

The original documents are located in Box 15, folder “Federal Election Commission - Morton Appointment as White House Counsellor (2)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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C-7

Who should pay for Morton?

Hairs could be split to infinity in the attempt to determine where government ends and politics begins in the activities of a president and his aides. In campaign years, any president routinely receives political advice from many on the government payroll. It is one of the incumbent's built-in advantages that no election law can completely eliminate.

Yet the limits of such advantage need to be established and clarified under the 1974 campaign finance law which is being given its first and crucial test by the current campaign. And President Ford's appointment of Rogers Morton as White House counselor with some campaign responsibilities has stirred sufficient controversy to warrant thorough examination and adjudication by the Federal Election Commission.

From the somewhat differing statements of Mr. Morton and presidential press secretary Nessen, it is unclear just how "incidental" — to use Mr. Nessen's word — Mr. Morton's political services will be. But the election commission's chairman, Thomas Curtis, a member of the President's own party, said he thought at least a part of Mr. Morton's reported \$44,600 salary would have to be counted against Mr. Ford's campaign spending ceiling. In that case, it would appear the taxpayers should not have to pay for that portion.

The question is whether the money involved was worth the problem of presidential image involved in seeking to put Mr. Morton on the government payroll.

"Credibility" was one of the strong points with which Mr. Ford began his tenure. It is something he needs to conserve and enhance, especially in the light of such episodes as his switch on the labor bill leading to the resignation of Secretary Dunlop — and attacks on Mr. Ford's credibility by labor leaders.

In the Morton appointment, Mr. Ford could bolster credibility by clarifying Mr. Morton's duties and asking for a determination by the election commission on what would be within the letter and the spirit of the law. He could hardly fault the commission on its previous decision about his spending limits. Then, over Democratic protest, it said that Mr. Ford need not charge his 1975 political travels against his primary spending ceiling, though he would be expected to consider all domestic travel in 1976 as political and charge it against his ceiling.

There is no reason to doubt Mr. Ford's intentions to abide scrupulously by the campaign law. For the sake of the credibility needed for his political as well as presidential effectiveness, he and his advisers have to avoid even any appearance of lacking the most sensitive regard for the legislation.

C.S. Monitor,
1/16/76

Morton's Pay

President Ford made a mistake in putting Rogers Morton on the White House payroll to help the President get nominated and elected. It was a mistake even if the Morton salary is counted against the campaign spending limits imposed on presidential candidates. Mr. Morton's salary comes from tax money that should serve Mr. Ford the President, not Mr. Ford the candidate. This is one case in which the line between politics and statecraft is clear. Everybody knows Mr. Morton was hired to help the faltering President Ford Committee, and the committee, not the Treasury, should pay him.

Baltimore Sun, 1/16/76



EYES ONLY
THE WHITE HOUSE
WASHINGTON

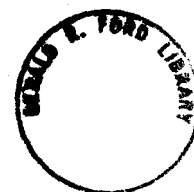
January 16, 1976

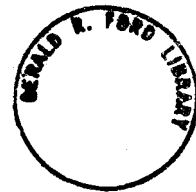
MEMORANDUM FOR: DICK CHENEY

FROM: PHIL BUCHEN *P.*

The attached memorandum includes at the end
a summary of information I obtained from
Tom Curtis when he called this morning.

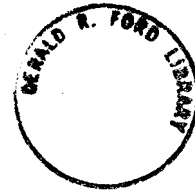
Attachment





GUIDE FOR PREPARATION OF LEGAL RESPONSES
TO ISSUES RAISED BY MORTON APPOINTMENT

1. Statutes which have possible relevancy
 - a) 18 U.S.C. § 209 (salaries of government employees payable only by U.S.)
 - b) 31 U.S.C. § 628 ("sums appropriated for...expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.")
 - c) 18 U.S.C. § 607 (payments to promote political objects from one government employee to another)
 - d) 2 U.S.C. § 431(e)(4) (inclusion in "contribution" of compensation paid by any "person" for the "personal services of another person which are rendered to such candidate or political committee without charge"; see definition of "person" in §431(h) which does not include the government)
 - (e) 2 U.S.C. § 431(e)(5) (exclusion from "contribution" of "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")
 - f) 2 U.S.C. § 431(f)(1) ("expenditure" includes any payment made for the purpose of influencing a nomination or election to Federal office)
 - g) 5 U.S.C. § 7324(d)(1) (exempts "employees paid from the appropriation for the office of the President" from the general prohibition against having Executive Branch employees participate in "political management or in political campaigns")



2. Possible issues

- a) The nature and extent of services by Counsellor Morton and his aides as they are covered by the objects for which appropriations to the office of the President are made, namely all services ordinarily performed for a President whether or not he is involved in a nomination/election campaign and those which may be campaign-related but which are required because he is the incumbent President.
- b) The nature and extent of services by these individuals as:
 - (i) they fall outside the objects of the applicable appropriations and they are not performed on the individual's own time, or
 - (ii) they are rendered to the President as candidate or to his election committee and they are not volunteered on the individual's own time.

3. Positions taken by Chairman Curtis

- a) He has interpreted Morton's public statements to give as a justification for his role for the President the uses which incumbent Congressmen make of their staffs for campaign purposes, and in the Chairman's view this is all wrong because two wrongs do not make a right.
- b) He concedes that the President and everyone on his staff have a legitimate "political" role not only in policy-making but in communicating and defending policy decisions to the American people, but that is not to say they can have a role in "electioneering" unless the costs attributable to that role are reported and accounted for as coming within the President's campaign spending limits. He thinks a workable distinction can be made and has to be made, or a serious inequity is created between incumbents and challengers.
- c) The FEC has no concern with whether or not these "electioneering" costs rightly or wrongly come out of appropriated funds but, if they do represent services for which the individual is compensated by his federal salary, they must be reported as campaign receipts and expenditures. He concedes that truly "off-time" volunteer services would fall outside this requirement.

