The original documents are located in Box 15, folder "Federal Election Commission - Morton Appointment as White House Counsellor (3)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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Digitized from Box 15 of the Philip Buchen Files at the Gerald R. Ford Presidential Library

DRAFT 1/24/76

Dear Chairman Curtis:

As I indicated at our meeting on January 19, the purpose of this letter is to bring to the attention of the Federal Election Commission a description of the assignments and responsibilities it is planned that Secretary Rogers Morton will assume when he joins the White House staff on February 1 as Counsellor to the President.

Secretary Morton's responsibilities will lie in a number of separate, but occasionally overlapping areas. These are:

1. Counsellor to the President with Cabinet rank;
2. Member of the Economic Policy Board (EPB) and the EPB Executive Committee;
3. Member of the Energy Resources Council (ERC) and the ERC Executive Committee;
4. Member of the Domestic Council; and
5. Principal White House official for liaison with the President Ford Committee (PFC) and the Republican National Committee (RNC).

As Counsellor, he will be one of four Cabinet-level assistants to the President providing a broad

range of advice on such subjects as the President may request. In this capacity, he will be filling an advisory role that has been vacant since Donald Rumsfeld left the White House staff.

His activities in this role will include daily meetings with the President to review current assignments and events, daily senior White House staff meetings, Cabinet meetings, Congressional Leadership meetings and special projects at the direction of the President.

Secretary Morton will continue to give specific substantive input on domestic, economic and energy matters which have been the focus of this attention during his tenure as Secretary of the Interior and Secretary of Commerce. As a member of the Economic Policy Board and the EPB Executive Committee, he will participate in daily meetings of the Executive Committee as well as the review process with respect to current economic data and forecasts, and proposed legislation. As a member of the Energy Resources Council and the ERC Executive Committee, he will attend weekly meetings of the Council and work with other Administration energy leaders (Messrs. Zarb, Kleppe, Richardson, and others) in the review of new and existing energy policy initiatives, the progress of current programs and proposed legislation.

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In addition, Secretary Morton will continue to serve as a member of the Domestic Council. In particular, the Secretary will participate in various Domestic Council task forces and activities relating to existing and proposed programs concerning issues such as water quality, land use, depletable mineral resources, individual privacy, illegal aliens and general revenue sharing.

As the official at the White House chiefly responsible for liaison with the PFC, Secretary Morton will be responsible for maintaining communication between the White House and the campaign committee in order to minimize demands on the time of Gerald R. Ford as candidate and to protect the time which he requires for his prime duties and responsibilities as President. Further, Secretary Morton will assure that campaign spokesmen for the candidate truly reflect his policies and positions as President. As the principal liaison official at the White House for the Republican National Committee, Secretary Morton will screen and pass upon requests for the President's traditional involvement as leader of his party so as to minimize demands on his time for this purpose.

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This liaison role with the two political committees requires a person who is involved officially at a high level in the overall operations of the White House staff and who is thoroughly familiar with ongoing and planned official actions and activities of the President in terms of both their substance and scheduling. Moreover, only one who is in this official position can reflect the interests of the Presidency in judging whether specific questions or requests for the President's consideration from the political committees and election workers actually warrant the President's attention and how they may be disposed of without taking the President's time.

Secretary Morton will also participate in various public appearances as they relate to the President's official duties and the work of his Administration.

In the course of these official duties, Secretary Morton will perform certain duties such as the review of all proposed Presidential speeches and statements, internal staffing memoranda to the President, personnel appointments, scheduling proposals, staff meetings, and the like.

In describing his new duties to the media on January 13, Secretary Morton stated:

"I think that the political duties will be a concentration of the political duties now being carried out by other members of the staff. Dick Cheney has had a running liaison communication with the campaign community -- Bo Callaway's committee. There has been a normal communication between Bob Hartmann, for example, and the National Committee.

I think these duties would be concentrated into one shop, which I am very happy to do, and I don't think they are incidental in the sense of their importance, but I don't think they are going to be overwhelming in the sense of their consumption of time on my part.

I am not going to get into the management of the campaign. I have not thought of that. However, I think the President has to have some vehicle through which he can communicate with the campaign and also as party leader with the National Committee. I am a very logical person, having been Chairman of the National Committee and having been involved in campaigns, to do that.

* * *

I think I am here as an overall adviser to the President. The experience I have had in the EPB -- the Economic Policy Board -- the energy field, the resource management field and the economic development field in Government over the last five years -- previous to that on the Ways and Means Committee and other Committees of the House of Representatives -- provides me with enough background to advise the President in an overall sense, and to take a matter that he can assign to me, look at it, evaluate it and give him my best judgment on whether it is a good way to go or whether it should be a different way to go or what have you."

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Apart from his aforementioned official duties, Secretary Morton plans to spend added time of his own on electioneering activities for the President, e.g., participation in PFC political strategy sessions, making political speeches, attendance at PFC fundraisers, delegate recruitment and the like. Of course, any expenses incurred in relation to such electioneering activities will be paid by the PFC in accordance with the Commission's proposed allocation regulations.

In conclusion, the above represents our best understanding of the duties and responsibilities it is planned that Secretary Morton will assume when he joins the White House staff. The question of how one should treat the salaries of assistants to public officials such as Secretary Morton or the administrative assistants to incumbent Congressmen, Senators and Governors, is not specifically addressed in either the Federal election laws or the requlations that have been proposed to date by the Commission. This is a matter of general concern to all holders of public office who are candidates for Federal elective office, and for this reason we believe there is a definite need for general guidelines or regulations applicable to all candidates which clearly address this issue. However, in the meantime, we

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request that the Commission issue an Advisory Opinion pursuant to Section 437f of Title 2, the United States Code, with respect to the matters set forth herein regarding Secretary Morton's duties and responsibilities as a member of the White House staff.

As I indicated to you at our meeting, the President has directed that his campaign be conducted in full compliance with both the letter and spirit of the election laws. I can assure you that the White House and the PFC will abide by such opinion as the Commission may issue in this matter. Also, if it is determined by the Commission that some portion of Secretary Morton's salary is to be treated as an expenditure within the meaning of 18 U.S.C. 591(f), then the PFC will reimburse the Treasury of the United States for such amount.

Your expeditious consideration of this matter would be appreciated.

Sincerely,

THE WHITE HOUSE

WASHINGTON

Re cy Morton

January 30, 1976

Dear Chairman Curtis:

As I indicated at our meeting on January 19, the purpose of this letter is to describe the assignments and responsibilities it is planned that Secretary Rogers Morton will assume when he is appointed to the White House staff on February 2 as Counsellor to the President.

Secretary Morton's responsibilities will focus on a number of separate, but occasionally overlapping, areas. These are:

1. Counsellor to the President with Cabinet rank;

2. Principal White House official for liaison with the President Ford Committee (PFC) and the Republican National Committee (RNC);

3. Member of the Economic Policy Board (EPB), and the EPB Executive Committee;

4. Member of the Energy Resources Council (ERC), and the ERC Executive Committee; and

5. Member of the Domestic Council.

GERALD R. FORD LIBRARY

As Counsellor, Secretary Morton will be one of four Cabinet-level assistants appointed by the President to provide a broad range of advice on such subjects as the President may request. In this capacity, the Secretary will be filling an advisory role that has been vacant since Donald H. Rumsfeld left his position on the White House staff to become Secretary of Defense. His activities as Counsellor will include daily meetings with the President to review current assignments and events, daily senior White House staff meetings, Cabinet

meetings, congressional leadership meetings and special projects at the personal direction of the President.

As the official at the White House chiefly responsible for liaison with the PFC, Secretary Morton will maintain communication between the White House and the campaign committee in order to minimize demands on Gerald R. Ford as candidate and thereby to protect the time which he requires for his essential duties and responsibilities as President. In addition, the Secretary will attempt to assure that campaign spokesmen for the candidate accurately reflect the President's policies and positions. As the principal liaison official at the White House for the Republican National Committee, Secretary Morton will screen and funnel requests and information for the President in his traditional capacity as leader of his Party. Only an individual in such an official position can reflect the interests of the Presidency in judging whether specific questions or requests for the President's consideration from the political committees and campaign workers actually warrant the President's attention, and how they may be disposed of without taking an undue amount of the President's time.

Secretary Morton will continue to give specific substantive input on various domestic, economic and energy matters, many of which have been the focus of his attention as Secretary of the Interior and Secretary of Commerce. As a member of the Economic Policy Board and its Executive Committee, he will participate in their daily meetings, as well as in the comment and review process on current economic issues and proposed legislation. As a member of the Energy Resources Council and its Executive Committee, he will attend weekly meetings and participate with other Administration energy leaders in the review of energy policy, existing programs and proposed legislation.

Secretary Morton will continue to serve as a member of the Domestic Council. In particular, he will participate in various Domestic Council task forces and activities relating to existing and proposed programs and legislative initiatives concerning issues such as water quality, depletable mineral reserves, individual privacy, illegal aliens and general revenue sharing.

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In the course of his official duties, Secretary Morton will review proposed Presidential speeches, statements and positions on issues, internal staffing memoranda to the President and personnel appointments. Secretary Morton will also participate in various public appearances as they relate to the President's official duties and the work of the Administration.

Apart from the aforementioned official duties, Secretary Morton plans to spend time of his own participating in campaign activities on behalf of the President. In particular, Secretary Morton will participate in PFC political strategy sessions, deliver political speeches, attend PFC fundraisers and engage in other campaign activities. Of course, any expenses incurred in relation to such campaign activities will be paid by the PFC in accordance with the Commission's proposed allocation regulations.

