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THE PRESIDENT HAS DELETED

THE WHITE HOUSE

WASHINGTON

December 26, 1974

MEMORANDUM FOR

THE PRESIDENT

FROM

KEN COLE

SUBJECT

Appointment of National Capital Service Area Director

Purpose

To explore the advisability of appointing the National Capital Service Area Director.

Background

Section 739 of the D.C. Self-Government and Governmental Reorganization Act (PL 93-198) (popularly known as the "Home Rule Act") establishes the National Capital Service Area and provides for the appointment of a level IV Director in the Executive Office of the President. The Service Area includes the Federal Monuments; the Mall; the White House; Capitol Buildings; Executive, Legislative and Judicial Office Buildings; Fort McNair; the Navy Yard; and Bolling Air Force Base. The function of the Director is to assure adequate fire protection and sanitation services to the Service Area "...utilizing District of Columbia governmental services to the extent practicable." With the exception of the Capitol Buildings and Grounds, the Supreme Court Buildings and Grounds, and the Library of Congress Buildings and Grounds, the Director is also to assure police protection and maintenance of streets and highways within the Service Area. The provision takes effect on January 2, 1975. For text of Section 739, see Tab A.

Article I, Section 8 of the U.S. Constitution (see Tab B) creates the whole of the District of Columbia as the seat of the Federal government. Generally the "Home Rule" legislation does not limit the constitutional powers of Congress over the District but rather delegates those matters which are exclusively local in nature. However, the establishing of a Service Area serves to narrowly focus Federal concern in a small geographic area and consequently detracts from the overall Federal interest throughout the District of Columbia

as provided under Article I of the U.S. Constitution. As drawn under Section 739, the boundaries of the Service Area exclude many Federal buildings and fails to include water sewage facilities which are vital to the operation of the Federal government. The Service Area is viewed by the local residents as a permanent restriction of the Federal presence within the District.

The legislative injunction to "assure" certain services is largely precatory. Efforts by the Director to provide such services could draw the Office of the President into the daily problems of street maintenance, garbage collection, etc. To develop an executive branch capability for enclave maintenance would necessitate Federal appropriations for independent Service Area police, fire, street and sanitation services.

Legislative Intent

The amendment creating the Service Area was added to the "Home Rule" bill on the floor of the House by Congresswoman Edith Green. Representative Green stated that her purpose was to make certain that the final responsibility for municipal services in the Service Area would not rest with elected District officials. The new Service Director's duties were designed to "supplement and not supplant existing structures and officials". The Director would only supply services where existing arrangements were inadequate. See Tab C. As Minority Leader of the House of Representatives, you stated that you saw no objection to the carving out of a part of the District which would be clearly known as the Capital. See Tab C.

Executive Branch Implementation

The statute is extremely vague as to the duties, functions, jurisdiction, and authorities of the Director. There are essentially two views as to the nature of the Director's responsibilities and the import of the Service Area.

The Department of Interior interprets the statute as necessitating a completely autonomous and self-sufficient Service Area. The Department of the Interior submitted draft legislation to OMB which would delegate the Director's job to the Secretary. The proposal was hotly opposed by the District, GSA, Chairman Diggs, and the Press.

The Office of Legal Counsel of the Department of Justice reviewed the proposed Department of the Interior legislation and stated that the DOI interpretation was without foundation. Section 739 (i) (See Tab A) states that except as "specifically provided," existing Federal and D.C. laws and regulations thereunder shall continue in force and effect. The Office of Legal Counsel advises that...

All municipal services, moreover, would continue as before to be provided at the District's expense, for the National Capital Service Area by its creation has not been extracted from the District, and the District government remains generally responsible for municipal services in the District.

Mayor Walter Washington, in a statement of his own regarding the Department of the Interior proposal, interpreted Section 739 in a manner that closely parallels the Office of Legal Counsel opinion.

Summation

The question to be decided is whether it is in the Federal interest to carve out a Service Area and whether it should be done in the manner provided under the provisions of Section 739.

Factors to be considered are:

1. The restriction of the Federal interest within the District.
2. The burden placed upon the Executive Office of the President by the appointment.
3. The administrative realities of assuring implementation of the statute.