- d) He wants to work, through informal means or through an advisory opinion, to achieve voluntary compliance with the Federal Election Campaign Laws, notwithstanding that a complaint has been filed which may involve the same issue.

(He has offered to meet in this regard on Monday, January 19, at 3:00 p.m.)

THE WHITE HOUSE
WASHINGTON

Date 1/16/76

TO: Phil Buchen

FROM:

BARRY ROTH

RR

ACTION:

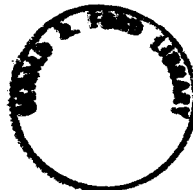
Approval/Signature

Comments/Recommendations

✓

For Your Information

REMARKS:



President Ford Committee

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

November 26, 1975

The Honorable Thomas B. Curtis
Chairman
The Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463



Re: Advisory Opinion Request

Dear Chairman Curtis:

The purpose of this letter is to set forth certain procedures which have been instituted by The President Ford Committee ("PFC") to assure that all personal services provided the PFC by (a) individuals, generally, and (b) by corporate, national bank, or labor organization employees, officials, or officers, specifically, are furnished in such a manner as to conform with the Federal election campaign laws.

Section 591(e), Title 18, United States Code, defines contribution as ". . . a gift, subscription, loan, advance . . . of money or anything of value . . . made for the purpose of influencing the . . . election of any person . . ." (emphasis added). However, specifically excluded from this definition is:

"[T]he 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;" 18 U.S.C. §591(e)(5)(A).

In addition, §610 provides an expanded definition of "contributions" and criminal sanctions for contributions by corporations, national banks or labor organizations:

"It is unlawful for any national bank or corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any



political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors . . . are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

* * *

As used in this section, the phrase "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section"
Id. (emphasis added).

Thus, payment of a salary by a corporation, bank or labor organization to one of its officers or employees for the time he spends as a political campaign chairman would normally be an attributable "in-kind" contribution by the bank and, therefore, illegal under 18 U.S.C. §610.

However, interpreting these provisions, the General Counsel of the Federal Election Commission decided in Opinion of Counsel 1975-57 that the election laws would not preclude a bank official from providing personal services as a campaign chairman for a candidate, so long as such services were provided in his individual capacity and without compensation from the bank. The Opinion emphasized that such personal services must be provided without direct compensation from the bank in order to be excluded from the law's definition of contribution.



In addition, the Commission has issued proposed regulations which encourage an individual, whether or not a corporate, national bank or labor organization employee, official or officer, to volunteer his time and services to campaign activities. In general, the proposed regulations provide that an individual may undertake volunteer campaign activity if it is performed on his or her own time and not while on someone else's payroll. Thus, such an individual may certainly engage in such activity (a) before or after normal working hours; (b) on vacation time; (c) during luncheon hour; and (d) while on a leave of absence without pay or the like. In particular, the proposed regulations, as currently revised, state specifically that such a person may engage in campaign activity but that no compensation is paid:

"(i) to an employee who:

(A) is paid on an hourly or salaried basis;

(B) is expected to perform duties for an employer for a particular number of hours per period; and

(C) engages in political activity during what would otherwise be a regular work period;

if the taken or released time is made up or completed by that employee within a reasonable period.

"(ii) to an employee who is paid on a commission or piecework basis, or is paid only for work actually performed, whose time is considered the employee's own to use as he or she sees fit and who engages in political activity during what would otherwise be normal working hours.

"(iii) where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time."

The Honorable Thomas B. Curtis
November 26, 1975
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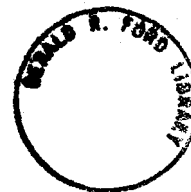
In other words, the Commission has made an initial determination that, under certain circumstances, an individual may engage in voluntary campaign activity during working hours on a compensatory time arrangement or basis without such personal services being considered an "in-kind" contribution. Absent a showing that such personal services were provided during the individual's personal time or that the organization will be reimbursed on a compensatory time basis, it would appear that the personal services would constitute an "in-kind" contribution to the political committee.

In view of these restrictions, the PFC has taken certain steps to insure that all personal services provided it are done so within the relevant Federal election campaign laws. Moreover, special attention and emphasis has been placed on personal services provided by a corporate, bank or labor organization employee, officer or official.

Before an individual is permitted to perform any personal services for the PFC, we will conduct review of the individual's employment status and, in particular, the nature and method of the individual's form of compensation. We intend to exclude from such compensation any indirect and normal fringe benefits paid by the individual's employer (e.g. medical, dental, disability, life and other forms of insurance, pension and stock option or savings plans), since such benefits are difficult to compute and any requirement that would mandate the exclusion of these benefits would unduly and unfairly penalize the individual for participating in the political arena. The wage or salary data will then be analyzed to determine the dollar value which may reasonably be considered an "in-kind" contribution and if that time spent on PFC business would not be made up within a reasonable period, a periodic reimbursement program will be established. In other words, if the individual is not volunteering on his own time or he does not plan to make up this time within a reasonable period, the PFC will reimburse the individual's employer for any salary or other direct compensation paid by that corporation, bank or labor organization. In effect, the individual will become an "independent contractor" for such purposes during the time the PFC reimburses his or her employer.

In order to illustrate the procedures which have

The Honorable Thomas B. Curtis
November 26, 1975
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been instituted, the following examples are hereby submitted.

First, Dean Burch, Esquire, a member of the Washington, D. C. law firm of Pierson, Ball and Dowd, provides personal services to the PFC on a volunteer basis. Mr. Burch, in his capacity as the Chairman of the PFC Advisory Board, spends approximately ten hours per week on PFC related matters. A portion of the services are provided during his normal work day. Therefore, pursuant to the proposed Title 2 regulations, Mr. Burch has agreed to make up such firm time within a reasonable period in order that it not be considered an "in-kind" contribution by Messrs. Pierson, Ball and Dowd. To actuate this program, Mr. Burch plans to supplement his normal working hours with extra, firm-related, work accomplished during his normal lunch hours, before and after normal working hours or weekends. Any identifiable administrative support provided (e.g. photocopying and telephone tolls), other than incidental support of a de minimus nature, will be reimbursed to his law firm by the PFC.

