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



RELEASED

B-202278

April 18, 1983

The Honorable William Proxmire
United States Senate

Dear Senator Proxmire:

This is in response to your request of February 19, 1981, for our opinion on the legality of certain support which the Department of Defense (DOD) provided for activities associated with the inauguration of President Ronald Reagan. More particularly, you asked whether there was any specific statutory authority for the military to provide 1,120 service personnel as chauffeurs, personal escorts and social aides, as well as other non-safety and non-medical support, for inaugural activities. You noted that some members of the Presidential Inaugural Committee were provided with military drivers from mid-November 1980 until the end of January 1981. In addition, you requested any proposals we might have for a statutory remedy, in the event we concluded that there is no specific statutory authority for DOD to provide these kinds of support for Presidential inaugural activities.

There is no specific statutory authority for DOD to provide chauffeurs, personal escorts and social aides, as well as other non-safety and non-medical support, for inaugural activities, nor are many of DOD's inaugural activities covered by more general authorities such as the Economy Act or those which support expenditures for local community relations activities. The Presidential Inaugural Ceremonies Act does authorize DOD to provide limited assistance, primarily safety and medical in nature, to the Presidential Inaugural Committee (PIC), but DOD itself recognizes that its extensive participation in Presidential inauguration activities is fundamentally a matter of custom rather than being rooted in legal authority.

Accordingly, we must conclude that much of the support provided by DOD for 1981 inaugural activities was without proper legal authority. At the same time, it must be recognized that Presidential inaugurations are highly symbolic national functions for which DOD support has been provided with the knowledge and approval of members of Congress over the years. Lack of a statutory base for this support has resulted in practices questionable on policy as well as legal grounds.

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In these circumstances, we recommend that Congress undertake a review of the Presidential Inaugural Ceremonies Act to establish a clear basis in policy and law for continuing participation by Federal agencies in Presidential inaugural activities. We will be glad to work with you in this endeavor. A detailed analysis is enclosed. DOD's report to us on Presidential inaugural activities is also enclosed.

Sincerely yours,

MILTON J. SOCOLAR

Comptroller General
of the United States

Enclosures - 2

DEPARTMENT OF DEFENSE ASSISTANCE FOR
THE 1981 PRESIDENTIAL INAUGURATION

The Comptroller General has been requested to provide his opinion on the legality of certain support the Department of Defense (DOD) provided for activities associated with the inauguration of President Ronald Reagan. More particularly, we have been asked whether there was any specific statutory authority for the military to provide 1,120 service personnel as chauffeurs, personal escorts and social aides, as well as other non-safety and non-medical support, for inaugural activities. It was also noted that some members of the Presidential Inaugural Committee were provided with military drivers from mid-November 1980 until the end of January 1981. In addition, we were asked to provide any proposals we might have for a statutory remedy, in the event we concluded that there is no specific statutory authority for DOD to provide these kinds of support for Presidential inaugural activities.

FACTS

We requested DOD to provide to us a complete report on its 1981 Presidential inaugural activities, including a full description of the types of inaugural assistance it furnished, as well as the legal basis for that assistance. In its report, DOD states that a total of 11,430 armed forces personnel provided support for activities associated with the 1981 Presidential Inauguration. The report indicates that 1,533 of its personnel were used as military aides (both personal aides and social aides), drivers, and ushers--the types of assistance about which you express the greatest concern. The other DOD personnel involved in the inaugural activities performed a variety of functions, including participating in the inaugural parade, acting as honor and parade route cordons, removing snow, and providing security. In addition, a variety of equipment, supplies and other services were provided by DOD, including logistical and administrative support. DOD inaugural support was coordinated through the Armed Forces Inaugural Committee (AFIC).