Summary of Options

1. Appoint a new Executive Level IV Director of Service Area in the Executive Office of the President.
2. Introduce legislation which would designate a Secretary of a Department or similarly high ranking official within the Executive Branch to perform the duties of the Director.
3. Designate an already serving office in the White House or appropriate Executive Office unit to perform the duties of the Service Director.
4. Request Congressional clarification of Section 739.
5. Propose legislation to abolish the Service Area.

Options

1. Appoint a new Executive Level IV within the Executive Office of the President.

Pro: Would comply with the most literal reading of the statute and therefore follow the intent of the Congress.

- Con:
- A. Would focus the Federal interest in the District of Columbia within the Service Area rather than District-wide.
 - B. The Director has neither the authority nor funding to fulfill his responsibilities. Consequently the Director will be at the mercy of City Hall as well as the Federal agencies.
 - C. As the Director is within the Office of the President, the Congress and the city could attempt to raise all questions in the District directly to the President.
 - D. The Service Area could generate local resentment and the Enclave Director could serve as a focal point of ill will.
 - E. The duties of the Director are so vague and limited that the position does not warrant a Level IV.
 - F. There is no appropriation available for the position. None would be available until late February 1975 at the earliest, if then, through a supplemented appropriation request.
 - G. Effective dealings with the maintenance problems would involve significant costs to the Federal government.

2. Designate a Secretary of a Department to assume the duties of the Director. The most logical choice of Departments would be Interior as its police jurisdiction extends to 70 percent of the Service Area.

Pro: A. This would place resources and staff support of the Department behind the Director.

- B. It would separate the Director from the Executive Office of the President.
- C. Would avoid the expense of appointing a separate Executive Level IV Position.

- Con:
- A. Would focus the Federal interest within the Service Area rather than throughout the entire District.
 - B. Would require legislative amendment which would be opposed by Chairman Diggs, the Mayor, and the Press.
 - C. The Service Area could generate local resentment and the Enclave Director could serve as a focal point of ill will.
 - D. There is no appropriation available for the position. None would be available until late February 1975 at the earliest, if then, through a supplemental appropriation request.
 - E. Effective dealings with the Service Area maintenance problems would involve significant costs to the Federal government.

3. Designate an already appointed official within the Executive Office of the President (the White House, Domestic Council, or OMB).

- Pro:
- A. Would assure that the Director was closely tied to the policies of the Administration.
 - B. Would avoid the expense of an additional appropriation.
 - C. Would provide Director with access to staff.

- Con:
- A. Would focus the Federal interest within Service Area rather than within the entire District of Columbia.
 - B. Would bring the daily problems of the administration of the Service Area into the White House.
 - C. The Director has neither the authority nor funding to fulfill his responsibilities. Consequently the Director will be at the mercy of City Hall as well as the Federal agencies.
 - D. As the Director is within the Office of the President the Congress and the city could attempt to raise all questions in the District directly to the President.

- E. The Service Area could generate local resentment and the Enclave Director could serve as a focal point of ill will.
- F. Effective dealings with the maintenance problems of the Service Area would involve significant costs to the Federal Government.

4. Seek Congressional clarification of Section 739.

Pro: Would place the burden of explanation on Congress.

Con: A. Would risk new legislation which could further restrict the Federal interest within the District.

B. Would risk new legislation which could lead to additional administrative and financial burdens on the Executive Branch.

C. Congressional intent is not at issue.

5. Propose legislation to abolish Service Area.

Pro: A. This would eliminate the situation of focusing the Federal interest in the Nation's Capital with a weakened administration of a reduced area.

B. Would eliminate the Service Area as a source of local resentment against the Federal government.

C. The Executive Office of the President would be spared the burden of maintaining the Service Area.

D. With representatives Nelsen, Green, Broyhill and Landgrebe leaving Congress the chance of repeal is greatly improved in the 94th Congress.

Con: A. Conservative Congressional concern may be voiced.

B. Chairman Diggs would protest the loss of the House D.C. Committee's jurisdiction over the Service Area.

C. May result in Congressional hearings.

Recommendations Received

- *1. Option 1 - To appoint a new Executive Level IV within the Executive Office of the President. Recommended by Representatives Edith Green and Ancher Nelsen.

Approve _____ Disapprove _____

- *2. Option 2 - To introduce legislation which would designate a Secretary of a Department to assume the duties of the Director. The most logical choice of Departments would be Interior as its police jurisdiction extends to 70 percent of the NCSA. Recommended by no one.