Second, the PFC has recently retained Mr. David Owen of Overland Park, Kansas, as its Great Plains Regional Coordinator. Mr. Owen, in addition to being a partner in a number of limited partnerships and an officer in a corporation, is the President and Chairman of the Board of the First National Bank of Shawnee Mission in Kansas. In return for his personal services, the bank compensates Mr. Owen with a yearly salary, insurance commissions, a car allowance and normal medical/health fringe benefits.

Following the aforementioned reimbursement program, the PFC will reimburse the Shawnee Mission Bank an appropriate pro rata share of Mr. Owen's salary for the time he spends as our field coordinator. In addition to his salary, Mr. Owen receives a car allowance and a medical benefits program from the Shawnee Mission bank. However, as stated above, it is our position that this car allowance and the other fringe benefits should not be deemed an "in-kind" contribution and, therefore, need not be reimbursed by the PFC.

The Honorable Thomas B. Curtis
November 26, 1975
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As previously noted, Mr. Owen has other business interests, specifically in the areas of real estate and cattle raising. He has informed us that he presently spends only 10 hours per week in connection with such other interests and that he plans to continue spending 10 hours per week of his spare time on these interests. Thus, no "in-kind" contribution will be deemed to have been made to the PFC by Mr. Owen's other businesses.

In conclusion, based on the aforementioned facts, the proposed Title 2 regulations and the reimbursement program, it is the position of the PFC that no "in-kind" contribution will be rendered by either the Shawnee Mission bank or Messrs. Pierson, Ball and Dowd, or any other individual, corporation, national bank or labor organization which compensates an employee such as Mr. Owen or Mr. Burch while such an individual provides personal services to the PFC.

In accordance with the provisions of §537(f), Title 2, United States Code, the PFC hereby requests the Commission to render an Advisory Opinion with respect to whether the aforementioned specific transactions and activities, including the proposed PFC procedures and reimbursement program, are in accordance with the Federal election campaign laws.

If you have any questions with regard to the above, please do not hesitate to contact us.

Sincerely,

Robert P. Visser

Robert P. Visser
General Counsel

T. Timothy Ryan
T. Timothy Ryan
Assistant General Counsel

January 16, 1976



EYES ONLY

To: Barry Roth

From: Phil Buchen

January 16, 1976



EYES ONLY

To: Rogers Morton

From: Phil Buchen

Please call me this afternoon
after looking at the attached.

EYES ONLY

THE WHITE HOUSE

WASHINGTON

January 17, 1976



MEMORANDUM TO: PHIL BUCHEN

FROM: ROY HUGHES

it is planned that he

As Counsellor to the President, Rogers Morton will have domestic, economic and political responsibilities. For the purpose of establishing his specific commitment to each, the following is a breakdown of his various activities over the course of a "typical" week.

1. Economic Policy Board, (executive committee): Attendance at daily EPB meetings and the preparation for them. Reviewing position papers on specific issues as well as economic data and forecasts, proposed legislation, etc.
(Time allocated, 5 hrs. per week for meetings, 5 hrs. per week for preparation and review)
- 2, Energy Resources Council, (executive committee): Attendance at weekly meeting of the Council, additional consultative meetings with Administrative leaders (Zarb, Richardson, Kleppe, etc.); review of new Administrative proposals as well as progress toward achieving existing goals, etc.
(2 1/2 hrs. for meetings, 2 1/2 hrs. for preparation and review)
3. Domestic Council: Specific areas of involvement as yet undetermined. However, Counsellor's interest and knowledge of proposed programs and/or legislative initiatives in the area of water quality, Law of the Sea, depletable mineral resources, capital formation, employee stock ownership, welfare reform, etc. will foster his direct involvement in various task force and committee activities.
(Time allocated, 2 1/2 hrs. per week for meetings and 2 1/2 hrs. per week for preparation and review)
4. Republican National Committee: Point of central contact at the White House for the Chairperson; keeping informed of the progress of the Party in general and in specific Congressional, Senatorial and Gubernatorial elections, etc.
(Time allotted for meetings, etc., 2 1/2 hrs.)

THE WHITE HOUSE

WASHINGTON

2



5. President Ford Committee: Point of contact at the White House for the PFC Chairman; responsible for insuring good communications and coordination of the activities of Ford the President and Ford the Candidate; keeping informed as to the progress of the President's campaign and advising the President as to its direction.
(Time allocation-10 hrs. per week)
 6. Council of Wage and Price Stability and Commission on Productivity and Quality of Working Life: Attendance at meetings of Council and Committee and review of the issues and initiatives of both.
(Time allocated- 1 1/2 hrs.)
- NOTE: The Counsellor has not yet been named to the Council or the Commission in his new role, but hopes to continue his existing membership and participation.
7. *Official* Speaking and Public Appearances: Counsellor will participate in various speaking engagements.
(Time allocated- 2 hrs.)
 8. Administrative Activities: In the course of his duties, the Counsellor will be involved in the following standard activities and functions: White House Senior Staff meetings; Cabinet meetings; White House meetings with interest groups; reviewing Presidential speeches, appointments, scheduling commitments, etc.; daily phone calls, letter dictation, etc.