PRESIDENTIAL INAUGURAL CEREMONIES ACT

The only statutory provision that specifically authorizes DOD to provide support for inaugural activities is 10 U.S.C. § 2543, the codification of section 6 of the Presidential Inaugural Ceremonies Act, act of August 6, 1956, ch. 974,

84th Congress, 2d Sess., 70 Stat. 1049, 1050. That section provides:

"(a) The Secretary of Defense, under such conditions as he may prescribe, may lend, to an Inaugural Committee established under section 721 of title 36, hospital tents, smaller tents, camp appliances, hospital furniture, flags other than battle flags, flagpoles, litters, and ambulances and the services of their drivers, that can be spared without detriment to the public service.

"(b) The Inaugural Committee must give a good and sufficient bond for the return in good order and condition of property lent under subsection (a).

"(c) Property lent under subsection (a) shall be returned within nine days after the date of the ceremony inaugurating the President. The Inaugural Committee shall--

"(1) indemnify the United States for any loss of, or damage to, property lent under subsection (a); and

"(2) defray any expense incurred for the delivery, return, rehabilitation, replacement, or operation of that property."

The type of inaugural assistance covered by this provision is rather limited and primarily of a medical or safety nature. This provision does not authorize DOD to provide the number of personnel and the wide-ranging inaugural support referred to in DOD's report to us.

DOD itself recognized the limited coverage of the provision. In the Executive Summary of the 1977 Armed Forces Inaugural Committee, DOD stated:

"10 U.S.C. 2543 is the only statutory authority within the United States Code specifically authorizing DOD support of a Presidential Inauguration. It identifies only medical and

safety equipment support. Additional inaugural support has traditionally been provided by DOD, though not specifically defined in the statute. Using the limiting language of this statute as a basis, * * * the Special Assistant, Secretary of Defense, understandably had reason to question the legality of all support traditionally provided by DOD. This caused lengthy reviews, frequent discussion and many false starts and stops. Major disruptions resulted. In the end, * * * the discussion was elevated to the U.S. Senate level * * *. To preclude recurrence of this situation, it is strongly recommended that DOD immediately initiate action to propose appropriate legislation to clarify the language and intent of 10 U.S.C. 2543.* * *

In response to DOD's concerns, the Chairman of the Joint Congressional Committee on Inaugural Ceremonies for the 1977 Presidential Inauguration had introduced S. 2839, 96th Congress, to amend the Presidential Inaugural Ceremonies Act, supra, to clarify DOD's participation. "Because of the legal questions always accompanying Inaugural support * * *, the Department of Defense supported Senate Bill 2839 * * *." Nevertheless, that bill was not enacted, and DOD now states that "the bill is still needed to avoid the quadrennial questions that prompted this inquiry." Thus there seems to be a consensus of uncertainty about DOD's authority.

DOD has not been alone in struggling with the lack of legal clarity with respect to participation in inaugural activities. The General Services Administration (GSA) in the past experienced inaugural problems similar to those of DOD. Without any explicit authority GSA provided the following assistance in connection with inaugurals:

- "1. Provide office space, office furniture, and telephones for the inaugural committee.

- "2. Provide additional guards for the protection and security of Government property and buildings.

"3. Make available public toilet facilities in Government buildings along the parade route.

"4. Make cafeterias and snack bars in Government buildings available to military organizations participating in the parade.

"5. Establish first-aid stations in Government buildings along or near the parade route.

"6. Maintain standby work force to deal with building maintenance emergencies (elevator trouble, electrical failures, plumbing leaks, snow removal, etc.).

"7. Arrange for special window and grounds cleaning at Government buildings along the parade route.

"8. Construct stands and platforms at Government buildings along the parade route.

"9. Provide parking space and dispatch services for official parade vehicles.

"10. Clean up Government buildings and grounds along parade route following inaugural."

H.R. Rep. No. 1796, 90th Cong., 2d Sess. 2 (1968).