In describing his duties, Secretary Morton stated, on January 13, 1976:

> "I think that the political duties will be a concentration of the political duties now being carried out by other members of the staff. Dick Cheney has had a running liaison communication with the campaign community -- Bo Callaway's committee. There has been a normal communication between Bob Hartmann, for example, and the National Committee.
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> "I think these duties would be concentrated into one shop, which I am very happy to do, and I don't think they are incidental in the sense of their importance, but I don't think they are going to be overwhelming in the sense of their consumption of time on my part.
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> "I am not going to get into the management of the campaign. I have not thought of that. However, I think the President has to have some vehicle through which he can communicate with the campaign and also as

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party leader with the National Committee. I am a very logical person, having been Chairman of the National Committee and having been involved in campaigns, to do that.

* * *

"I think I am here as an overall adviser to the President. The experience I have had in the EPB -- the Economic Policy Board -- the energy field, the resource management field in Government over the last five years -- previous to that on the Ways and Means Committee of the House of Representatives -- provides me with enough background to advise the President in the overall sense, and to take a matter that he can assign to me, look at it, evaluate it and give him my best judgment on whether it is a good way to go or whether it should be a different way to go or what have you."

The question of whether to treat a portion of the salaries of assistants to public officials, such as Secretary Morton or administrative assistants to incumbent Congressmen, Senators and Governors who seek Federal elective office, as campaign expenditures does not appear to be specifically addressed in either the Federal election laws or the regulations that have been proposed to date by the Commission. If the Commission believes that such matters are affected by the laws which it administers, it would seem appropriate to have complete and permanent guidelines or regulations on the subject which apply to all candidates similarly involved.

However, inasmuch as the promulgation of such guidelines or regulations may be a lengthy and slow process, we request that the Commission issue an Advisory Opinion, pursuant to Section 437f of Title 2, the United States Code, with respect to the matters set forth herein. In particular, we request the Commission to decide whether any portion of the salaries of assistants to public officials, such as Secretary Morton, should be considered as expenditures within the meaning of 18 U.S.C. 591(f) or

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any other provision of the Federal election laws and, therefore, must be reported for the purpose of determining that a candidate has kept within his or her expenditure limits.

As I indicated to you at our meeting, the President has directed that his campaign be conducted in full compliance with both the letter and the spirit of the election laws. Accordingly, I can assure you that the White House and the President Ford Committee will abide by such opinion as the Commission may issue in this matter. Also, if it is determined that some portion of the salary of public officials such as Secretary Morton is to be treated as an expenditure under the Federal election laws, the President Ford Committee will then reimburse the Treasury of the United States for such amount, in a manner that is consistent with applicable Federal law, including 18 U.S.C. 209.

Due to the importance of this issue, we request that the Commission expedite to the greatest extent possible this request for an Advisory Opinion.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Thomas B. Curtis
Chairman
Federal Election Commission
Washington, D. C. 20463

GERALD R. FORD LIBRARY

THE WHITE HOUSE

WASHINGTON

January 30, 1976

Dear Chairman Curtis:

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However, inasmuch as the promulgation of such guidelines or regulations may be a lengthy and slow process, we request that the Commission issue an Advisory Opinion, pursuant to Section 437f of Title 2, the United States Code, with respect to the matters set forth herein. In particular, we request the Commission to decide whether any portion of the salaries of assistants to public officials, such as Secretary Morton, should be considered as expenditures within the meaning of 18 U.S.C. 591(f) or

any other provision of the Federal election laws and, therefore, must be reported for the purpose of determining that a candidate has kept within his or her expenditure limits.

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Due to the importance of this issue, we request that the Commission expedite to the greatest extent possible this request for an Advisory Opinion.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Thomas B. Curtis
Chairman
Federal Election Commission
Washington, D. C. 20463

GERALD R. FORD

THE WHITE HOUSE

WASHINGTON

March 12, 1976

Morton
Rogers
See
McConnell

MEMORANDUM FOR: ROGERS MORTON

FROM: PHIL BUCHEN

Attached is a memo which came to me from a young friend of mine. I pass it on to you for whatever value you may see in it.

Attachment

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THE WHITE HOUSE

WASHINGTON

March 15, 1976

MEMORANDUM FOR: ROGERS MORTON

FROM: PHIL BUCHEN P.

Attached is a letter from Virginia Kelly dealing with suggestions which may be of concern to you.

Attachment

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THE WHITE HOUSE

WASHINGTON

March 15, 1976

Dear Virginia:

Many thanks for your thoughtful letter which you sent me following our conversation at the Finnish Embassy dinner.

I am passing on your suggestions so that they can be given careful consideration.

Sincerely,

Phil

Philip W. Buchen
Counsel to the President

Mrs. Virginia Weldon Kelly
Virginia Weldon Kelly News Service
3930 Connecticut Avenue, N. W.
Washington, D. C. 20008

THE WHITE HOUSE

WASHINGTON

April 8, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: PHILIP BUCHEN

FROM: JAMES E. CONNOR JEC

SUBJECT: Freedom of Information Act Request by Common Cause to Obtain Information Concerning Political and Official Travel Of Rogers C. B. Morton While Serving on the White House Staff

The President reviewed your memorandum of April 5 on the above subject and approved the following:

> Option 1 - Decline to respond to this request on the grounds that we are not legally obligated to do so.

Please follow-up with appropriate action.

cc. Dick Cheney

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Hold file

THE WHITE HOUSE

WASHINGTON

April 5, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN

SUBJECT: Freedom of Information Act Request by Common Cause to Obtain Information Concerning Political and Official Travel of Rogers C. B. Morton While Serving on the White House Staff

Attached at Tab A is a copy of the above-described request. Common Cause requests information regarding the following:

(1) communication between Mr. Rogers C. B. Morton and the White House concerning domestic travel by Mr. Morton, or his predecessor in office.

(2) communication between Mr. Morton and the President Ford Committee concerning domestic travel by Mr. Morton, or his predecessor in office.

(3) travel schedules from trips taken by Mr. Morton, or his predecessor in office, including

(a) the dates of such trips;

(b) the destination of such trips, including the city and state;

(c) audiences addressed, if any speeches were made; and

(d) meetings attended, including the identities of those in attendance.

(4) the cost of each trip.

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(5) the person or group which paid for each trip.

The request is similar to that which has come to each of the other Cabinet Officers, and the respective Departments involved have responded to such requests with documents from their records delineating domestic official and political travel actually taken by the Cabinet Officers. These records include those involving Rogers Morton's travel while he was Secretary of the Interior or Secretary of Commerce. The Cabinet Departments are legally required to comply with the Freedom of Information Act request.

There is no written communication regarding points No. (1) and No. (2) above, and the only records concerning Rogers' official and political travel at the White House are those starting January 1, 1976.

We have consistently taken the position that White House records are not subject to the Freedom of Information Act, and we believe we are not legally required to respond to this request. However, a decision should be made as to whether we should nevertheless make the information available to the requesting party or, in the alternative, make it generally available through the Press Office.

The following options which are available are:

1. Decline to respond to this request on the grounds that we are not legally obligated to do so.

   Pro

   . This is a position consistent with one we have taken before and which we will want to preserve.

   Con

   . Failure to supply the information may result in a court test or an effort to secure an amendment to the Freedom of Information Act which would clearly put the White House within the scope of the Act.

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. Failure to disclose the information may be regarded as inconsistent with your policy of operating an "open" Administration when it could be argued that the public should have as much right to know about Rogers Morton's travel as it has to know about the travel of your other Cabinet Officers, particularly insofar as it relates to political activities.

2. Make a voluntary response to the requesting party with a clear indication that the information is not being furnished as a matter of compliance with the Freedom of Information Act, but merely as an exercise of your discretion in the matter.

Pro

. Avoids the objections to Option 1 while still preserving our legal position under the Freedom of Information Act.

Con

. If distribution of the information is limited to the requesting party, it may be regarded as a de facto compliance with the Freedom of Information Act.

. Disclosure of the information could stimulate charges that Rogers Morton has been occupied in electioneering activities while on the White House payroll to a much greater degree than was indicated when his appointment to a White House position was made and was defended on the basis he would be spending a normal amount of time on government-related activities, devoting only "his own time" to electioneering activities. In fact, Rogers has on the average spent over a third of his total time on "political" trips.

3. Release the information in a general way through the Press Office in lieu of a direct response to the requestor of the information.

Pro

. Avoids any implication that we are complying with the Freedom of Information Act.

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Con

. Same as under Option 2.

RECOMMENDATIONS

Option 1

Decline to respond to this request on the grounds that we are not legally obligated to do so.

APPROVE _____ DISAPPROVE _____

Option 2

Make a voluntary response to the requesting party with a clear indication that the information is not being furnished as a matter of compliance with the Freedom of Information Act, but merely as an exercise of your discretion in the matter.

APPROVE _____ DISAPPROVE _____

Option 3

Release the information in a general way through the Press Office in lieu of a direct response to the requestor of the information.

APPROVE _____ DISAPPROVE _____

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FOIA

THE WHITE HOUSE

WASHINGTON

April 2, 1976

MEMORANDUM FOR: JIM CONNOR

FROM: PHIL BUCHEN

SUBJECT: Freedom of Information Request

Kindly give me your comments and suggestions on the attached before it is typed in final form.

I would appreciate hearing from you this afternoon.

Attachment

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THE WHITE HOUSE

WASHINGTON

March 18, 1976

MEMORANDUM FOR BARRY ROTH

FROM KENT KAHLE

Attached are copies of the itineraries, reimbursements, memos and vouchers which have been requested by Common Cause.

