congress would appear clearly to comprehend and include the power to urge arguments upon individual Members of Congress in support of such measures. Necessarily the President must entrust part of this function to subordinate officers within the executive branch. Our Federal Government could not function efficiently if the President and his subordinates could not do so.' 108 Cong. Rec. 8451 (1962)."

We took the same position in a letter dated May 24, 1976, to Representative Robert H. Lagomarsino (B-114839, B-129874).

" * * * Congress did not intend by the enactment of this provision to prevent Government officers or employees from communicating to Members of the Congress their views in regard to legislation or appropriations necessary for the efficient conduct of the public business. We have consistently construed similar provisions in appropriation acts as restricting only lobbying which is in the nature of a direct appeal addressed to members of the public, suggesting that they contact Members of the Congress to indicate their support of or opposition to pending legislation. They do not, we believe, preclude all expression by agency officials of views on pending legislation."

Assuming that the Commerce Department activities were intended to influence your vote on the bill, they were certainly a form of direct lobbying, which is generally allowed by section 1913.

There may exist one situation when direct lobbying of Members of Congress might violate the statute; however, it is not applicable to this case. In National Association for Community Development v. Hodgson, 356 F. Supp. 1399 (D.D.C. 1973), the only reported court decision that discusses section 1913, the court said that the statute was intended:

" * * * to prevent corruption of the legislative processes through government financial support of an organization 'intended or designed to influence in any manner a Member of Congress, to favor or oppose * * * any legislation or appropriation' and thereby precludes the drowning out of the privately financed 'voice of the people' by a publicly funded special interest group."

It is clear that the Consumer Affairs Division is not the type of publicly funded special interest group referred to in Hodgson. Rather, it is an executive branch office communicating its views to Members of Congress concerning pending legislation. The activities described are not prohibited by section 1913.

Sincerely yours,

DEPUTY Comptroller General
of the United States