Congress has since explicitly legitimized GSA's participation in inaugural activities by amending the Federal Property and Administrative Services Act. In 1968 Congress added subsection 210(a)(15) to the Federal Property and Administrative Services Act, as amended, 40 U.S.C. § 490(a)(15), which authorized GSA:

"to render direct assistance to and perform special services for the Inaugural Committee (as defined in section 721 of Title 36) during an inaugural period in connection with Presidential inaugural operations and functions,

including employment of personal services without regard to the civil service and classification laws; provide Government-owned and leased space for personnel and parking; pay overtime to guard and custodial forces; erect and remove stands and platforms; provide and operate first-aid stations; provide furniture and equipment; and provide other incidental services in the discretion of the Administrator."

It is with this background that we analyze whether DOD's participation in the 1981 Presidential inaugural events was legally supportable on some basis other than 10 U.S.C. § 2543. Our starting point is the Presidential Inaugural Ceremonies Act, supra, now largely codified at 36 U.S.C. §§ 721-730, because it is the primary legislation dealing with Presidential inaugurations. Legally it could well be construed as the exclusive authority for establishing responsibilities related to Presidential inaugurals, since it is the permanent legislation in which Congress attempted to address the whole inaugural process. The statute itself, however, does not explicitly preempt other authorities, and the example of the special legislation for GSA indicates that Congress has not legislated on inaugural matters exclusively through amendments to the Presidential Inaugural Ceremonies Act. Accordingly, we shall not treat the Presidential Inaugural Ceremonies Act, supra, as preempting other possible authorities for DOD assistance for Presidential inaugurals, as long as the other more general authorities do not contradict the provisions and policies of the Presidential Inaugural Ceremonies Act. The more general authorities relied on by DOD are the Economy Act and DOD's community relations regulations, each of which is discussed below.

Before addressing the other authorities relied on by DOD, however, at least the major features of the Presidential Inaugural Ceremonies Act should be noted, so that DOD's assistance may be properly evaluated in the context of the provisions of that primary statute.

First, subsection 1(b)(2) of the act, 36 U.S.C. § 721(b)(2), acknowledges that there will be a Presidential Inaugural Committee (PIC) for each Presidential inauguration, and defines it as "the committee in charge of the Presidential inaugural ceremony and functions and activities connected

therewith, to be appointed by the President-elect." The statute assumes that the PIC will be a private, non-governmental entity, and gives it substantive and substantial rights. However, it contains no provisions authorizing Governmental financial assistance to the PIC. At the same time, in at least three sections, the Presidential Inaugural Ceremonies Act requires that the PIC indemnify the Government for any loss or damage.^{1/} As such, the Presidential Inaugural Ceremonies Act implies that the PIC was not expected to receive Federal funds or any assistance from Federal agencies other than as specified.

Section 9 of the act, 36 U.S.C. § 729, reserves to the Joint Congressional Committee on Inaugural Ceremonies (JCCIC) responsibility for inaugural activities at the United States Capitol Buildings or Grounds or other property under the jurisdiction of the Congress. In addition, this section permits the JCCIC to receive, upon its request, any of the services or facilities otherwise authorized by the Presidential Inaugural Ceremonies Act.

Section 6 of the Presidential Inaugural Ceremonies Act, supra, which authorizes the limited DOD support to the PIC, is but one isolated provision of this statute, and DOD is but one of the agencies assigned responsibilities. Among other things, the Presidential Inaugural Ceremonies Act does, in addition, explicitly:

"Authorize an appropriation for District [of Columbia] expenses in connection with a Presidential inauguration;

"[A]uthorize the Commissioners [now Council of the District of Columbia] to make regulations for the protection of life, health, and property during the 'Inaugural period,' * * *;

"[A]uthorize the granting of special licenses [, with the approval of the Inaugural Committee,] to persons selling goods, wares, and merchandise on the streets of the District [of Columbia] during such period;

Please find footnotes at end of statement.