The following additional information may be of assistance:

1. I have no written communication with Warren Hendricks or the President Ford Committee concerning Mr. Morton's domestic schedule.

2. All trips, except for New York on February 5, Columbus on March 1, and Talbot County Farm Bureau on March 10 (voucher copies attached) are political.

3. All political trips were paid by the sponsoring group or the President Ford Committee. All airfares to political events were paid by me and reimbursed by the President Ford Committee.

Airfares:	Kansas City	- $250.73
	Cincinnati	- 140.73
	Bergen County, N.J.	- 47.37
	New Hampshire	- 117.36
	North Carolina/Florida	- 400.57
	Illinois	- 195.73

Most hotel bills were paid by the local PFC representative or field office, and I have no record of such expenses.

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DRAFT

MEMORANDUM FOR:

FROM: BOBBIE GREENE KILBERG

SUBJECT:

It should be noted that the attached list of Morton's travel schedule includes the cost estimates submitted only by Kent Kahle, Mr. Morton's aide. The "political" cost figures (at Tab A) represent only Kahle's out-of-pocket expenses made on Morton's behalf while on trips billed as political. In no way do the cost estimates accurately describe the total amounts spent for Morton's political trips. Local PFC groups and the PFC in Washington covered the costs of most of his political trips (hotels, meals, etc.) and Morton's office has no record of which group spent what amounts on his behalf.

It should also be noted that while many of his trips were organized and billed as "political", there were numerous occasions when Morton participated in "official" functions along the way - e.g., stopping to address a small Rotary Club while en route to a major PFC fund-raiser. The costs were not apportioned and, it is my understanding that the PFC paid for the entire trip.

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KentKahle estimated that of Morton's total time spent here at the White House, half of it was concerned with "official" functions (staff meetings, press briefings, EPB, Domestic Council, etc.). If that figure is anywhere close to accurate, that would mean that given the amount of time spent by Morton on "political" travel (25-45%)(at Tab B), it would be very difficult to substantiate the 40-hour "official" work weeks that were originally used to justify Morton being on the White House rolls. For example, in the first 15 days of March, out of a total of 11 possible wo rk days (Saturdays and Sundays excluded), Morton spent 5 or 45% of those days away from the White House on "political" travel. That would mean that of the remaining 6 possible work days, using 8 hour days, Morton would have had to have spent approximately 14 hours on each of those 6 days on "official" business. Given Kahle's estimate that half of each day at the White House is spent on political events, that would mean Morton would have had to put in impossible 28-hour work days for the time he spent in Washington.

Morton's entire travel schedule for February and March 1-15 is attached at Tab C.

~~White~~ A press release detailing who paid for which of Morton's trips would reveal that the White House and PFC have strictly complied with the FEC rulings is as much as all but four of the trips were paid

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for by the PFC. It is apparent that we have "bent over backwards" to ensure that there could not even be the appearance of the White House paying for "political" travel.

However, such a press release responding in essence to the questions raised by the Common Cause letter regarding Morton's travel (at Tab D) would necessarily reveal information which would make our previous assertions regarding how Morton spent his time as a Presidential counsellor extremely hypocritical.

ROGERS C. B. MORTON/SCHEDULE

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Official Trips

February		(Vouchers Submitted)
2	Townsend, Md., Address McDonough School	$?
5	New York, Address West Side Association of Commerce	69.75
March		
1	Columbus, Ohio, Address Rotary-Kiwanis	118.73
10	Easton, Md., Address Talbot County Farm Bureau	27.70
	Total cost	$?

Political Trips

February		(Kahle's Expenses)
7	Kansas City, Address Lincoln Club	$250.73
11-12	Cincinnati, Address Hamilton County Lincoln Day (Depart White House 3 p.m. on 2/11) (Arrive White House 12 p.m. on 2/12)	140.73
13	Bergen County, New Jersey, Address Lincoln Day (Depart White House 4 p.m., return D.C. 11 p.m.)	47.37
17-20	New Hampshire, Various PFC events (Depart D.C. 8 a.m.; return D.C. 6 p.m.)	117.36
March		
4	North Carolina, Various PFC events (Depart D.C. 9:30 a.m.)	48.37
5	Florida, Various PFC events	227.48
6	Palm Beach, Fla., Address Lincoln Day Rally	10.50
7	Hobe Sound, Fla., PFC Fund-raiser	?
8	Fla., Various PFC Fund-raisers (Return D.C. 9:30 p.m.)	114.22
11	Illinois, Various PFC events (Depart D.C. 10 a.m.)	27.7
12	Illinois, Various PFC events (return D.C. 7:30 p.m.)	195.7
	Total cost	$?

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	February	March (1-15)
Total possible "work" days	20	11
Total days spent traveling	6	7
Total days spent traveling - "political"	5	5
- "official"	1	2
Total travel/possible work days	30%	60%
Total "political" travel/possible work days	25%	45%
Total "official" travel/possible work days	5%	15%

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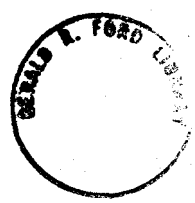
ROGERS C. B. MORTON/SCHEDULE

FEBRUARY

			(Organized as)
Sunday	1		
	2	Townson, Md., Address McDonogh School (Depart White House 5:30 P.M.)	Official
	3		
	4		
	5	New York, Address West Side Association of Commerce (left White House at 4 P.M.)	Official
	6	(Arrived White House 12 Noon)	
Saturday	7	Kansas City, Address Lincoln Club	Political
Sunday	8		
	9		
	10		
	11	Cincinnati, Address Hamilton County Lincoln Day (Depart White House 3 P.M.)	Political
	12	(Arrives White House 12 P.M.)	
	13	Bergen County, New Jersey, Address Lincoln Day (Depart White House 4 P.M. return D.C. 11 P.M.)	Political
Saturday	14		
Sunday	15		
	16		
	17	New Hampshire (Depart D.C. 8 A.M.)	Political
	18	New Hampshire) Various PFC events	Political
	19	New Hampshire)	Political
	20	New Hampshire (Return D.C. 6 P.M.)	Political
Saturday	21		
Sunday	22		
	23		
	24		
	25		
	26		
	27		
Saturday	28		
Sunday	29		



ROGERS C. B. MORTON/SCHEDULE

MARCH

			(Organized as)
	1	Columbus, Ohio; Address Rotary-Kiwanis (Depart White House at 9 A.M. - Return at 4 P.M.)	Official
	2		
	3		
	4	North Carolina; Various PFC Events (Depart D.C. 9:30 A.M.)	Political
	5	Florida; Various PFC Events	Political
Saturday	6	Palm Beach, Florida; Address Lincoln Day Rally	Political
Sunday	7	Hobe Sound, Florida; PFC Fund-raiser	Political
	8	Florida; Various PFC Events (Return D.C. 9:30 P.M.)	Political
	9		
	10	Easton, Md; Address Talbot County Farm Bureau (Depart D.C. 9 A.M. - return 9:30 P.M.)	Official
	11	Illinois; Various PFC Events (Depart D.C. 10 A.M.)	Political
	12	Illinois; Various PFC Events (Return D.C. at 7:30 P.M.)	Political
Saturday	13		
Sunday	14		
	15		
	16		
	17		
	18		
	19		
Saturday	20		
Sunday	21		
	22		
	23		
	24		
	25		
	26		
Saturday	27		
Sunday	28		
	29		
	30		
	31		

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John W. Gardner, Chairman (202) 833-1200

March 15, 1976

Mr. Richard Parsons
Room 216
Old Executive Office Building
Washington, D.C. 20501

FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Parsons:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I hereby request a copy of, or access to, all documents, correspondence, memoranda or other writings relating to the following matters:

1. communication between Mr. Rogers C. B. Morton and the White House concerning domestic travel by Mr. Morton, or his predecessor in office.

2. communication between Mr. Morton and the President Ford Committee concerning domestic travel by Mr. Morton, or his predecessor in office.

3. travel schedules from trips taken by Mr. Morton, or his predecessor in office, including

   a. the dates of such trips;

   b. the destination of such trips, including the city and state;

   c. audiences addressed, if any speeches were made; and

   d. meetings attended, including the identities of those in attendance.

4. the cost of each trip.

5. the person or group which paid for each trip.

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This request covers all documents, correspondence, memoranda or other writings relating to the above-enumerated items between the dates of January 1 through June 1, 1975, and between January 1, 1976 through the date of this request, March 15, 1976. I realize that the President Ford Committee was not in existence between January 1 and June 1, 1975.

I wish to clarify that I am not requesting any recommendations or opinions expressed in any communications between Mr. Morton and the White House. I want only information concerning Mr. Morton's domestic travel.

If you determine that some parts of the requested information are exempt from release, please advise me as to which exemption you believe covers the material you are not releasing. I, of course, reserve my right to appeal any decision to withhold all or part of the requested information.

If any expenses in excess of $50.00 are incurred in connection with this request, please inform me of all such charges prior to their being incurred for my approval. If I do not receive a substantive reply within 10 days of the date of this letter, I will deem my request denied.

Thank you for your attention to this matter.

Sincerely,

David Cohen
President

DC:RS

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THE WHITE HOUSE

WASHINGTON

January 30, 1976

Dear Chairman Curtis:

As I indicated at our meeting on January 19, the purpose of this letter is to describe the assignments and responsibilities it is planned that Secretary Rogers Morton will assume when he is appointed to the White House staff on February 2 as Counsellor to the President.