Approve _____ Disapprove _____

- *3. Option 3 - To designate an already appointed official within the Executive Office of the President (The White House, Domestic Council, or OMB). Recommended by no one.

Approve _____ Disapprove _____

*Options 1, 2, & 3 are available alternatives notwithstanding the absence of staff recommendations.

- 4 Option 4 - To seek Congressional clarification of Section 739. Recommended by: Bill Timmons

Approve _____ Disapprove _____

- 5. Option 5 - To propose legislation to abolish Service Area. Recommended by: Mayor Washington, Bill Walker, OMB, and the Domestic Council

Approve RR 9. but after consultation with G.O.P. leadership Disapprove _____

Rationale Supporting Option 5: Existing relationships between the Federal government and the District of Columbia for providing services in the Service Area are in place and are working effectively. Efforts to operate separately or in addition to these existing relationships are potentially costly and burdensome. In addition, both Congress and the President have sufficient existing authority to assure that all needed and appropriate services are provided to the Service Area. The Service Area provision focuses the Federal jurisdiction in a narrow geographic area and detracts from the District-wide Federal interest set forth under Article I, Section 8 of the Constitution.

TAB A

Legislation: The D.C. Self-Government and Governmental Reorganization Act (P.L. 93-198)

Establishment. Sec. 739. (a) There is established within the District of Columbia the National Capital Service Area which shall include the principal Federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the Federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building.

Director. (b) There is established in the Executive Office of the President the National Capital Service Director who shall be appointed by the President. The President, through the National Capital Service Director, shall assure that there is provided, utilizing District of Columbia governmental services to the extent practicable, within the area specified adequate fire protection and sanitation services. Except with respect to that portion of the National Capital Service Area comprising the United States Capitol Buildings and Grounds. National Capital Service Director shall assure that there is provided within the remainder of such area specified adequate police protection and maintenance of streets and highways.

Compensation. (c) The National Capital Service Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for Level IV. The Director may appoint such personnel as may be necessary.

U.S. Laws, applicability (i) ...all general laws of the United States and all laws enacted by the Congress and applicable to the District of Columbia...shall...continue to be applicable and within such National Capital Service Area...as if this section had not been enacted.

Effective Date: January 2, 1975

TAB B

TAB C

TAB B

Article I, Section 8 of the U.S. Constitution provides that Congress is empowered:

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; - And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Legislative Intent:

Recent Expressions: Representatives Edith Green and Ancher Nelsen who respectively sponsored and supported the Service Area amendment have written you in this regard stating that this provision was designed to reassure "...many members of Congress that the Federal interest would be protected." Letter of December 4, 1974, from Reps. Green and Nelsen.

Edith Green: The amendment creating the Service Area was added on the floor of the House. Its sponsor was Congresswoman Green. In speaking in favor of the amendment, she made clear that its purpose was to insure that the final responsibility for police, fire, sanitation, and roads in the specifically Federal areas would not rest upon a person elected within the District. See generally 119 Cong. Rec. H8706 (daily ed. Oct. 9, 1973); 119 Cong. Rec. H8798, H8830 (daily ed. Oct. 10, 1973).

Representative Diggs: When the bill emerged from Conference, it contained the current language of Section 739. Conference Committee Chairman and Manager of the bill, Congressman Diggs stated:

I want to stress that the new Service Director's duties are designed to supplement and not supplant existing structures and officials.

It is our view that he would act to supply services only in those cases where existing, police, fire, sanitation and street maintenance services are inadequate in the service area. 119 Cong. Rec. H11512 (daily ed. Dec. 17, 1973).

Minority Leader: As minority leader, you had no objection to the Green Amendment. On the floor of the House, you said...

I see no reason whatsoever to object to the carving out of a particular part of the geography of the District where it is made crystal-clear that this is the Capital of the United States.

It seems to me that this particular portion of the geography of the District ought to be more clearly defined, and certain powers and authority ought to be included within that enclave. For that reason I strongly hope that the amendment is approved, and I trust that the majority will approve it.

THE WHITE HOUSE
WASHINGTON

January 7, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: KEN COLE
FROM: JERRY H. JONES 
SUBJECT: Appointment of National Capital
Service Area Director

Your memorandum to the President of December 26 on the above subject has been reviewed and Option 5 -- To propose legislation to abolish Service Area -- was approved with the following notation:

-- But after consultation with G. O. P.
leadership.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld