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THE WHITE HOUSE

WASHINGTON

January 11, 1975

MEMORANDUM FOR THE PRESIDENT

FROM:

PHILLIP AREEDA

P.A.

SUBJECT:

Commissioner of Rehabilitation Services

Secretary Weinberger would like to retain Dr. Andrew Adams as Commissioner of the Rehabilitation Services Administration. (See Tab A.) The Rehabilitation Act Amendments of 1975, which become effective on February 5, newly subjects this post to Senate confirmation. To require the incumbent to be so confirmed, however, amounts to legislative removal and is, therefore, unconstitutional. The Justice Department so believes and I agree. (See Tab B.) Justice also believes that neither the statutory language nor the published legislative history is clearly applicable to the present incumbent. Justice would, therefore, interpret the statute in the light of the Constitution to require Senate confirmation only of future appointees to this office. Based on its detailed familiarity with the legislative process -- which is broader than the published legislative history which a court would consider -- HEW believes that Congressional intent makes clear that the incumbent must be confirmed.

Option 1. Notwithstanding the probable political and constitutional confrontation, Secretary Weinberger recommends that Dr. Adams continue as Commissioner after February 5 and that his name not be sent to the Senate.*

Option 2. We could retain Adams and send his name to the Senate for confirmation**/ but this would constitute an undesirable and unconstitutional precedent. And he probably would not be confirmed.

Option 3. A new person could be selected and his name sent to the Senate.**/ This would avoid the difficulties of the previous two options, but Weinberger would prefer to keep Adams.

*/ There is the possibility that the Comptroller General would take exception to Dr. Adams' salary after February 5.

**/ This procedure would raise difficult but not insurmountable problems in determining who may lawfully exercise the duties of the office after February 5 and before a Commissioner is confirmed.

RECOMMENDATION: Take Option 1. Neither Bill Walker nor Ken Cole has any contrary views. If you agree, the Congressional leadership should be forewarned by letter that you are taking this course on the advice of the Justice Department as to the meaning of the statute in the light of the Constitution.

Option 1. MR7 Option 2. _____ Option 3. _____