Secretary Morton's responsibilities will focus on a number of separate, but occasionally overlapping, areas. These are:

1. Counsellor to the President with Cabinet rank;

2. Principal White House official for liaison with the President Ford Committee (PFC) and the Republican National Committee (RNC);

3. Member of the Economic Policy Board (EPB), and the EPB Executive Committee;

4. Member of the Energy Resources Council (ERC), and the ERC Executive Committee; and

5. Member of the Domestic Council.

As Counsellor, Secretary Morton will be one of four Cabinet-level assistants appointed by the President to provide a broad range of advice on such subjects as the President may request. In this capacity, the Secretary will be filling an advisory role that has been vacant since Donald H. Rumsfeld left his position on the White House staff to become Secretary of Defense. His activities as Counsellor will include daily meetings with the President to review current assignments and events, daily senior White House staff meetings, Cabinet

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meetings, congressional leadership meetings and special projects at the personal direction of the President.

As the official at the White House chiefly responsible for liaison with the PFC, Secretary Morton will maintain communication between the White House and the campaign committee in order to minimize demands on Gerald R. Ford as candidate and thereby to protect the time which he requires for his essential duties and responsibilities as President. In addition, the Secretary will attempt to assure that campaign spokesmen for the candidate accurately reflect the President's policies and positions. As the principal liaison official at the White House for the Republican National Committee, Secretary Morton will screen and funnel requests and information for the President in his traditional capacity as leader of his Party. Only an individual in such an official position can reflect the interests of the Presidency in judging whether specific questions or requests for the President's consideration from the political committees and campaign workers actually warrant the President's attention, and how they may be disposed of without taking an undue amount of the President's time.

Secretary Morton will continue to give specific substantive input on various domestic, economic and energy matters, many of which have been the focus of his attention as Secretary of the Interior and Secretary of Commerce. As a member of the Economic Policy Board and its Executive Committee, he will participate in their daily meetings, as well as in the comment and review process on current economic issues and proposed legislation. As a member of the Energy Resources Council and its Executive Committee, he will attend weekly meetings and participate with other Administration energy leaders in the review of energy policy, existing programs and proposed legislation.

Secretary Morton will continue to serve as a member of the Domestic Council. In particular, he will participate in various Domestic Council task forces and activities relating to existing and proposed programs and legislative initiatives concerning issues such as water quality, depletable mineral reserves, individual privacy, illegal aliens and general revenue sharing.

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In the course of his official duties, Secretary Morton will review proposed Presidential speeches, statements and positions on issues, internal staffing memoranda to the President and personnel appointments. Secretary Morton will also participate in various public appearances as they relate to the President's official duties and the work of the Administration.

Apart from the aforementioned official duties, Secretary Morton plans to spend time of his own participating in campaign activities on behalf of the President. In particular, Secretary Morton will participate in PFC political strategy sessions, deliver political speeches, attend PFC fundraisers and engage in other campaign activities. Of course, any expenses incurred in relation to such campaign activities will be paid by the PFC in accordance with the Commission's proposed allocation regulations.

In describing his duties, Secretary Morton stated, on January 13, 1976:

> "I think that the political duties will be a concentration of the political duties now being carried out by other members of the staff. Dick Cheney has had a running liaison communication with the campaign community -- Bo Callaway's committee. There has been a normal communication between Bob Hartmann, for example, and the National Committee.
>
> "I think these duties would be concentrated into one shop, which I am very happy to do, and I don't think they are incidental in the sense of their importance, but I don't think they are going to be overwhelming in the sense of their consumption of time on my part.
>
> "I am not going to get into the management of the campaign. I have not thought of that. However, I think the President has to have some vehicle through which he can communicate with the campaign and also as

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party leader with the National Committee. I am a very logical person, having been Chairman of the National Committee and having been involved in campaigns, to do that.

* * *

"I think I am here as an overall adviser to the President. The experience I have had in the EPB -- the Economic Policy Board -- the energy field, the resource management field in Government over the last five years -- previous to that on the Ways and Means Committee of the House of Representatives -- provides me with enough background to advise the President in the overall sense, and to take a matter that he can assign to me, look at it, evaluate it and give him my best judgment on whether it is a good way to go or whether it should be a different way to go or what have you."

The question of whether to treat a portion of the salaries of assistants to public officials, such as Secretary Morton or administrative assistants to incumbent Congressmen, Senators and Governors who seek Federal elective office, as campaign expenditures does not appear to be specifically addressed in either the Federal election laws or the regulations that have been proposed to date by the Commission. If the Commission believes that such matters are affected by the laws which it administers, it would seem appropriate to have complete and permanent guidelines or regulations on the subject which apply to all candidates similarly involved.

However, inasmuch as the promulgation of such guidelines or regulations may be a lengthy and slow process, we request that the Commission issue an Advisory Opinion, pursuant to Section 437f of Title 2, the United States Code, with respect to the matters set forth herein. In particular, we request the Commission to decide whether any portion of the salaries of assistants to public officials, such as Secretary Morton, should be considered as expenditures within the meaning of 18 U.S.C. 591(f) or

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any other provision of the Federal election laws and, therefore, must be reported for the purpose of determining that a candidate has kept within his or her expenditure limits.

As I indicated to you at our meeting, the President has directed that his campaign be conducted in full compliance with both the letter and the spirit of the election laws. Accordingly, I can assure you that the White House and the President Ford Committee will abide by such opinion as the Commission may issue in this matter. Also, if it is determined that some portion of the salary of public officials such as Secretary Morton is to be treated as an expenditure under the Federal election laws, the President Ford Committee will then reimburse the Treasury of the United States for such amount, in a manner that is consistent with applicable Federal law, including 18 U.S.C. 209.

Due to the importance of this issue, we request that the Commission expedite to the greatest extent possible this request for an Advisory Opinion.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Thomas B. Curtis
Chairman
Federal Election Commission
Washington, D. C. 20463

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THE WHITE HOUSE
WASHINGTON

Date 4/7/76

TO: Phil Buchen

FROM: BARRY ROTH

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ACTION:

_____ Approval/Signature

_____ Comments/Recommendations

✓ For Your Information

REMARKS:

As we discussed, an argument can be made against us that such documents required by law to be kept are subject to the FOIA and that at least certain portions of the permanent staff, e.g., accounting are identifiable subunits.

Barry

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

FEB 20 1975

MEMORANDUM FOR THE HONORABLE PHILIP W. BUCHEN
Counsel to the President

Re: Applicability of the Freedom of Information Act to the White House Office

This is in reply to your recent request for our views regarding the applicability of the Freedom of Information Act (FIA), as amended, to the White House Office.

Summary

The legislative history of the Freedom of Information Act Amendments of 1974 makes clear that some entities within the Executive Office of the President are not "agencies" for purposes of the FIA; but it does not provide clear guidelines for determining which they are. In our opinion, it is proper to conclude that generally speaking the components of the White House Office, in the traditional or budgetary sense, are not "agencies." The more difficult questions relate to the status of other entities within the Executive Office, such as the Domestic Council or the National Security Council.

Statutory Provisions

Prior to adoption of the 1974 Amendments, coverage under the FIA, 5 U.S.C. 552(b), depended entirely upon the definition of "agency" contained in the Administrative Procedure Act (of which the FIA is a part). The APA definition is not particularly helpful with respect to the present issue. That definition (5 U.S.C. 551(1)) reads as follows:

(1) 'agency' means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include--

(A) the Congress;
(B) the courts of the United States;
(C) . . . (H) [six other specific exceptions, none of which refers to the President or the White House Office].

The 1974 Amendments, which took effect on February 19, 1975, add a special definition of "agency" applicable only to the FIA portion of the APA. Section 3 of the Amendments adds the following provision to 5 U.S.C. 552:

(e) For purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

While the statutory language itself does not differentiate among the various parts of the Executive Office of the President, the legislative history makes clear that some parts are not intended to be covered. Before turning to the legislative history, it is necessary to discuss the most prominent feature in its background, which was a District of Columbia Circuit Court decision under the original definition of "agency."

Soucie v. David

Soucie v. David, 448 F.2d 1067 (D.C. Cir. 1971), involved an FIA request for a document of the Office of Science and Technology (OST), a unit within the Executive Office of the President, but not part of the White House Office. The principal issue in the case was whether OST was an "agency" within the meaning of 5 U.S.C. 551(1).

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In resolving this issue in the affirmative, the court adopted a functional approach to the Act. 1/ It stated that "the APA apparently confers agency status on any administrative unit with substantial independent authority in the exercise of specific functions." 448 F.2d at 1073 (footnote omitted). The court's reasoning with respect to OST was explained, in part, as follows:

> If the OST's sole function were to advise and assist the President, that might be taken as an indication that the OST is part of the President's staff and not a separate agency. In addition to that function, however, the OST inherited from the National Science Foundation the function of evaluating federal programs. When Congress initially imposed that duty on the Foundation, it was delegating some of its own broad power of inquiry in order to improve the information on federal scientific programs available to the legislature. When the responsibility for program evaluation was transferred to the OST, both the executive branch and members of Congress contemplated that Congress would retain control over information on federal programs accumulated by the OST, despite any confidential relation between the Director of the OST and the President--a relation that might result in the use of such information as a basis for advice to the President. By virtue

---

1/ In a recent case involving the applicability of the FIA to certain advisory committees of the National Institute of Mental Health, the court, in holding that the advisory groups are not "agencies," used a similar functional approach. Washington Research Project, Inc. v. Department of Health, Education and Welfare, 504 F.2d 238, 246 (D.C. Cir., 1974).

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> of its independent function of evaluating federal programs, the OST must be regarded as an agency subject to the APA and the Freedom of Information Act. 448 F.2d at 1975 (footnotes omitted).

Thus, the principal basis of the court's decision was the fact that OST was not limited to advising and assisting the President, but also had an independent power delegated by Congress

The legislative history of the 1974 Amendments

The bill to amend the FIA reported by the House Committee on Government Operations in March 1974 contained a provision regarding the meaning of "agency" which was essentially the same as the provision ultimately enacted. 2/ H.R. Rep. No. 93-876, 93d Cong., 2d Sess. (1974), p. 29. Like the enacted provision, the House version expressly referred to the "Executive Office of the President."

The expanded definition of "agency" was explained as follows in the House report (p. 8):

> For the purposes of this section, the definition of 'agency' has been expanded to include those entities which may not be considered

---

2/ The only difference between the House version and the final version related to the introductory phrase. The House version stated: "Notwithstanding section 551(1), for purposes of this section, the term 'agency' means any executive department . . . [etc.]." The provision which was enacted states: "For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department . . . [etc.]."

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> agencies under section 551(1) of title 5, U.S. Code, but which perform governmental functions and control information of interest to the public. The bill expands the definition of 'agency' for purposes of section 552, title 5, United States Code. Its effect is to insure inclusion under the Act of Government corporations, Government controlled corporations, or other establishments within the executive branch, such as the U.S. Postal Service.
>
> The term 'establishments in the Executive Office of the President,' as used in this amendment, means such functional entities as the Office of Telecommunications Policy, the Office of Management and Budget, the Council of Economic Advisers, the National Security Council, the Federal Property Council, and other similar establishments which have been or may in the future be created by Congress through statute or by Executive order.

Thus, the report's explanation did not refer to the President or to the White House Office. It should be noted that the Department of Justice had sent the House committee a bill report which asserted that it would be unconstitutional for Congress to extend the FIA to the President's staff. House report, p. 20.

During House debate on the bill, Congressman Erlenborn paraphrased the committee report's discussion of the Executive Office of the President. Then he asked the floor manager, Congressman Moorhead, if it was correct that "it [the bill's definition of agency] does not mean the public has a right to run through the private papers of the President himself." 120 Cong. Rec. H 1789 (daily ed., Mar. 14, 1974). Congressman Moorhead replied that Congressman Erlenborn's view was correct, i.e., that no right of access to the private papers of the President was intended. The precise meaning of this exchange is not entirely clear. However, taken in con-

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nection with the silence of the House report regarding the President, the exchange should establish that the House bill was not intended to make the FIA applicable to the President himself.

The bill reported by the Senate Judiciary Committee expanded the existing definition of "agency" in some respects (e.g., by adding an express reference to the Postal Service), but did not deal expressly with the status of the Executive Office of the President. The Senate report did refer, with approval, to the decision in Soucie v. David. S. Rep. 93-854, 93d Cong., 2d Sess. (1974), p. 33.

The only other pertinent item in the legislative record is the conference report, S. Rep. No. 93-1200, 93d Cong., 2d Sess. (1974), pp. 14-15. That report described the differences between the House and Senate provisions regarding "agency" and stated (p. 14) that: "The conference substitute follows the House bill." It then continued (p. 15):

> With respect to the meaning of the term 'Executive Office of the President' the conferees intend the result reached in Soucie v. David, 448 F.2d 1067 (C.A.D.C. 1971). The term is not to be interpreted as including the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President.

Apparently, the conference committee read Soucie to mean that, if the functions of OST had been limited to advising and assisting the President, OST records would not have been subject to the FIA. The correctness of this interpretation of Soucie is questionable, for the court specifically stated that it found it unnecessary to decide that issue. 448 F.2d at 1073. Still, the main consideration here is not what the Soucie court stated, but what Congress intended.

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Interpreting the legislative history

It can be argued that on the point at issue here the language of the 1974 Amendments ("any . . . establishment in the executive branch of the Government (including the Executive Office of the President)") is absolutely clear and thus permits no resort to legislative history. See, e.g., Caminetti v. United States, 242 U.S. 470, 490 (1917). If the parenthetical phrase "(including the Executive Office of the President)" clearly modified the word "establishment," that might be the case. However, its position in the sentence indicates that it modifies the word "Government"--which would leave for determination what units, within the Executive Office of the President, constitute "establishments" within the meaning of the Act, compelling examination of evidence of legislative intent. Moreover, any reading which would place the entire Executive Office within the Act would include the President himself, who is the head of that office; and since this would raise the most serious constitutional questions, an interpretation would be sought to avoid it--again compelling resort to legislative history. In short, we have no doubt that courts will not adopt the blanket view that all parts of the Executive Office are covered but will examine the legislative history to clarify the point.

The exact meaning of the legislative history, as described above, is unclear. As noted, the House report listed a number of entities within the Executive Office that were to be covered by the bill ("the Office of Telecommunications Policy, the Office of Management and Budget, the Council of Economic Advisers, the National Security Council, the Federal Property Council, and other similar establishments"). The conference report took an entirely different approach to the issue, seeking to clarify the meaning of "Executive Office" by principle rather than by example. The term "Executive Office" was not meant to include "the President's immediate personal staff or units . . . whose sole

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function is to advise and assist the President." Because of this basic difference in approach, it is impossible to tell whether the conference committee agreed or disagreed with the House report. Tending to show agreement is the statement in the conference report that "the conference substitute follows the House bill"--but this is a reference to the language of the bill, and goes no further than the statute itself toward showing that the House committee's intent was adopted. This issue of the relationship between the House and conference committee reports is relevant but not crucial to the present determination; it will be absolutely central when we come to consider the status under the Act of units named in the House report.

Constitutional Considerations

It is a settled rule of statutory construction that an interpretation that raises substantial constitutional questions will not be adopted where another reading of the statute is possible. See, e.g., Crowell v. Benson, 285 U.S. 22, 66 (1932). This principle is pertinent here. For the Congress to subject the President, or that portion of the Executive Office that functions as a mere extension of the President, to the requirements of the FIA (including its provisions for judicial review) seems inconsistent with the doctrine of separation of powers. Cf. Myers v. United States, 272 U.S. 52 (1926). Moreover, the exemptions of the FIA do not necessarily correspond to the scope of Executive privilege, a privilege grounded on the Constitution. United States v. Nixon, 42 Law Week 5237 (1974). Finally, the practical burdens resulting from application of the FIA to the President and his staff, including the provisions for judicial review and sanctions, might unduly interfere with the President's duty under Article II, § 3 to execute the laws.

These considerations weigh heavily against any interpretation of "agency"--if another is feasible under the statute and its history--which would apply it to what might be termed the nucleus of the Presidency.

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General Conclusions

On the basis of the language of the statute, its legislative history (which includes reliance upon the Soucie case) and the constitutional issues involved, we are of the view that the following factors should be determinative of whether a unit within the Executive Office is covered by the Act:

1. Functional proximity to the President. A unit such as the Office of Telecommunications Policy, which ordinarily reports through one or another Presidential Assistant, is more likely to be covered than a unit such as the Domestic Council, which has regular direct access.

2. Authority to make dispositive determinations. A unit such as OMB, which regularly makes Executive branch decisions is more likely to be covered than a unit such as the Council of Economic Advisers, which only makes recommendations to the President.

3. Constitutional basis for the functions performed. A unit such as the Office of Economic Opportunity, which is meant to achieve goals established under the Constitution by the Congress, is more likely to be covered than a unit such as the National Security Council, which performs a function directly assigned to the President by the Constitution.

4. Manner of creation. A unit such as the Council on Environmental Quality, originally established by statute, is more likely to be covered than a unit such as the Federal Property Council, established by Executive Order on the basis of inherent Presidential authority.

Needless to say, no single one of these factors is determinative.

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The status of the White House Office

Your immediate inquiry is whether the "White House Office" is covered by the Act. We are not entirely clear what that phrase is meant to include. The United States Government Manual (1974-75) lists officials who are in the White House Office (p. 81) and contains a chart (copy attached) showing the relation of that Office to other parts of the Executive Office of the President (p. 80). The Executive Office Appropriation Act for 1975 (and for prior years) contains a separate line item for that unit. 3/ Public Law 93-381 (1974), Title III. However, more recently, a revised chart showing the organization of the "White House Staff" was issued (copy attached). 4/ That chart does not use the term "White House Office," and appears to give parallel treatment to units that are in our view not at all comparable for present purposes. We assume that your inquiry relates to the White House Office as shown in the Government Organization Manual and as separately funded in the Budget.

It is clear from the legislative history that the FIA does not embrace the "President's immediate personal staff." This phrase is used in the conference report, but is not explained. Presumably, it means that records maintained in the President's own offices or maintained

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3/ Other line items within the Executive Office include the CEA, Domestic Council, NSC, OMB and OTP.

4/ 10 Weekly Compilation of Presidential Documents 1588-89 (Dec. 23, 1974).

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by his closest aides are beyond the scope of the FIA.[5/] This would seem to include the records of the four cabinet-rank advisers listed on the recent chart (Messrs. Buchen, Hartmann, Marsh and Rumsfeld); and those of the units listed as White House Operations, Counsellor to the President (Mr. Marsh), Office of the Press Secretary, Counsellor to the President (Mr. Hartmann), and Office of the Counsel. It would appear that the White House Office includes all of the aforementioned entities. They all perform staff functions for the President, and they do not appear to have OST-type independent functions. In our view they all must be considered as "advising and assisting" the President, even if that phrase is narrowly construed.

