

Appendix to Chapter 9

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT ADVISORY OPINION No. 1 ISSUED JANUARY 26, 1970

(On the Role of a Member of the House of Representatives in Communicating With Executive and Independent Federal Agencies*)

REASON FOR ISSUANCE

A number of requests have come to the Committee for its advice in connection with actions a Member of Congress may properly take in discharging his representative function with respect to communications on constituent matters. This advisory opinion is written to provide some guidelines in this area in the hope they will be of assistance to Members.

BACKGROUND

The first Article in our Bill of Rights provides that "Congress shall make no law . . . abridging the . . . right of the people . . . to petition the government for a redress of grievances." The exercise of this Right involves not only petition by groups of citizens with common objectives, but increasingly by individuals with problems or complaints involving their personal relationships with the Federal Government. As the population has grown and as the Government has enlarged in scope and complexity, an increasing number of citizens find it more difficult to obtain redress by direct communication with administrative agencies. As a result, the individual turns increasingly to his most proximate connection with his Government, his representative in the Congress, as evidenced by the fact that congressional offices devote more time to constituent requests than to any other single duty.

The reasons individuals sometimes fail to find satisfaction from their petitions are varied. At the extremes, some grievances are simply imaginary rather than real, and some with merit are denied for lack of thorough administrative consideration.

Sheer numbers impose requirements to standardize responses. Even if mechanical systems function properly and timely, the stereotyped responses they produce suggest indifference. At best, responses to grievances in form letter or by other automated means leave much to be desired.

Another factor which may lead to petitioner dissatisfaction is the occasional failure of legislative language, or the administrative interpretation of it, to cover adequately all the merits the legislation intended. Specific cases arising under these conditions test the leg-

*Subsequent legislation, regulations or rules may affect part or all of this advisory opinion (see 5 U.S.C. sec. 557(d) relating to prohibited ex parte communications to administrative agencies).

islation and provide a valuable oversight disclosure to the Congress.

Further, because of the complexity of our vast federal structure, often a citizen simply does not know the appropriate office to petition.

For these, or similar reasons, it is logical and proper that the petitioner seek the assistance of his Congressman for an early and equitable resolution of his problem.

REPRESENTATIONS

This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:

- request information or a status report;
- urge prompt consideration;
- arrange for interviews or appointments;
- express judgments;
- call for reconsideration of an administrative response which he believes is not supported by established law, Federal Regulation or legislative intent;
- perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

PRINCIPLES TO BE OBSERVED

The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also other self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.
2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.
3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

CLEAR LIMITATIONS

Attention is invited to United States Code, Title 18, Sec. 203(a) which states in part: "Whoever . . . directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another

- (1) at a time when he is a Member of Congress . . . ; or
- (2) at a time when he is an officer or employee of the United States in the . . . legislative . . . branch of the government . . .

in relation to any other determination, arrest, or other is a party or has partment, agency, naval commission

Shall be fined not more than two years or of honor, trust, or

The Committee statute but notes directly or indirectly in connection, the Commission, the accrual to a Member which may be per

It should be noted that employees of the I

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission . . .

Shall be fined not more than \$10,000 or imprisoned for not more than two years or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to any compensation, directly or indirectly, for services by himself or another. In this connection, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation of any such services which may be performed by a law firm in which the Member retains a residual interest.

It should be noted that the above statute applies to officers and employees of the House of Representatives as well as to Members.

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