"[C]entralize in the Secretary of the Interior (or his designated agent, who might be the Superintendent of National Capital Parks) the authority to grant permits to the Inaugural Committee for the temporary use of public space under the control of the Federal Government outside of the Capitol Grounds;

"[A]uthorize the Commissioners [now Mayor of the District of Columbia] to grant permits to the Inaugural Committee for the temporary use of public space under their control; [and]

"[A]uthorize the temporary installation [by the Inaugural Committee] of lighting or communication facilities on and over public space; * * * ." (Organization modified from original into paragraph structure.)

S. Rep. No. 2645, 84th Congress, 2d Sess. 1 and 2 (1956). See also, H.R. Rep. No. 2611, 84th Congress, 2d Sess. 2 and 3 (1956). Moreover, section 3 of the act, as amended, 36 U.S.C. § 723, specifically authorized funds to be appropriated to the District of Columbia to enable it to:

"* * * provide additional municipal services * * * during the inaugural period, including employment of personal services without regard to the civil-service and classification laws; travel expenses of enforcement personnel, including sanitarians, from other jurisdictions; hire of means of transportation; meals for policemen, firemen, and other municipal employees, cost of removing and relocating streetcar loading platforms, construction, rent, maintenance, and expenses incident to the operation of temporary public comfort stations, first-aid stations, and information booths; and other incidental expenses in the discretion of the Commissioners [now Mayor of the District of Columbia] * * *."

Finally, subsection 1(b)(1) of the Presidential Inaugural Ceremonies Act defines the term "inaugural period" as:

"* * * the period which includes the day on which the ceremony of inaugurating the President is held, the five calendar days immediately preceding such day, and the four calendar days immediately subsequent to such day."
36 U.S.C. § 721(b)(1).

ECONOMY ACT

Aside from the Presidential Inaugural Ceremonies Act, DOD relies in part on the so-called Economy Act as authority to provide additional support for inaugural events in response to requests of the Presidential Inaugural Committee and the Joint Congressional Committee on Inaugural Ceremonies.^{2/} Section 601 of the Economy Act, as amended,^{3/} 31 U.S.C. § 1535,^{4/} permits one agency or bureau of the Government to furnish materials, supplies or services for another on a reimbursable basis. The PIC is not a Government agency and even if it were, DOD used its own appropriations without reimbursement from either the PIC or JCCIC. Therefore, the authority of the Economy Act is not applicable.

COMMUNITY RELATIONS REGULATIONS

Aside from statutes, DOD relies upon its internal regulations and its traditional ceremonial role of participation in national celebrations and somber state occasions.

DOD's community relations regulations are codified at 32 C.F.R. Parts 237 and 238. The statutory authority listed for them is 5 U.S.C. § 301 (previously codified at 5 U.S.C. § 22) which provides that:

"The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public."

DOD defines "community relations" as "the relationship between the military and civilian communities." 32 C.F.R. § 237.3(a). DOD's policy justifications for the community relations program include recognition that:

"The morale of all personnel of the Department of Defense is affected by the favorable or unfavorable attitudes of the civilian community toward their mission and their presence in the area * * *." (32 C.F.R. § 237.4(a)(2).),

and that:

"Active participation of military units and military personnel and their dependents as individuals in civilian activities, organizations, and programs is an important factor in establishing and maintaining a state of mutual acceptance, respect, cooperation, and appreciation between the Armed Forces and civilian communities affected by their operations." (32 C.F.R. § 237.4(a)(3).)

These regulations encompass a broad range of activities, with emphasis on DOD participation in local community events. They were not designed to cover events which are national in scope such as a Presidential inauguration and which have little if anything to do with the means by which favorable local community relations are fostered. Nevertheless, an examination of certain aspects of the regulations may be useful for the purpose of developing Presidential inauguration participation policy.

As a general principle, DOD's regulations distinguish between the kind of participation in public events and programs which primarily fosters DOD's own interests and purposes, and participation as one of several interested parties in which the benefits may be said to be mutual. (By necessary implication,

if there is only negligible benefit to DOD to be derived from its participation, it should decline the invitation to be part of the event.) DOD may pick up most or all of the costs of its participation in the first category as necessary. For events in the second category, DOD should pay only the proportionate share of the costs directly attributable to the participation of its own personnel.