TIME ALLOCATIONS:

- | | | |
|----|-------------------------------|------------|
| 1. | Economic Policy Board | 10 hrs. |
| 2. | Energy Resources Council | 5 hrs. |
| 3. | Domestic Council | 5 hrs. |
| 4. | Republican National Comm. | 2 hrs. |
| 5. | President Ford Committee | 10 hrs. |
| 6. | Council & Commission | 1 1/2 hrs. |
| 7. | Speaking & Public Appearances | 2 hrs. |
| 8. | Administration | 20 hrs. |

55 1/2

The Washington Star

JOE L. ALLBRITTON, *Publisher*

JAMES G. BELLOW, *Editor*

SIDNEY EPSTEIN, *Managing Editor*

EDWIN M. YODER JR., *Associate Editor*

MONDAY, JANUARY 19, 1976



Too much ado over Morton

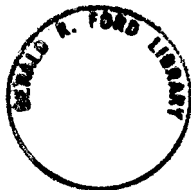
The flap over whether Rogers Morton is a many if not most congressional aides would

THE WHITE HOUSE
WASHINGTON

Mr. Buchen:

Thought you might like
to see this.

Larry Speakes



CAMPAIGN 1-19

DAY LD

(THIS IS ANOTHER IN UPI'S WEEKLY REPORTERS' NOTEBOOK SERIES FOR MONDAY AFTERNOON NEWSPAPERS).

CAMPAIGN '76 -- THE ROAD TO NOVEMBER

BY CLAY F. RICHARDS.

WASHINGTON (UPI) -- WHITE HOUSE PRESS SECRETARY RON NESSEN HAS NO BUSINESS DEALING WITH THE NEWS MEDIA ON QUESTIONS INVOLVING PRESIDENT FORD'S CAMPAIGN, SAYS THE CHAIRMAN OF THE FEDERAL ELECTION COMMISSION.

THOMAS B. CURTIS, WHO SURPRISED MANY LAST WEEK WHEN HE SAID IT PROBABLY WAS ILLEGAL FOR FORD TO APPOINT ROGERS MORTON AS WHITE HOUSE POLITICAL ADVISER, BELIEVES THE SAME RULE -- IF NOT THE SAME LAW -- APPLIES TO NESSEN.

IN SHORT, CURTIS DOESN'T WANT ANYONE ON THE PUBLIC PAYROLL DOING POLITICAL BUSINESS FOR HIS BOSS.

"MAYBE IT'S NITPICKING, BUT WE HAVE TO BEND OVER BACKWARD IF WE'RE GOING TO GET OUT FROM UNDER THIS WATERGATE CLOUD," CURTIS SAID. "AND BESIDES, WHAT BUSINESS DOES HE HAVE HANDLING POLITICAL MATTERS WHILE ON THE PUBLIC PAYROLL?"

"WHAT MR. NESSEN SHOULD DO (WHEN A POLITICAL QUESTION COMES UP) IS HAVE SOMEONE FROM THE CAMPAIGN THERE, AND SAY 'HERE IS MR. SO-AND-SO AND HE WORKS FOR THE CAMPAIGN AND HE CAN ANSWER THAT,'" CURTIS SAID. SIMILARLY, WHEN THE PRESIDENT IS ON A CAMPAIGN TRIP, A PRESS SECRETARY FROM THE FORD CAMPAIGN, NOT NESSEN, SHOULD HANDLE MEDIA.

CURTIS SAYS IT IS UNFAIR THAT AN INCUMBENT CAN USE IN A CAMPAIGN THE STAFF PAID FOR BY THE GOVERNMENT. HE SAYS HE ISN'T JUST PICKING ON FORD, THE MAN WHO APPOINTED HIM TO THE FEC. THE SAME SHOULD APPLY TO MEMBERS OF CONGRESS.

TODAY'S PRECINCT CAUCUSES IN IOWA ARE THE FIRST STEP IN PICKING THE DELEGATES THAT END UP AT THE DEMOCRATIC NATIONAL CONVENTION NEXT SUMMER. POLS, PUNDITS, REPORTERS AND "CONVENTIONAL WISDOM" FAVOR SEN. BIRCH BAYH AND FORMER GOV. JIMMY CARTER IN IOWA; BUT THAT OLD WARHORSE "UNDECIDED" IS MAKING A STRETCH DRIVE.

REPORTS FROM IOWA INDICATE DEMOCRATS DO NOT WANT TO COMMIT THEMSELVES ON THE PRECINCT LEVEL UNTIL THEY SEE HOW THE GAGGLE OF DEMOCRATIC CANDIDATES SURVIVE IN NEW ENGLAND.

JACK ANDERSON REPORTS THAT ALL THE DEMOCRATIC CANDIDATES AND NEAR-CANDIDATES ARE IN GOOD HEALTH. AT THE COLUMNIST'S REQUEST, THEY TURNED OVER THEIR MEDICAL RECORDS, EXCEPT FOR INDEPENDENT EUGENE MCCARTHY AND DEMOCRATS SARGENT SHRIVER AND TERRY SANFORD.

GOV. GEORGE WALLACE IS IN "REMARKABLY GOOD SHAPE" CONSIDERING HIS PARALYSIS, THE COLUMN SAID. AMONG THE NONSERIOUS MEDICAL PROBLEMS ARE HEART MURMURS OF SEN. GEORGE MC GOVERN AND REP. MORRIS UDALL; APPARENTLY CURED CANCER IN SEN. FRANK CHURCH AND HUBERT HUMPHREY; SEN. LLOYD BENTSEN'S FACIAL TWITCH AND SEN. HENRY JACKSON'S "CHRONIC NASAL STUFFINESS."

AND FORMER SEN. FRED HARRIS HAS A "SIGNIFICANT WEIGHT PROBLEM."



THE WHITE HOUSE

WASHINGTON

January 19, 1976



MEMORANDUM FOR:

PHILIP BUCHEN

FROM:

ROY HUGHES

Roy Hughes

It is planned that Rogers Morton will serve the President on the White House Staff as a Counsellor with Cabinet rank in three separate, but occasionally overlapping, capacities. These are:

1. Counsellor to the President.
2. Economic Policy Board, Energy Resources Council, and Domestic Council member.
3. Principal point of contact for the Republican National Committee (RNC) and the President Ford Committee (PFC).