5/ That the President himself is not an "agency" for purposes of the FIA should follow, a fortiori, from the expressed intent to exclude the President's immediate staff. See also the Erlenborn-Moorhead exchange (discussed above).

It may also be noted that the recent opinion of the U.S. District Court for the District of Columbia (Judge Richey), dealing with access to White House tapes and other material compiled during the Nixon Administration, stated that the "Office of the President" is not an "agency" and that records of the "President and his immediate aides" are not subject to the FIA. Nixon v. Sampson, Civ. Action No. 74-1518, D.D.C. (Jan 3, 1975), p. 69. The court supported its conclusion by reference to the legislative history of the 1974 Amendments, i.e., the conference report. (The effect of this opinion has been stayed by the Court of Appeals.)

We are expressing no opinion at the present time as to the application of the FIA to other units of the Executive Office, such as OMB, 6/ NSC, 7/ CEA and the Domestic Council. Each of those units must be considered separately, and the question can be reserved for consideration when requests addressed to each of them are received.

As a matter of sound planning, we urge that two steps be taken for the future:

(1) Any functions performed by those units described above as being within the White House Office which do not consist of "advising and assisting" the President should, if possible, be located within another Executive Office unit. If this is not possible, then a segregable subunit of the White House Office unit should be created.

6/ On February 19, 1975, OMB published an FIA regulation implementing the view that some, but not all, of OMB's functions are subject to the FIA. See 40 Fed. Reg. 7346, 7347.

7/ The recent FIA regulation published by the NSC staff contains language which seeks to leave open the question of coverage. See 40 Fed. Reg. 7316 (Feb. 19, 1975).

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(2) The concept of a separate "White House Office" should be fostered and strengthened in as many ways as possible. Any future organizational charts should clearly indicate the existence of such a unit separate and apart from the rest of the Executive Office. Judicial acceptance of such a functional division can greatly simplify our FIA problems with respect to the Executive Office.

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

President Ford Committee

1828 L STREET, N.W., SUITE 250, WASHINGTON, D.C. 20036 (202) 457-6400

April 9, 1976

MEMORANDUM

TO: Phil Buchen

FROM: Bob Visser
Tim Ryan

RE: Proposed Answers to "Morton" Complaints

Attached hereto are two drafts of our answer to the complaints filed with the FEC by the DNC and Mr. Harris.

Draft A is for all purposes a "Motion to Dismiss" and does not address the substantive issues involved. Draft B deals with the substantive issues raised by the subject complaints.

Roy Hughes agrees with us that the most effective answer would be Draft A. Your comments with regard to both drafts would be appreciated.

T.T.R.

Enclosures

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President Ford Committee

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Forfeiting

April 16, 1976

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Michael Hershman, Esquire
Disclosure and Compliance Section
The Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

RE: Secretary Rogers C. B. Morton

Dear Mr. Hershman:

The following request is hereby submitted regarding the Commission's recent inquiry concerning the appointment of Rogers C. B. Morton as Counsellor to the President. The relevant facts with regard to Secretary Morton's appointment were previously set forth in Mr. Philip Buchen's Advisory Opinion Request (AOR) of January 30, 1976. We would, therefore, request that you consider the facts contained in that submission during your deliberation of this matter.

Following the February 2, 1976 appointment of Secretary Morton, two complaints were filed with the Commission pursuant to 2 U.S.C. §437g(a)(1)(A). These complaints, filed by Fred R. Harris and the Democratic National Committee (DNC), respectively, argue that Secretary Morton's duties while at the White House raise legal questions as to the propriety of governmental payments for his services. Neither the Federal election campaign laws, Commission regulations, proposed regulations, guidelines, or Advisory Opinions specifically address the questions raised in these complaints.

After a thorough review of the issues raised in the subject complaints, we submit that for the following reasons the Commission must dismiss the complaints.

I. THE COMMISSION LACKS SUBJECT MATTER JURISDICTION

Prior to any discussion of the merits of a complaint, the Commission must first determine if it has subject matter jurisdiction over the issues raised therein. We submit that no such jurisdiction exists in this case. Section 437g(a)(1)(A) of Title 2, United States Code, provides, inter alia, that "[a]ny person who believes a violation of this Act . . . has

The President Ford Committee, Rogers C. B. Morton, Chairman, Robert C. Moot, Treasurer. A copy of our Report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C. 20463.

occurred may file a complaint with the Commission." In addition, Section (a)(2) states:

> "The Commission upon receiving any complaint under paragraph (1)(A) or a referral under paragraph (1)(B), or if it has reason to believe that any person has committed a violation of any such provisions, shall notify the person involved in such apparent violation and shall--
>
> * * * *
>
> (B) make an investigation of such apparent violation." 2 U.S.C. §437g(a)(2). (emphasis added).

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In his complaint, Mr. Harris argues that payment by the White House of a salary to Secretary Morton for his services as Counsellor to the President constitutes a misuse of federally appropriated funds by the President. The complaint does not allege a violation of the Federal election campaign laws.

Similarly, the DNC complaint argues, among other things, that "[t]he description of Mr. Morton's duties raises serious legal questions as to the propriety of any governmental payments for his services."

Questions regarding the use or alleged misuse of federally appropriated funds by a candidate or his principal campaign committee do not fall within the jurisdiction of the Commission. Such issues must be presented to a forum that is statutorily empowered to address the question of federally appropriated funds. Clearly, this is not within the scope of the Federal election campaign laws and, therefore, may not be considered by the Commission.

II. THE ISSUE IS MOOT

Secretary Morton was appointed to the White House staff on February 2, 1976, as a Counsellor to the President. On April 2, 1976, the Secretary resigned this position to become Chairman of The President Ford Committee (PFC). Since the Secretary is no longer receiving payments from federally

appropriated funds, the issue presented in the subject complaints is now moot. Moreover, all future payments of salary to Secretary Morton will be reported monthly by the President Ford Committee as campaign-related expenditures. The payment of salary to Secretary Morton for his services as Counsellor to the President is no longer a question which necessitates any action by the Commission. If, however, the Commission decides that this issue is ripe for determination, the Commission should issue an Advisory Opinion as soon as it has been restructured rather than continuing its investigation of the unique issues presented by the complaints.

In conclusion, it is our position that the only proper action for the Federal Election Commission to take at this juncture is to dismiss the subject complaints.

Respectfully submitted,

Robert P. Visser
General Counsel

T. Timothy Ryan
Assistant General Counsel

cc: Philip Buchen, Esquire
John G. Murphy, Jr., Esquire
Thomas B. Curtis
Neil Staebler
Joan Aikens
Thomas Harris
Vernon Thomson
Robert Tiernan

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THE WHITE HOUSE

WASHINGTON

Marlow
Rog

June 3, 1976

MEMORANDUM FOR: BARRY ROTH

FROM: PHIL BUCHEN P.

Please keep these transcripts in your files in case they are still neeeded in connection with the Rogers Morton matter.

Attachments

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FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

July 26, 1976

Philip Buchen, Esquire
Counselor to the President
The White House
Washington, D. C. 20500

Dear Mr. Buchen:

The Federal Election Commission has directed me to forward the attached Commission Action to you in connection with its disposition of MUR 1976-77, together with the concurring opinions of individual Commissioners.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

Attachment

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
President Ford Committee (Morton)	)	MUR 077 (76)
	)	

COMMISSION ACTION

The Federal Election Commission has reviewed the compliants in this matter and has concluded by a vote of 5-1 that there is no reason to believe that any violation of the Federal Election Campaign Act of 1971, as amended, has been committed. The Federal Election Commission has accordingly voted, 6-0, to close the file in this matter.

Marjorie W. Emmons

Secretary to the Commission

DATE: July 26, 1976

Murphy

STATEMENT OF COMMISSIONER HARRIS

The question here presented is whether political activity by a federal employee on behalf of a candidate for federal office raises any issue within the purview of the Federal Election Campaign Act and of this Commission. It is assumed that the challenged political activity was carried on in part during normal working hours. No assumption is made as to whether time thus spent was made up by regular, non-political, work outside of normal hours.

This issue has been raised in connection with the executive branch of the government, including White House staff, but has application ~~too~~ also to congressional employees. It will be considered in the context of the other statutes, orders and rules which may bear upon it.

The political activity of federal employees is regulated primarily by the Hatch Act, which forbids covered employees from taking "an active part in political management or in political campaigns." 5 USC §7324a. This statute applies only to employees in the executive and not the legislative branch of the government; and numerous categories of executive branch employees are excluded from its reach, including "an employee paid from the appropriation for the office of the President." In any event, enforcement of the Hatch Act is

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entrusted to the Civil Service Commission, not to this Commission. See 5 USC §7325; U.S. Civil Service Commission v. National Association of Letter Carriers, 412 U.S. 548, 574.

Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," contains general language which might be stretched to cover political activity in government offices, viz. Sec. 204:

> "An employee shall not use federal property of any kind for other than officially approved activities."

Apparently, however, official approval could be urged as a defense, and here again, this Order too is enforceable by the Civil Service Commission, not by this Commission.

Another statute cited as barring federal employee political activity, at least during normal working hours, is 31 USC §628, which provides:

> "Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

This provision falls within the general investigative and reporting functions of the Comptroller General. 31 USC §53. Public Citizen and Ralph Nader have brought suit under §628 to bar the use of government employees to aid the re-election campaigns of incumbent federal officeholders. The suit was dismissed for lack of standing by the district court, but is pending on appeal. (No. 74-2025, D.C. Cir. Argued Oct. 23, 1975). Here again, there is no suggestion that this Commission

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has any authority to enforce this statute.