We will now examine DOD assistance with the 1981 Presidential inaugural activities in the light of these principles.

INAUGURAL CEREMONY

The installation of the President as Commander-in-Chief of the Armed Services is obviously of major interest to the DOD. It is also of major interest to every other Federal entity, as well as to the public at large. In recognition of this shared interest, the Congress established the Joint Congressional Committee on Inaugural Ceremonies (JCCIC) and charged it with the responsibility of making arrangements for the inaugurations of the President-elect and the Vice President-elect. In addition, section 9 of the Presidential Inaugural Ceremonies Act, 36 U.S.C. § 729, reserves to the JCCIC responsibility for inaugural activities at the United States Capitol Buildings or Grounds or other property under the jurisdiction of the Congress. Consequently, primary responsibility for the arrangements for the Presidential inaugural ceremony, including funding, rests with the JCCIC rather than DOD.

Since DOD also has a clear interest in the event, it may pay for the expenses necessarily incurred by its personnel in participating in the ceremony. This might well include the costs of transporting DOD participants to the ceremony, per diem and other travel expenses of participating, the costs of ceremonial uniforms, flags, etc. It would also include the costs of any services provided to the Presidential Inaugural Committee (PIC) under section 6 of the Presidential Inaugural Ceremonies Act, discussed before. As explained earlier, that type of assistance is rather limited and is primarily of a medical or safety nature.

On the other hand, there appears to be no authority for the provision of what DOD described as "logistical and administrative" support to the JCCIC, nor for the provision of equipment and supplies (unrelated to DOD's own participation needs), all on a non-reimbursable basis. We also question the use of DOD personnel as ushers for those holding reserved seats for the inaugural ceremony. (Ushers are explicitly listed as inappropriate capacities for service by military personnel in DOD's community relations regulations, 32 C.F.R. § 238.6(b)(4)(iv).) However, it is not our intention now to single out all specific costs which may definitely be allowed and to identify all others which are clearly improper. We are merely discussing the applicable principles under DOD's own community relations regulations, in order to point up the need for more definitive guidance from the Congress.

INAUGURAL PARADE

Participation in this significant national celebration is clearly of great importance and significance to DOD. As was true of the inaugural ceremony, other Federal entities could also regard such participation as being of direct benefit or interest to them. For example, it is conceivable that at some future inaugural, the Departments of Agriculture or Interior might be invited by the PIC to provide a "float" symbolizing their contributions to the nation. Thus, once again we have a "mutual benefit" event, and each agency may incur and pay costs directly attributable to its own participation. As for other costs not so allocable, we note that subsection 1(b)(2) of the Presidential Inaugural Ceremonies Act, 36 U.S.C. § 721(b)(2), charges the PIC with responsibility for Presidential inaugural functions and activities that do not take place at the United States Capitol Buildings or Grounds or on other property under the jurisdiction of the Congress. In addition, that statute does not provide for assistance to the PIC through Federal expenditures, although use of appropriated funds was anticipated by the District of Columbia government for related functions. Therefore, we conclude that primary responsibility for the presidential inaugural parade rested with the PIC and not DOD.

Applying this principle, we agree with a January 6, 1977, memorandum (referred to in the materials included in the Congressional submission) from the Assistant Secretary of Defense (Installation and Logistics) to the Assistant

Secretaries of the military departments. This memorandum questioned the practice of using military jeeps to pull non-military floats, or to supply military drivers for (non-DOD) VIPS taking part in the parade. Aside from the risks of tort liability, these expenses are not properly attributable to DOD's own needs but are, instead, expenses incurred for the benefit of some other participant.

INAUGURAL BALLS

In defining "official civil ceremonies", DOD's community relations regulations provide:

"* * * Community or civic celebrations such as banquets, dinners, receptions, carnivals, festivals, opening of sports seasons, and anniversaries are not considered official civil ceremonies even though sponsored or attended by civic or governmental dignitaries." (Emphasis added.) 32 C.F.R. § 237.7(h).