As a Counsellor he will be providing a broad range of advice on such subjects as the President may request. As a member of various Cabinet-level councils he will be giving specific substantive input on domestic, economic, and energy matters. As the principal point of contact for the PFC, Mr. Morton will be responsible for insuring that, within the framework of Federal Election Laws, there is the maximum amount of effective communication and coordination between the White House and the campaign committee regarding the activities of Gerald R. Ford as the President and a candidate. As the principal point of contact with the RNC, he will act as the conduit for information and advice between the Republican Party and its leader. In both instances Mr. Morton will observe the progress of the committees and advise the President as to their direction.

For the purpose of establishing the approximate time commitment to his various roles, the following is a breakdown of his projected

activities during the course of a "typical" week:

1. Counsellor's Activities: Daily meetings with the President to review current assignments and events; daily senior White House Staff meetings; Cabinet meetings (one every three weeks); special projects at the President's direction. (Time allocation, 8 hours -- 5-1/2 hours of meetings; 2-1/2 hours preparation.)
2. (a) Economic Policy Board (Executive Committee): Attendance at daily EPB meetings; review of position papers on specific issues; review of current economic data, economic forecasts, legislation, etc. (Time allocation, 5 hours -- 2-1/2 for meetings and 2-1/2 for preparation and review.)

(b) Energy Resources Council (Executive Committee): Attendance at weekly meeting of the Council; additional consultative meetings with Administration energy leaders (Zarb, Kleppe, Richardson, etc.); review of new and existing policy as well as progress of current programs. (Time allocation, 5 hours -- 2-1/2 for meetings; 2-1/2 for preparation and review.)

(c) Domestic Council: Specific areas of involvement as yet undetermined; however, Mr. Morton's knowledge and interest of existing and proposed programs and legislative initiatives in the areas of water quality, land use, depletable mineral resources, capital formation, employee stock ownership, etc. will foster his direct involvement in various task force and committee activities. (Time allocation, 5 hours -- 2-1/2 for meetings, 2-1/2 for preparation.)
3. (a) President Ford Committee: Principal point of contact to insure communication and coordination between the White House and the campaign committee. This impacts scheduling commitments, Presidential policy statements, campaign literature, campaign expenditures relating to Presidential travel, strategy clearance, etc. (Time allocation, 10 hours.)

- (b) Republican National Committee: Principal point of contact between the Chairperson and the President; responsible for keeping informed on the progress of the Party in general as well as specific Senatorial, Congressional and Gubenatorial primaries and elections, etc. (Time allocation, 2 hours.)
4. Official and Political Public Appearances: Mr. Morton will participate in various speaking engagements as they relate to the Administration policies and record as well as the President's candidacy. (Time allocation, 4 hours -- 2 hours official, 2 hours political.)
5. Administration Activities: In the course of all these duties Mr. Morton will perform the following standard activities: review Presidential speeches, personnel appointments, scheduling proposals, etc.; make phone calls; dictate memos and letters; hold personal staff meetings, etc. (Time allocation, 18 hours.)

TOTAL ALLOCATIONS OF TIME

	<u>Official</u>	<u>Political</u>
Counsellor	8	
EPB	10	
ERC	5	
DC	5	
PFC		10
RNC		2
Speaking	2	2
Administrative	<u>12</u>	<u>6</u>
Subtotals	42	20

TOTAL (approx.): 62 hours



THE WHITE HOUSE
WASHINGTON

January 19, 1976



MEMORANDUM FOR: PHILIP BUCHEN

FROM: ROY HUGHES

Roy Hughes

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activities during the course of a "typical" week:

1. Counsellor's Activities: Daily meetings with the President to review current assignments and events; daily senior White House Staff meetings; Cabinet meetings (one every three weeks); special projects at the President's direction. (Time allocation, 8 hours -- 5-1/2 hours of meetings; 2-1/2 hours preparation.)
2. (a) Economic Policy Board (Executive Committee): Attendance at daily EPB meetings; review of position papers on specific issues; review of current economic data, economic forecasts, legislation, etc. (Time allocation, 5 hours -- 2-1/2 for meetings and 2-1/2 for preparation and review.)

(b) Energy Resources Council (Executive Committee): Attendance at weekly meeting of the Council; additional consultative meetings with Administration energy leaders (Zarb, Kleppe, Richardson, etc.); review of new and existing policy as well as progress of current programs. (Time allocation, 5 hours -- 2-1/2 for meetings; 2-1/2 for preparation and review.)

(c) Domestic Council: Specific areas of involvement as yet undetermined; however, Mr. Morton's knowledge and interest of existing and proposed programs and legislative initiatives in the areas of water quality, land use, depletable mineral resources, capital formation, employee stock ownership, etc. will foster his direct involvement in various task force and committee activities. (Time allocation, 5 hours -- 2-1/2 for meetings, 2-1/2 for preparation.)
3. (a) President Ford Committee: Principal point of contact to insure communication and coordination between the White House and the campaign committee. This impacts scheduling commitments, Presidential policy statements, campaign literature, campaign expenditures relating to Presidential travel, strategy clearance, etc. (Time allocation, 10 hours.)



- (b) Republican National Committee: Principal point of contact between the Chairperson and the President; responsible for keeping informed on the progress of the Party in general as well as specific Senatorial, Congressional and Gubernatorial primaries and elections, etc. (Time allocation, 2 hours.)
4. Official and Political Public Appearances: Mr. Morton will participate in various speaking engagements as they relate to the Administration policies and record as well as the President's candidacy. (Time allocation, 4 hours -- 2 hours official, 2 hours political.)
5. Administration Activities: In the course of all these duties Mr. Morton will perform the following standard activities: review Presidential speeches; personnel appointments, scheduling proposals, etc.; make phone calls; dictate memos and letters; hold personal staff meetings, etc. (Time allocation, 18 hours.)