Various provisions of the Rules of the two Houses of Congress and of the Legislative Reorganization Act of 1946 (60 Stat. 812) also deal, though indirectly, with the issue of political activities by congressional employees; and, although those provisions are of course not administered by this Commission, the interpretations the Houses have given their rules do throw light on their practices and understandings as to what is permissable. Rule 8 of House Rule XLIII provides:

> "A Member of the House of Representatives shall retain no one from his clerk hire who does not perform duties commensurate with the compensation he receives."

This rule has been interpreted by the House Committee on Standards of Official Conduct as follows:

> "As to the allegation regarding campaign activity by an individual on the clerk hire rolls of the House it should be noted that due to the irregular time frame in which the Congress operates, it is unrealistic to impose conventional work hours and rules on Congressional employees. At sometimes these employees may work more than double the usual work week -- at others, some less. These employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated but this Committee expects Members of the House to abide by the general proposition." [Congressional Record (daily edition), H. 6053, July 12, 1973].

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This interpretation that congressional employees may engage in campaign activity on their own time, and that such activity even during normal working hours is permissible upon the assumption that the lost time is made up, parallels the interpretation this Commission's General Counsel has given to the definition of "contribution" in the Federal Election Campaign Act. See OC 1975-30 (March 22, 1976).

The Legislative Reorganization Act of 1946 (2 USC §72a(a)) and the Rules of the House, Rule XI, clause 6(a)(3)(B) and (C) could be regarded as imposing an absolute ban on political activity by professional staff members of standing committees, as distinguished from the staff of individual legislators. However, a study by the Congressional Research Service suggests that these provisions were only meant to ban political activity during normal working hours. See Maskell and Burdette, Political Activity by Congressional Employees, (Feb. 26, 1976), pp. 3-4.

Further light is shed on Congressional practice by Rule XLIII of the Standing Rules of the Senate. It reads:

> POLITICAL FUND ACTIVITY BY OFFICERS AND EMPLOYEES
>
> 1. No officer or employee whose salary is paid by the Senate may receive, solicit, be the custodian of, or distribute any funds in connection with any campaign for the nomination for election, or the election of any individual to be a Member of the Senate or to any other Federal office. This prohibition does not apply to any assistant to a Senator who has been

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> designated by that Senator to perform any of the functions described in the first sentence of this paragraph and who is compensated at a rate in excess of $10,000 per annum if such designation has been made in writing and filed with the Secretary of the Senate. The Secretary of the Senate shall make the designation available for public inspection.

The second sentence of this provision makes it absolutely clear that, as far as the Senate is concerned, there is no bar to political activity by senatorial assistants paid above $10,000 per annum.

We come then to the question of the application of the Federal Election Campaign Act to political activities of federal employees on behalf of candidates for federal office.

The most elaborate presentation made in support of the complaints is the memorandum amicus curiae filed by Public Citizen. (This organization, as noted, is also engaged in attempting to litigate the applicability of 31 USC §628 to federal employee political activity).

Public Citizen argues that "government payment of the salary of an official who spends a substantial part of his working hours campaigning" is a "contribution" under the Act, and hence an "expenditure" by the recipient candidate or his committee. The definition of "contribution" relied on is 2 USC §431(e)(4), which provides that "contribution":

> "means the payment, by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose."

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The brief amicus points out that "person" is broadly defined to include "any other organization" (2 USC §431(h)), and argues at some length that the government is a "person" within this definition.

One obstacle to this argument is that "In common usage that term [person] does not include the sovereign, and statutes employing it will ordinarily not be construed to do so." U.S. v. United Mine Workers, 330 U.S. 258, 687. A still more formidable barrier is the absurdity of the result, for if the United States is a "person", and its payments of salary for time spent politicking are "contributions", it is subject to the $1,000. ceiling on contributions of §441a(a)(1), and is subject to the Act's criminal provisions. See §441j.

A more plausible line of argument is that, although these salary payments are not a contribution within §431(e)(4), they are a contribution under the general language of §431(e)(1) as "a gift ... of money or anything of value made for the purpose of -- (A) influencing" nomination or election to federal office. If this language were viewed as applicable it would be possible to disregard the role of the United States as contributor, but to require recipient candidates or committees to report the salary payments as contributions in-kind to them and as expenditures by them -- a result less absurd than would follow from holding the United States to be a "person".

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However this construction, too, runs afoul of the literal language of the statute, for the "gift" is "made" by the United States, and the United States has no purpose to influence an election: only the incumbent officeholder and the employee have that purpose.

This contribution would also involve the Commission in great practical difficulties of administration. The definition of "contribution" excludes "the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee". §431(e)(5). Thus if complaints were filed the Commission would have to determine in each instance:

(a) Whether the services were in fact volunteered, or were required by the incumbent officeholder;

(b) Whether a normal day's work was done by the employee, so that the services could be said to be "without compensation".

(c) Whether particular activities were intended to influence the election, or to report to constituents on public issues or to assist them with particular problems.

This last distinction would be impossible of administration, except upon a presumption based on proximity to the election. And, as the Court of Appeals noted in Buckley v. Valeo:

> "It is certainly appropriate for Congress to assure that steps taken to diminish incumbency advantage do not have the result of eroding representation or the effectiveness of a legislator in communicating with his constituents."

The Court also noted:

> "Any advantage gained by incumbents from service to their constituents is neither novel nor pernicious. Indeed, this may be a vindication of the principles of democracy."

These three types of determinations would have to be made in the first instance by reporting candidates and committees, but would be reviewable by the Commission if complaints were filed, as many surely would be by competing candidates.

If the services were (a) not volunteered, or (b) even if they were to the extent that they were in lieu of, and not in addition to, normal non-political work, or (c) if the services were for the purpose of influencing the election, as distinguished from constituent reporting or service, then the value of the services (presumably the salary paid) would be reportable as contributions and expenditures.

The Commission as presently staffed and budgeted could not conceivably handle the problems to which such a construction of the Act would give rise. Assuming that the United States is not subject to the ceilings on contributions, the consequence of holding that government employee political activity is a contribution and an expenditure would, in the case of congressional elections, be simply to trigger a reporting obligation. In the case of a presidential general election, however, such a holding would be an absolute barrier to employee political activity on behalf of an incumbent President accepting public financing.

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Public Citizen argues that that is just what Congress must have intended.

Public Citizen points out that much of the impetus for the 1974 amendments to the Act came from the abuses of the Nixon administration during the 1972 election, and that "among the most prominent of these abuses was the extraordinary use of the federal government for campaign purposes, including the extensive use of Cabinet officials and White House advisors in campaign activities." The sequitur asserted is that the 1974 amendments must have been meant to bar these abuses.

However there is nothing in the language or the legislative history of the 1971 Act (enacted in 1972), the 1974 amendments, or the 1976 amendments, that even hints that Congress meant to deal with federal employee political activity via the Election Campaign Act. It is inconceivable to me that Congress intended, without mentioning it, to confer on this Commission responsibility for monitoring political activity by government employees, including congressional staffs. If, as Public Citizen says, the 1972 misuse of White House staff was prominently before Congress in 1974, its total omission to deal explicitly with that problem via the Election Campaign Act must indicate a decision to leave its handling to other statutes, rules and orders, and to agencies other than this Commission. None of the studies made by the Congressional Research Service early this year suggests that the Elections Act has application to the problem.

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I accordingly conclude that the complaints filed with this Commission do not allege any violation of law within the jurisdiction of this Commission. It goes without saying that I do not, in reaching this conclusion, negate or minimize the possibilities of abuse which exist as respects political activities by federal employees on behalf of incumbent federal officeholders, nor do I minimize the advantage this may give incumbents over challengers. I simply conclude that this Commission has not been empowered to do anything about it.

MUR - 077

STATEMENT OF COMMISSIONER STAEBLER
CONCURRING IN RESULT

While I concur in the action of the Commission in closing the file in MUR-077, I do so solely on the basis of the Commission's inherent discretion not to pursue matters which will not further the purposes of the Act. I cannot, however, concur in the conclusion of my fellow Commissioners that the Commission has found "no reason to believe" that a violation of the Act has occurred.

I. PURSUIT AT THIS TIME OF MUR-077 WILL NOT FURTHER THE PURPOSES OF THE ACT

Resolution of this particular, well-publicized case, caught in the aftermath of the Buckley decision, frought with procedural complexities, and largely mooted by subsequent events, has been delayed far too long. Nothing submitted to the Commission indicates any intentional violation by Mr. Morton, the President Ford Committee, or the White House. Any possible continuing questions as to the propriety of Mr. Morton's status were closed by his resignation within a matter of weeks after the events which prompted the complaints. As will be discussed in more detail below, the reach of the law in this delicate area is less than completely clear. There is every indication that if any technical violation occurred it would have been found to be both inadvertent and minimal in effect. Under such circumstances to commit scarce Commission resources to a full-blown investigation of this particular case cannot, in my opinion, be justified.

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I believe, however, that the issues presented by the complaints are issues of great public significance and merit further discussion. I do so here in order that the Commission's decision not be misunderstood and that Congress and the public be made aware of questions which yet remain with respect to the Commission's mandate.

II. POLITICAL USE OF GOVERNMENT EMPLOYEES REMAINS A MAJOR AMBIGUITY IN THE LAW

This case highlights a major ambiguity in the political process which remains despite all recent reform legislation: the extent to which government employees and other government resources may be used for political purposes. In many higher level positions of government, there is an inevitable, perhaps inseparable involvement with politics; the gradation between general political matters and campaign-related acitivity can be almost imperceptible.