In addition, these DOD regulations define "official Federal Government functions" as:

"* * * Those activities in which officials of the Federal Government are involved in the performance of their official duties." 32 C.F.R. § 238.3(a)(3).

An inaugural ball, being akin to a banquet, dinner or reception, would not be regarded as an official civil ceremony. In addition, even though an inaugural ball may be attended by officials of the Federal Government, they are not in attendance in the performance of their official duties, but rather as guests who happen to be officials. Moreover, unlike the inaugural parade, an inaugural ball is not generally available to the community. See 32 C.F.R. § 238.6(a)(1)(iii). The inaugural balls have been limited to invitees, in significant part selected by the PIC; admission is by ticket only (usually for a substantial fee); and are basically private gatherings or parties whose proceeds go to the PIC. Therefore, we doubt that any of DOD's costs of participating at inaugural balls, whether incurred for DOD officials or others, constitute official expenses which may be paid from DOD appropriations.

PRE-INAUGURAL ACTIVITIES

The submission states that certain kinds of DOD assistance were provided to some members of the PIC from mid-November 1980 until the end of January 1981. We recognize the complexities associated with effective coordination and implementation of the various inaugural activities. Therefore, a reasonable amount of planning and preparation by participants is essential. As was true for all the other inaugural activities discussed before, DOD should only have assumed the costs of planning and preparation for its own participants.

SPECIFIC ASSISTANCE

Much of the assistance reported to us by DOD appears directly related to its own preinaugural needs. There are, however, a number of questionable activities. For example, DOD reports the billeting of high school and university parade participants from outside the National Capital Region in local military installations. In addition, DOD reports:

"e. The Military Aides Subcommittee of the AFIC organized, assigned, briefed, supervised, and assisted aides provided to VIPs during the Inaugural period. Two categories of aides were provided. Personal aides were assigned to assist specific VIPs. Social aides were assigned to assist at official Inaugural events. A total of 175 personal aides and 329 social aides were utilized.

* * * * *

"i. The Transportation Subcommittee of the AFIC coordinated the travel and transportation of all Armed Forces elements in connection with the Inaugural and operated the Inaugural motor pool. This motor pool provided drivers to operate vehicles donated to the PIC for the purpose of providing transportation for AFIC and PIC staff personnel on official business prior to the Inaugural and other VIPs during Inaugural week. During the peak period immediately preceding Inaugural Day, 671 drivers were utilized."

The use of military personnel as chauffeurs, personal escorts and social aides for non-military personnel cannot be regarded as a cost related to the participation of DOD's own personnel in the inaugural events. Moreover, this type of support does not comply with 32 C.F.R. § 238.6(b)(4)(iii) of DOD's community relations regulations, which provide:

"(b) The Department of Defense does not authorize support of community relations programs when * * *

"(4) * * * DOD support:

* * * * *

"(iii) Consists wholly or in part of resources, facilities, or services which are otherwise reasonably available from commercial sources." (Emphasis in original.)

We have seen no evidence that adequate, non-military-chauffeured transportation was not reasonably available from commercial sources, such as taxis, buses, subway, and other forms of public transportation, for the use of PIC personnel during the pre-inaugural period. Similarly, with respect to drivers for the private motor vehicles loaned to the PIC, there appear to be many sources of help in the private sector, if PIC personnel were unable to drive themselves in the pre-inaugural period, or even in the inaugural period itself.

Similarly, we believe that the services of personal escorts or aides, social aides, and ushers were "reasonably available from commercial sources," and thus were not authorized to be provided by DOD under DOD's community relations regulations.

We find nothing in the materials before us that indicates that military personnel or military skills were peculiarly essential in the performance of the duties assigned to personal aides, social aides, or ushers for the inaugural activities. Thus, we think that personnel for these tasks should have been obtained from commercial sources. See also

32 C.F.R. § 238.6(b)(4)(iv) and 32 C.F.R § 238.11(f)(ii) of DOD's community relations regulations which list these functions as being inappropriate for DOD personnel.