TOTAL ALLOCATIONS OF TIME

	<u>Official</u>	<u>Political</u>
Counsellor	8	
EPB	10	
ERC	5	
DC	5	
PFC		10
RNC		2
Speaking	2	2
Administrative	<u>12</u>	<u>6</u>
Subtotals	42	20

TOTAL (approx.): 62 hours

Copy to
Barry.



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

January 21, 1976

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Rogers C. B. Morton
Secretary of Commerce
Executive Office Building
Washington, D. C. 20506

Dear Mr. Secretary:


The Federal Election Commission has received a formal complaint suggesting that the salary you receive as Counselor to the President of the United States should be, in fact, paid by the President Ford Committee. The complaint implies that your duties will primarily be of a political (campaign related) nature.

The Commission invites you to submit any information which would clarify, explain or correct the matter referred to above. Such information should be received by the Commission not later than ten business days after receipt of this letter.

This letter of notification, and the subject matter shall remain confidential, unless and until you decide to release it and so confirm to the Commission in writing.

If further guidance or assistance is required, please do not hesitate to contact Mr. Michael Hershman by mail or telephone (202/382-6023).

Sincerely,


Gordon Andrew McKay
Assistant Staff Director for
Disclosure and Compliance

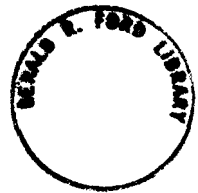


Cc: Philip Buchen, Esquire
Counsel to the President

Dear Chairman Curtis:

As I indicated at our meeting on Monday, 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. Basically, Secretary Morton's responsibilities will lie in three separate, but occasionally overlapping, capacities. These are:

1. Counsellor to the President with Cabinet rank.
2. Member of the Economic Policy Board and the EPB Executive Committee, the Energy Resources Council and the Domestic Council.
3. Principal White House point of contact for the President Ford Committee (PFC) and the Republican National Committee (RNC).

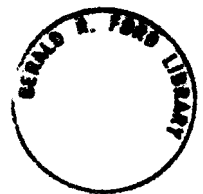


As Counsellor, he will be one of four Cabinet-level assistants to the President providing a broad range of advice on such subjects as the President may request. In this capacity, he will be filling

an advisory role that has been vacant since Donald Rumsfeld left the White House staff.

As a member of various Cabinet-level councils he will continue to give specific substantive input on domestic, economic, and energy matters which have been the focus of his attention during his tenure as Secretary of the Interior and Secretary of Commerce.

As the principal point of contact at the White House for the PFC, Secretary Morton will be responsible for maintaining communication and coordination between the White House and the campaign committee required to minimize demands on the time of Gerald R. Ford as candidate and thus protect the time which he needs for his prime duties and responsibilities as President, and to assure that campaign spokesmen for the candidate are enabled to reflect truly his policies and positions as President. As the principal point of contact at the White House for the Republican National Committee, he 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.

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. Also, only one who is in this 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.

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

"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."

For the purpose of establishing the approximate time commitment to his various official roles, the following is a breakdown of his projected activities during the course of a "typical" week:

1. Counsellor's Activities

Daily meetings with the President to
review current assignments and events;
daily senior White House staff meetings;
Cabinet meetings (one every three weeks);



Congressional leadership meetings (one every three weeks); special projects at the President's direction. (Time allocation, 8 hours -- 5 1/2 hours of meetings; 2 1/2 hours preparation.)

2. (a) Economic Policy Board (Executive Committee):

Attendance at daily EPB meetings; a review of position papers on specific issues; review of current economic data, economic forecasts, legislation, etc. (Time allocation, 5 hours -- 2 1/2 hours for meetings and 2 1/2 hours for preparation and review.)

(b) Energy Resources Council (Executive Committee):

Attendance at weekly meeting of the Council; additional consultative meetings with Administration energy leaders (Zarb, Kleppe, Richardson, etc.); review of new and existing policy as well as progress of current programs. (Time allocation, 3 hours, 1 1/2 hrs. for meetings; 1 1/2 hours for preparation and review.)



(c) Domestic Council:

Specific areas of involvement are existing and proposed programs and legislative initiatives in the areas of water quality, land use, depletable mineral resources, capital formation, and employee stock ownership. Secretary Morton's activities will include participation in the following task forces and committees: (INSERT) (Time allocation, 3 hours - 1 1/2 hours for meetings, 1 1/2 hours for preparation.)

3. (a) President Ford Committee:

Principal point of contact to insure communication and coordination between the White House and the campaign committee. Services will help assure orderly and reasonable planning of the President's overall schedule and fully adequate time for the functions of his office and will help create an understanding of the President's official positions and policies, both ongoing and planned, by those who may speak or write in his behalf for campaign purposes. (Time allocation, 10 hours.)



(b) Republican National Committee:

Principal point of contact with RNC officials on party leadership matters to determine which matters warrant Presidential involvement.

(Time allocation, 2 hours.)

4. Official Public Appearances:

Mr. Morton will participate in various events as they relate to the President's official duties and the work of his Administration. (Time allocation -- 2 hours official.)

5. Administrative Activities:

In the course of all these duties, Mr. Morton will perform the following standard activities: review proposed Presidential speeches and statements, internal staffing memoranda to the President, personnel appointments, scheduling proposals, etc., make phone calls, dictate memos and letters, hold personal staff meetings. (Time allocation, 8 hours.)



S U M M A R Y

Counsellor	8
Economic Policy Board ...	5
Energy Resources Council .	3
Domestic Council	3
Liaison	
(a) PFC	10
(b) RNC	2
Official appearances	2
Administrative	<u>8</u>
Total ...	<u><u>41</u></u>

Although the amounts of time Secretary Morton will devote to the different aspects of his White House responsibilities will fluctuate from week to week, his overall time in performing the official duties described above will on the average not decline below the projected weekly total.

Apart from these 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, political speeches, attendance at PFC fundraisers, delegate recruitment, etc. Of course, any expenses incurred in relation to such electioneering activities will be paid by the PFC.



In my letter to you of September 3, 1975, I stated how the White House intended to treat the salaries and travel expenses of White House staff who may engage in political activities as well as their official duties. It is my understanding that the Commission has informally stated in the course of a recent public session that the treatment of travel expenses described in that letter is in accordance with the regulations proposed by the Commission for "Allocation of Candidate and Committee Expenses," 11 CFR Part 107.

In this September 3 letter, I stated the following with respect to the services of government personnel:

"For the purpose of identifying the costs of travel to be borne by the appropriate political committee, we understand that it is not necessary to apportion the salaries of those members of the personal staffs of incumbent candidates for Federal office within either the Executive or Legislative Branches who, in addition to their official duties, also participate in some limited political activities. For example, employees 'paid from the appropriation for the office of the President' are exempted by 5 U.S.C. 7324(d)(1) from the general prohibition contained in 5 U.S.C. 7324(a)(2) against Executive Branch employees participating in 'political management or in political campaigns.' This section effectively places the White House staff in a position comparable to that of the personal staffs of Members of Congress.



No precise dividing line now exists, nor is one likely to be drawn, which clearly indicates when such employees are performing

official duties and when those duties are political. So long as these employees expend a substantial majority (an average in excess of 40 hours per week) of their time on official duties, there is no need to attribute any portion of the salaries of such employees to a political committee."

This approach is also consistent with Advisory Opinion No. 2 (issued July 11, 1973) by the Committee on Standards of Official Conduct of the House of Representatives which states in part the following:

"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 frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on Congressional employees. At some times, these employees may work more than double the usual work week -- at others, some less. Thus, employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at 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."



We continue to believe that the position set forth in my September 3 letter is correct. Nothing in the Federal Election Campaign Act, as amended, or the regulations now proposed by the Commission for Disclosure of Federal Campaign Funds, 11 CFR, Part 100,

or the Allocation of Candidate and Committee Expenses, supra, specifically addresses this particular point. As you are aware, this is a matter of general concern to all holders of public office who are candidates for Federal elective office, and for this reason there is a definite need for general guidelines or regulations applicable to all candidates which clearly addresses this issue.

In respect of public officeholders (President, Governors, Senators or Members of the House of Representative) who are running for election or re-election to a federal office, certain special considerations apply to services by employees who work in their offices. During the course of a campaign such employees will perform services for the officeholder which are required whether or not he is involved in a nomination/election campaign and others which may be campaign-related but which are required because he is the holder of a public office.



So long as the officeholder must exercise ongoing official responsibilities, employees helping him to carry out those responsibilities have to react to the impact which the demands of the campaign have. The officeholder's time must be conserved to give him the capacity to campaign without disabling him

from full performance of his official duties, and the scheduling and handling of his calls, correspondence, appointments, conferences, travel, public appearances, office time, and personal time, must accordingly take into account the many conflicting or overlapping and excessive demands, both official and campaign-related, for his attention and involvement.

This situation is in a material way different from that of the candidate who holds no office. Such candidate needs only a staff devoted to his campaign and it can be hired and used exclusively for that purpose. He himself is not distracted from his campaign and has no official responsibilities to which he is required to devote either himself or people who serve him.



On the other hand, the officeholder who is at the same time a candidate must depend on his official staff, who alone know all about his official functions, to make it possible for those functions to survive the intrusion of the campaign demands and give official functions the required priority without avoidable damage to the necessities of an election. This is particularly true of a President, due to the critical and sensitive nature of many of his official duties and the large and effective staff support which they require.

Another marked difference between the candidate not in office and the one with ongoing official decision-making responsibilities is that the latter's decisions and the policies to guide them can only be planned and developed through official staff work and must not be contradicted or subverted by people, however well-intentioned, who are working for a campaign committee. The candidate who holds no office may develop and publicize positions and react to inquiries simply and without regard for any operational effects (because they have none), and he has no problem of having to rely on an official staff and then being sure of liaison and coordination between that staff and the separate apparatus of a political campaign.

In closing, as I indicated to you at our meeting, it is our desire to comply with both the spirit and the letter of the election laws. Should the Commission determine that this matter warrants a formal Advisory opinion, you may consider this letter a request under 2 U.S.C 437f for such an opinion on the above matters.



THE WHITE HOUSE

WASHINGTON

January 22, 1976

Re: Morton Matter

Phil -

I am concerned that we may be digging a very deep hole for ourselves in the Morton matter. As I understand it, we will be arguing to the FEC that Morton will be spending close to 40 hours a week on non-political matters. This premise for our argument was also stated by Nessen and Morton at a press briefing. If we win our argument at the FEC -- and likely we will -- I think the White House will really be in a box. My fear is that week after week as the political fires begin to roar, the White House will be asked by the press corps for Morton's weekly schedule, telephone logs, etc., to verify that he has been serving within the scope of our "40 hour rule". If we don't produce the requested information, we will be charged with a cover-up and violations of the Federal Election laws. No one will ever believe our premise, and I have some doubts as to whether it will hold up in the future.

It seems to me that we can get things back on what I view a better course by stating candidly that as time goes by we expect that Morton will be devoting an increasing percentage of his time to assisting the President in political matters. We would argue that this is the only way any President can operate and toss the ball back in the laps of the FEC. The risk we would run is that the PFC would have to pay all or a portion of Morton's salary. But isn't this a better risk than being pestered by the press week after week if we continue on the present course?