Access to government employees and resources constitutes an undeniable and material advantage to candidates with power to make political use of them. This is particulary true with respect to an incumbent President, campaigning for re-election, possessed of great resources, and subject to a tight limit on his campaign spending. The literal language of the definition of a contribution and an expenditure under the Act includes "anything of value used to influence the nomination of a candidate for Federal office". The points raised by Commissioner Harris as to whether government assets may be contributions or expenditures at all is not answered by resort to the legislative

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history of the FECA. However, the use of government employees for political use is considered an abuse in the mind of the public. Such abuse creates a loophole of major proportions in the contribution and expenditure limits established by the Federal Election Campaign Act. It is most unfortunate that the guidance given by the law in this area is so unclear.

III. UNDER DIFFERENCE CIRCUMSTANCES THERE MIGHT BE SUFFICIENT EVIDENCE TO WARRANT INVESTIGATION

To close the file for lack of sufficient evidence, as the General Counsel's report recommends, may convey the impression that all similar complaints will be similarly dismissed. While a consistent standard of evidence for all such complaints is certainly necessary, I believe that the Commission must hold itself in readiness to proceed to obtain independent evidence, based on a standard of evidence no higher than present in these complaints, when circumstances are more appropriate than here.

I do not believe, as the Commission's letter implies and the General Counsel's report states, that Congress intended the Commission to be so procedure-bound that only a documented, prima facie case can justify an investigation. Campaign violations have usually taken place in secret, and have often been unravelled only by the thinnest threads of evidence. I note parenthetically that Watergate could never have been investigated based on such a lofty standard; and I do not believe

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that a prima facie case can be required as a prerequisite to Commission investigation. Rather, I believe that "lack of evidence" here serves merely as a euphemism for the combination of factors described in Section I, above, and not as a statement of the standard of evidence that the Commission will require. To base closing the file in MUR-077 on lack of evidence, as is suggested, is unwarranted as a matter of both law and policy.

IV. THE COMMISSION HAS AT LEAST ARGUABLE JURISDICTION OVER THE MATTERS COMPLAINED OF

A second argument to support closing the file is advanced by Commissioner Harris in his separate statement. Regardless of the capacity of the government to be a contributor within the meaning of the Act, the value of government resources used by the President for political purposes should be treated as a campaign expenditure subject to the Act and is, I believe, conceded to be so by the White House.

Since the value of government services so provided cannot be a contribution in kind from the government to the candidate, the only appropriate remedy consistent with the purposes of the Act is reimbursement to the government by the campaign. Indeed, unless reimbursement is required, the law stands without any effective means of redress. I would not understand Commissioner Harris to assert any less. Rather, he would conclude only that such a determination must be made by the Civil Service Commission or the General Accounting Office, rather than the Commission.

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As is pointed out above, the literal language of the contribution and expenditure definitions of the Act include all things of value (including personal services) which influence the nomination of a person to Federal office. The effectiveness of limits on campaign spending in Presidential elections depends on effective limits on all monies used in connection with the campaign. Determination long after the fact by some other agency that reimbursement is required on the basis of a different statutory mandate will not preserve the integrity of those limits.

I believe that the Commission does have jurisdiction over the matters here in question and I will be prepared to vote to assert jursidiction in appropriate cases raising similar issues.

V. CONCLUSION

The Commission has taken the correct action in closing the file in MUR-077. I believe that the purposes of the Act are not served by keeping the matter open, and I believe all my fellow Commissioners share that view. It is therefore unfortunate to explain the closing in a way which may be misleading. Accordingly, I concur in the result in MUR-077 but dissent from the explanation given in the letter of transmittal and the General Counsel's report.

Neil Staebler, Commissioner

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 077 (76)
President Ford Committee (Morton)	)	

GENERAL COUNSEL'S REPORT

I. Allegations

During January 1976, the Federal Election Commission received three separate notarized complaints and a number of letters directed against the activities of Roger C. B. Morton in his then position as Counselor to the President. In substance, it was alleged that Mr. Morton was participating in campaign activities on behalf of the President, and that such activities constituted contributions within the meaning of the Federal Election Campaign Act of 1971, as amended (the Act). Accordingly, it was alleged that the payment of Mr. Morton's salary out of public funds actually constituted a reportable expenditure by the President Ford Committee under Title 2 of U.S.C.A., and in addition, counted against the President's spending limits set forth in 18 U.S.C. Section 608(c), now U.S.C. Section 44la(b).

II. Evidence

Other than the allegations outlined, supra, and the presentation of various news clippings providing a general description of Mr. Morton's role, none of the complainan

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delineated specific examples of Mr. Morton's use of his office on behalf of the President. On April 2, 1976, having resigned his position as counsellor, Mr. Morton was appointed National Campaign Director for the President's campaign.

III. Analysis and Recommendation

None of the complainants in this matter have furnished the Commission with evidence that the political activities of Mr. Morton have occurred during his working time as counsellor to the President. Submissions on behalf of the President support a contrary view. Absent such evidence, we find no basis for the Commission to proceed with further investigation of this matter.

2 U.S.C. §431(e)(5)(A) states that there is no contribution in a situation involving "the value of services provided without compensation by individuals who volunteer a portion . . . of their time on behalf of a candidate." The Commission has repeatedly construed this as meaning that campaign-related services provided outside the course of a normal work day are not contributions. See Proposed Regulation on Disclosure §100.4(b)(2); AO 1975-94 (41 FR 4742); OC 1975-30 (March 22, 1976). There is no basis for believing that such is not the case here.

Relevant in this connection is the applicable language of the Hatch Act. As an employee who is "paid from the appropriation for the Office of the President," Mr. Morton is exempted by 2 U.S.C. §7324(d) from the blanket proscription of 2 U.S.C. §7324(a) on political activity by an employee of an executive agency. A reasonable construction of this exemption is that it permits an exempt employee -- e.g., Mr. Morton -- to engage in campaign-related activities in non-business hours.*/ Although Mr. Morton would arguably have violated the Hatch Act had he aided the President's campaign during the business work day, there is no proof that he did so. It should also be noted that there is no standard definition of ordinary business work day for a person at Mr. Morton's level.

---

*/ This construction appears to follow from the language of United Public Workers v. Mitchell, 330 U.S. 75 (1947). Discussing the absolute ban on political activity by executive employees the Court noted:

> "We do not find persuasion in appellant's argument that such activities during free time are not subject to regulation even though admittedly political activities cannot be indulged in during work hours." (Id. at 330 U.S. 95) (Emphasis added.)

See also, Mtr. of Charles P. Demsey, LSC, F-1215-47, 1 Par. 325, holding that even though an individual Government employee was not subject to political activity restrictions because of his temporary situation, he still could not engage in political activity on the job.

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We are mindful that the underlying issue herein--when and to what extent staff members to a candidate who are paid from public funds may perform campaign related tasks--presents serious problems. However, the present case, for the reasons outlined, supra, is not an appropriate vehicle for resolution of the issue posed.

IV. Conclusion

Close file.

John G. Murphy, Jr.
General Counsel

DATE: July 19, 1976

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THE WHITE HOUSE

WASHINGTON

July 27, 1976

MEMORANDUM FOR: DICK CHENEY

FROM: PHIL BUCHEN P.

SUBJECT: Morton Complaint

Last January, the FEC received three formal complaints (including complaints filed by the DNC and Fred Harris) alleging that the appointment of Rogers Morton to the White House staff violated the Federal election laws because his service represented an in-kind contribution to the PFC which the PFC had not reported. Yesterday the Commission by a 6-0 vote closed its file in this matter. Five members of the Commission (Neil Staebler dissenting) concluded "that there is no reason to believe that any violation of the Federal Election Campaign Act of 1971, as amended, has been committed."

The FEC General Counsel, in a report that has been released to the press, took the position that the Hatch Act appears to prohibit White House employees from engaging in campaign-related activities during the business work day. However, the General Counsel noted that "there is no standard definition of an ordinary business work day for a person at Mr. Morton's level." He then concluded that none of the complaints had furnished evidence that the political activities of Rog Morton had occurred during his working time as counsellor to the President and absent such evidence, there was no basis for the Commission to investigate this matter further. The general question of the performance of campaign-related tasks by government employees was specifically left open.

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Vice Chairman Harris released a separate statement in which he concluded that the Federal Election Campaign Act, as amended, was never intended to deal with political activities by federal employees. Accordingly, he found that the complaints in this matter did not allege any violation of law within the jurisdiction of the FEC. Harris suggests that GAO or the CSC may have jurisdiction in such matters. Commissioner Staebler also issued a statement in which he concluded that the Morton complaint was now moot and the case should be closed. However, he stated his view that the value of government resources used by the President for political purposes should be treated as campaign expenditures subject to the Act, and that he is prepared to vote to assert jurisdiction over such matters in the future.

Should Ron Nessen receive any press inquiries on this matter, I recommend he indicate that the Commission's decision is clear on its face, that we are pleased by the decision, and the White House views on this matter have already been extensively commented on by Ron in the past.

cc: Ron Nessen

GERALD R. FORD LIBRARY

F.E.C.

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

10 SEP 1976

I/C #497

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Buchen:

This refers further to your request for an opinion concerning whether any portion of the salaries of assistants to public officials should be expenditures for purposes of the Federal Election Campaign Act of 1971, as amended.

I believe you are aware that the issues raised by your request have been resolved by the Commission in the context of a compliance matter. Accordingly, in view of those developments which have occured since my letter to you of March 16, 1976, it would appear that no further response to your inquiry is required.

Thank you for your patience and understanding.

Sincerely yours,

John G. Murphy, Jr.
General Counsel