Even if DOD's community relations regulations did not contain the limitations discussed, we would have reservations about these expenditures. It is fundamental that Federal agencies cannot make use of appropriated funds to supply services (or manufacture products or materials) for private parties in the absence of specific authority therefor, usually specific statutory authority. 34 Comp. Gen. 599 (1955); 31 Comp. Gen. 624 (1952); 28 Comp. Gen. 38 (1948); B-69238, July 13, 1948. See also, 31 U.S.C. § 628; National Forest Preservation Group v. Volpe, 352 F. Supp. 123 (D.C. Mont. 1972), aff'd. on reconsideration 359 F. Supp. 136 (D.C. Mont. 1973). In fact, it has been held that the performance of services by Government personnel for non-Federal or private agencies involves an improper use of appropriated funds even where the Government is compensated therefor or reimbursed in kind. 34 Comp. Gen. 599 (1955); 31 Comp. Gen. 624 (1952); B-69238, July 13, 1948. See also, 33 Comp. Gen. 115 (1953). Moreover, "the general rule [is] that it is the sole right of the Government to supervise and control the work and time of performance of its officers and employees engaged in governmental activities," and an agency does not have authority to delegate this responsibility to a non-Federal or private entity. 31 Comp. Gen. 624 (1952).

In any other context besides the Presidential inaugural events, there would be little doubt about the impropriety of using taxpayer funds to provide personal aides, social aides, and drivers for private individuals. While we agree that the application of usual laws and regulations may not seem appropriate for inaugural activities, the current law does not make any special exceptions for agency assistance to the inaugural events, other than as provided in the Presidential Inaugural Ceremonies Act. If assistance would be unlawful and improper generally, it likewise would be unlawful and improper for the inaugural events. Consequently, we conclude that a significant amount of the support provided by DOD for 1981 inaugural activities was without proper legal authority.

CONGRESS

The Executive Summary of the 1977 Armed Forces Inaugural Committee discloses certain DOD inaugural activities in 1977 of questionable legality under the standards discussed above, and akin to those of concern in the 1981 inaugural. However, many of these DOD actions were apparently undertaken with the knowledge, active involvement and approval of key members of Congress. DOD stated in its response to our letter of inquiry that Congress had "full knowledge of past practices because Congressional members themselves have participated in the events." However, the mere fact that an activity has been disclosed to the Congress and has not been objected to does not necessarily require the conclusion that it was thereby legally authorized. B-69238, July 13, 1948.

We note that the House Committee on Government Operations, when acting upon GSA's request for inaugural legislation which was discussed above, stated:

"The inauguration of a President of the United States is a principal event in our democratic society. It symbolizes the major attribute of a governmental system based on laws rather than on men: the orderly transfer of the powers of the highest office in the land.

"Millions of Americans are present on this ceremonious occasion, either in person or through the medium of television, and their presence gives further affirmation and legitimacy to the democratic process.

"The spectacle of an inauguration requires a great deal of planning as well as financing to accommodate the public and to insure that the event is as memorable in execution as it is in significance.* * *"

H.R. Rep. No. 1796, 90th Cong., 2d Sess. 2 (1968).

We agree with these statements. However, we are not confident that existing law, agency practices and Congressional oversight are adequate to provide necessary guidance to agencies on permissible and impermissible inaugural activities and their funding.

RECOMMENDATION

We recommend that Congress undertake a review of the provisions of the Presidential Inaugural Ceremonies Act for the purpose of conforming its provisions to recent practices with respect to Government support of inaugural activities or, in the alternative, prohibiting the practices that do not conform with the law. In this review, we suggest that special attention be given the issues of:

- (1) which inaugural functions should properly be funded by the American taxpayers and which by the President-elect and Vice President-elect's supporters from private funds;
- (2) whether formal governmental representation on the Presidential Inaugural Committee might be appropriate, if the Government is to bear any substantial costs for inaugural activities;
- (3) whether Government funding should vary depending on the inaugural activity, i.e., pre-inaugural planning and preparation, formal inaugural ceremony, inaugural parade, and inaugural balls; and
- (4) DOD's appropriate role in inaugural activities in light of the current trend of increasing DOD's responsibilities for such activities as contrasted with the Presidential Inaugural Committee, the Joint Congressional Committee on Inaugural Ceremonies, the Government of the District of Columbia, and the Department of the Interior.

Until these basic policy issues are resolved, we are reluctant to propose any specific statutory language. However, we shall be glad to work with Congress in a review of the provisions of the Presidential Inaugural Ceremonies Act and in offering any other assistance that may be requested in devising a legislative solution to the problems identified above.

FOOTNOTES

1/ Section 4 of the act, 36 U.S.C. § 724, provides, in part:

"* * * The Inaugural Committee shall indemnify and save harmless the District of Columbia and the appropriate agency or agencies of the Federal Government against any loss or damage to * * * ["any sidewalk, street, park, reservation, or other public grounds in the District of Columbia" occupied with the approval of the Inaugural Committee by any stand or structure "for the sale of goods, wares, merchandise, food or drink"] and against any liability arising from the use of such property, either by the Inaugural Committee or a licensee of the Inaugural Committee." (Emphasis added.)

Section 5 of the act, 36 U.S.C. § 725, provides, in part:

"* * * No expense or damage from the installation, operation, or removal [by the Inaugural Committee] of * * * temporary overhead conductors or * * * illumination or other electrical facilities shall be incurred by the United States or the District of Columbia, and the Inaugural Committee shall indemnify and save harmless the District of Columbia and the appropriate agency or agencies of the Federal Government against any loss or damage and against any liability whatsoever arising from any act of the Inaugural Committee or any agent, licensee, servant, or employee of the Inaugural Committee." (Emphasis added.)

Section 6 of the act, 10 U.S.C. § 2543, provides, in part:

"* * * [T]he Inaugural Committee shall indemnify the Government for any loss or

damage to any * * * ["hospital tents, smaller tents, camp appliances, hospital furniture, ensigns, flags, ambulances, drivers, stretchers, and Red Cross flags and poles" lent to them by the DOD], and no expense shall be incurred by the United States Government for the delivery, return, rehabilitation, replacement, or operation of such equipment. The Inaugural Committee shall give a good and sufficient bond for the safe return of such property in good order and condition, and the whole without expense to the United States." (Emphasis added.)

2/ DOD stated its justification for reliance on the Economy Act as follows:

"Another legal theory which authorized Department of Defense support to the Inaugural is that much of it was pursuant to the Economy Act (31 U.S.C. 686). Throughout the pre-Inaugural period, the AFIC received requests from the PIC, which is recognized by 36 U.S.C. 721. As an operational principle, the AFIC responded to the PIC as if the PIC were an agency entitled to receive Economy Act assistance. Although this was inconsistent with a 1977 interpretation by the Staff Judge Advocate, Military District of Washington, it was reasonable for the AFIC to provide assistance to the PIC in view of the interrelationship among the JCCIC, PIC, and AFIC. Of course, in 1977 the Special Assistant to the Secretary of Defense expressly approved Economy Act support for the JCCIC, which is recognized by 36 U.S.C. 729."

3/ Section 601 of the Economy Act, as amended, states in part:

"(a) Any executive department or independent establishment of the Govern-

ment, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual cost of the materials, supplies, or equipment furnished, or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned * * *." (Emphasis added.)

4/ Pub. L. No. 97-258, approved September 13, 1982, 96 Stat. 877, enacted Title 31 of the United States Code into positive law and renumbered various of its provisions. The Economy Act, cited by DOD as 31 U.S.C. § 686, is now found at 31 U.S.C. § 1535.