Ed Schmults



23 JAN 1976

Re: The Legality under 18 U.S.C.
§ 209 of the President's Campaign
Organization Paying Part of Rogers
Morton's Salary as Counsellor to
the President.

The question has arisen whether it would be a violation of 18 U.S.C. § 209 for President Ford's campaign organization to pay part of the salary of Rogers Morton while he is employed as Counsellor to the President. It is acknowledged that Mr. Morton's duties will include acting in a liaison capacity between the President and his election campaign officials. Some persons have suggested, then, that his campaign organization, rather than the United States, should pay that portion of Mr. Morton's salary which is attributable to his "political" functions.

The relevant portion of 18 U.S.C. § 209 provides:

"(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

"Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection --

"Shall be fined not more than \$5,000 or imprisoned not more than one year, or both.



The crucial question is whether payments from the campaign organization to Mr. Morton would be regarded "as compensation for his services as an officer or employee of the executive branch." */

Section 209 was not intended to prevent a Federal employee from having outside income or outside employment. See, e.g., R. Perkins, The New Federal Conflict-of-Interest Law, 76 Harv. L. Rev. 1113, 1137 (1963). Thus, if Mr. Morton had an entirely separate outside position with a private organization, 18 U.S.C. § 209(a) would not prevent him from receiving compensation for that work.

In this case, however, Mr. Morton will not have a separate position. By his own public account, Mr. Morton's political activities and official duties will be inextricably intertwined. It would not be possible satisfactorily to isolate his political activities to the degree necessary to characterize them as "outside employment." Indeed, Mr. Morton has made it clear that acting in a liaison capacity in political affairs will be part of his official duties. Therefore, payments received from the campaign organization would almost surely be regarded as a contribution to salary "as compensation for" his official duties, even though they were purportedly in return for the political aspects of his work.

*/ 18 U.S.C. § 209(c) provides that the prohibitions contained in subsection 209(a) shall not apply to a special Government employee or to an officer or employee serving without compensation. Since Mr. Morton will continue in his position indefinitely, he could not with assurance be regarded as a special Government employee within the meaning of 18 U.S.C. § 202(a). The latter provision requires a positive expectation at the time the person is hired that he is employed to perform for not to exceed 130 days out of the next 365 consecutive days.

Under subsection 209(c), it would apparently be lawful for the President's campaign organization to pay the equivalent of Mr. Morton's entire salary if he served without compensation from the United States.

Official interpretations of 18 U.S.C. § 1914 (1958), the predecessor provision to 18 U.S.C. § 209(a) (1970), support this construction. The earlier statute prohibited a Government officer or employee from receiving any salary from a source other than the United States "in connection with his services as such an official or employee." A series of opinions of the Attorney General indicates that this statute had particular force where there was a substantial relationship between the payor and the agency in which the Federal employee worked, as would be the case here. For example, in a general discussion of prohibitions imposed by 18 U.S.C. § 1914 on outside business activities, Attorney General Biddle emphasized that the section "does not . . . prohibit payment for services rendered exclusively to private persons or organizations and which have no connection with the services rendered to the Government." 40 Op. A.G. 187, 190 (1942), citing 39 Op. A.G. 501 (1940); 38 Op. A.G. 294 (1935). In a later opinion to the Secretary of Agriculture concluding that members of the Turkey Industry Advisory Committee could continue to receive compensation from their employers in private industry while serving on the Committee, Attorney General Brownell stated:

I think I should also point out, however, that the determination of whether a particular payment is made "in connection with" the services of an individual as a Government official or employee is often a matter of ascertaining not only the intent with which the payment is made but also the intent of the employee in receiving the payment. An important factor in determining intent is whether the individual rendering service to the Government is in a position by virtue of his Government service to assist his private employer. 41 Op. A.G. 217, 221 (1955) (emphasis added).

See also 40 Op. A.G. 168 (1942); 32 Op. A.G. 309 (1920). See generally B. Manning, Federal Conflict-of-Interest Law 164-65 (1964).

The House Report on the bill that contained the section eventually enacted as 18 U.S.C. § 209 did discuss one difference in the new provision that should be mentioned here:



Whereas the prohibition of section 1914 applies to private salary paid "in connection with" the Government services of the employee, section 209 substitutes the phrase "as compensation for" his services as an officer or employee in order to emphasize the intent that the prohibition is against private payment made expressly for services rendered to the Government. The phrase "in connection with" is vague and capable of an indefinitely broad interpretation.

H. Rep. No. 748, 87th Cong., 1st Sess. 24-25 (1961). This passage could be read to suggest that use of the phrase "as compensation for" may have narrowed the scope of the statute, requiring an express indication from the payor that the payments are for official services. Even assuming a narrower sweep, it is possible however that there would be just such an express understanding in this case if the campaign organization made payments to Mr. Morton, since he has characterized his political activities as part of his official duties.

In any event, the House Report, quoted above, could not be relied on with confidence as an indication of a narrower scope of the statute. The Senate Report on the bill, which was submitted more than a year after the House Report, states that subsection 209(a) was intended to "reenact" the prohibitions contained in 18 U.S.C. 1914 "in substance," S. Rep. No. 2213, 87th Cong., 2d Sess. 14 (1962), and the Attorney General stated in his 1963 Memorandum Regarding the Conflict of Interest Provisions of Public Law 87-849, at p. 13 (reprinted as a note to 18 U.S.C. § 201), that subsection 209(a) "uses much of the language of the former 18 U.S.C. 1914 and does not vary from that statute in substance." See also Perkins, supra, 76 Harv. L. Rev. at 1138.

Thus, the plain language of section 209, its legislative history and administrative interpretation, and the interpretation of the predecessor provision all indicate that payments by the campaign committee to Mr. Morton would almost surely be in violation of 18 U.S.C. § 209(a). However, that section would not prohibit the campaign committee from paying a salary to Mr. Morton if he served without compensation from the Government. See footnote, supra.

