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clfr The Honorable Phillip Burton
House of Representatives

Dear Mr. Burton:

cc+R2 In your letter of October 19, 1972, jointly signed by Congressman Les Aspin, you raised several legal questions. The following are the legal questions raised and our response to them:

Detailing of Federal Employees to the White House

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On page 5 of your letter it is stated that absent specific authority to the contrary the narrow language of section 628, title 31 of the United States Code severely restricts the President's hiring or detailing power. The cited language reads as follows: "Except as otherwise provided by law, sums appropriated for the various branches of expenditure and the public service shall be applied solely to the objects for which they are respectively made, and for no others."

On page 6 the view is expressed that the detailing authority of section 107 of title 3 of the United States Code does not contain authority or constitute a right to exceed limitations regarding the use of details. Following this statement these questions are posed:

"Would you also advise us therefore what the GAO now considers to be those specific Presidential or executive actions which are necessary to initiate or continue a 'detail' from another agency? What is the maximum duration of such a detail based on explicit or implicit history of the use of 'details'? Must there be a document in writing?

"Since the history of this detailing power also indicates its use has been restricted to permanent employees of agencies, does the GAO know of any converse authority (express or implied) that might allow

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detailing of temporary employees of which would allow a permanent White House employee to also serve as a temporary employee of another agency?"

The provision found at 3 U.S.C. 107 reads as follows:

"Employees of the executive departments and independent establishments of the executive branch of the Government may be detailed from time to time to the White House Office for temporary assistance."

This provision of law was first enacted in the Legislative, Executive, and Judicial Expenses Appropriations Act, 1906, Public Law 40, 58th Congress, approved February 3, 1905, 33 Stat. 631, 642. While nothing has been found in the legislative history of that act explaining the purpose for its enactment, in all likelihood it was prompted at least in part by the December 22, 1904, ruling of the Attorney General which held in effect that the Postmaster General had no authority to detail a registry clerk to the White House because of lack of statutory authority for such a detail. See 25 Ops. Atty. Gen. 301. In any event, nothing has been found in the legislative history of this language that would suggest any limitation on the expressed detail authority provided therein and we cannot agree with the suggestion made on page 6 that the lack of authorizing legislation for the original language somehow suggests a limitation. While the lack of authorizing language for a legislative item in an appropriation bill would under the rules of the House and the Senate furnish basis for a point of order during debate, once the language is enacted it becomes law and entitled to the same force and dignity as any other duly enacted measure. See Aeronautical Radio, Inc. v. United States, 335 F. 2d 304, 308 (1964). Moreover, with regard to the specific provisions of 3 U.S.C. 107, this language was enacted into positive law by the codification of title 3 of the United States Code by the act of June 25, 1948, 62 Stat. 672. Accordingly, in response to the specific questions quoted above we must advise that:

1. The language of 3 U.S.C. 107 does not require any specific presidential or executive actions to

institute or continue a detail.

2. Although 3 U.S.C. 107 only constitutes authority for temporary details, there is no stated maximum limitation and whether or not a detail is "temporary" within the meaning of 3 U.S.C. 107 would depend upon the individual circumstances of each detail.
3. There is no requirement that the detail must be documented in writing.
4. The authority of 3 U.S.C. 107 is not limited to details of permanent employees.

Also in connection with 3 U.S.C. 107, it is our view that the provision does not require reimbursement on account of a detail thereunder.

Practice of Placing Presidential Appointees on Payrolls of Federal Agencies

On page 7 of your letter a practice is described whereby presidential appointees are placed on the payrolls of OEP and OTP thereby--according to your letter--resulting in a "de facto" detail to the White House. You therefore ask--

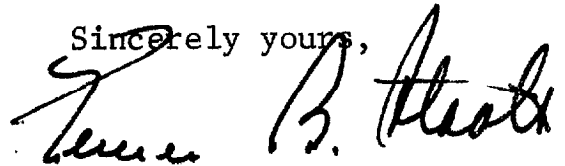
"Since these OEP expenditures appear to be both unprecedented and represent a major deviation from their testimony, do you know of any circumstances that allow OEP--without any emergency conditions--to step outside the existing spending restrictions in the laws of Congress? What remedies does the Congress now have if these OEP actions were unjustified?"

Whether an agency has employed an individual for the sole purpose of detailing him to the White House is at best difficult to establish. In view of the circumstances involved in this matter we know of no practical actions that the Congress can take which will correct what has already been done. While it

may be that OEP has not kept faith with the Congress in the practice followed, the only effective remedies available to the Congress are prospective. In this regard it can restrict future appropriations by dollar amounts so that OEP will not have funding authority for employees to be detailed to the White House, or it can alternatively repeal 3 U.S.C. 107 or amend it in a manner to specifically state the conditions governing such details.

We trust the foregoing answers the legal questions you raised. We are sending a copy of this letter to Congressman Les Aspin.

Sincerely yours,



Comptroller General
of the United States