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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Retirement of James Coyne Campaign Debt

I submitted a memorandum giving James Coyne guidance on retiring his campaign committee debts for your approval, indicating that once approved I would review the memorandum with the Office of Government Ethics. You concurred, and OGE agreed with the guidance in the memorandum. Subsequently, I became concerned about possible Hatch Act difficulties, because of Coyne's status as an SES employee of the Commerce Department. The General Counsel of the Office of Personnel Management, Joseph Morris, has advised, however, that there would be no Hatch Act problems if Coyne left active fundraising to the James Coyne for Congress Committee -- which owes Coyne the debt in question -- as I understand he intends to do. Morris advises that Coyne could appear and speak at the fundraiser without encountering Hatch Act problems. I have added a paragraph to the Coyne memorandum noting that the fundraising activities of Coyne and his Committee should be strictly limited to retiring pre-existing debts from the past campaign, and that Coyne himself should not actively engage in soliciting contributions or organizing fundraising functions, although he may attend and speak at a function organized by the Committee. The memorandum is now ready to be sent to Coyne.

*Why?*

Alternatively, any Hatch Act problems could be avoided by transferring Coyne to the White House payroll. John Rogers has stated that he is unwilling to do this in the absence of a directive from Mr. Deaver.

*if it may be a problem,  
we should press this -*

*what do you think?*

*JGR*

Attachment

United States of America  
**Office of  
Personnel Management**

Office of the General Counsel  
Washington, D.C. 20415

In Reply Refer To:

MAR 31 1983

Your Reference:

Mr. John Roberts  
Associate Counsel to  
the President  
Room 112  
Old Executive Office Building  
Washington, D.C. 20500

Dear John:

This is in response to a question you raised with me last week concerning the "Hatch Act." You asked if a Federal employee would be permitted to engage in political activity to the extent necessary to pay off a campaign debt incurred in connection with a partisan political campaign conducted before his employment with an Executive agency. You inquired, as an alternative, if it would be permissible for the employee involved to be merely a passive creditor in connection with the debt while others conducted the activities necessary to liquidate the debt.

The Hatch Act, as codified at 5 U.S.C. 7324, prohibits, inter alia, employees of an Executive agency from "taking an active part in political management or in political campaigns." OPM's implementing regulations include two prohibitions that appear to bear on your question. 5 CFR § 733.122(b)(3) prohibits:

Directly or indirectly soliciting, receiving, collecting, handling, disbursing or accounting for assessments, contributions or other funds for a partisan political purpose.

In addition, 5 CFR § 733.122(b)(4) prohibits:

Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or of a political party, or political club.

Neither the statute nor the regulations make a temporal distinction concerning political campaigns, and no explicit exception exists for current political activity in connection with past partisan political campaigns. Accordingly, it would appear that the restrictions on

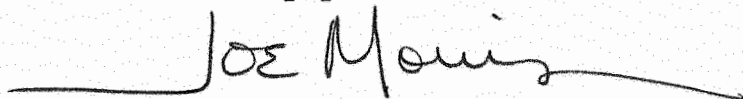
partisan political activity while in the employ of an Executive agency, at least arguably, makes current partisan political activity a violation even if that activity is in connection with a past partisan campaign.

These temporal issues notwithstanding, it is clear that the emphasis of the prohibitions is on active partisan political activity. Therefore, if, as you suggest in your alternative hypothetical, an employee were to serve merely a passive role in connection with the liquidation of a campaign debt--leaving the fund-raising to others--both the letter and the spirit of the restrictions would appear to be satisfied.

Please bear in mind that the Civil Service Reform Act of 1978 (Pub. L. 95-454, 92 Stat. 1111 (1978)) gives the Office of the Special Counsel of the Merit Systems Protection Board the authority to issue advisory opinions on the Hatch Act and enforce its provisions. 5 U.S.C. § 1206(l), 5 U.S.C. § 1206(g). Although we have consulted informally with staff of that office on your question and they apparently concur in our views, we cannot and do not speak for the Special Counsel on this matter.

We hope you find this information helpful.

Sincerely yours,

A handwritten signature in cursive script that reads "Joe Morris". The signature is written in black ink and is positioned above a horizontal line that extends across the width of the signature.

Joseph A. Morris  
General Counsel

THE WHITE HOUSE

WASHINGTON

April 1, 1983

MEMORANDUM FOR THE FILE

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Retirement of James Coyne Campaign Debt

I discussed by telephone with Joseph Morris the application of the Hatch Act to efforts of the James Coyne for Congress Committee to retire the debt it owes to James Coyne. My call was an effort to clarify the advice contained in Mr. Morris' March 31 letter. According to Morris, Coyne could attend and speak at a fundraiser held by the Committee without violating the Hatch Act. Morris recommended that Coyne not participate in organizing the fundraiser, and recommended that any speech delivered by Coyne not be overly partisan.

THE WHITE HOUSE

WASHINGTON

April 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: James Coyne Campaign Debt

Attached is the memorandum we discussed this morning. Once a decision is made to change Coyne's employment status, we will need to send him an appropriately revised memorandum with guidance on conflicts, which I have ready and waiting.

THE WHITE HOUSE

WASHINGTON

April 7, 1983

MEMORANDUM FOR JAMES A. BAKER, III  
MICHAEL K. DEEVER

FROM: FRED F. FIELDING Orig. signed by FFF

SUBJECT: Retirement of James Coyne Campaign Debt

James Coyne has advised my office that he would like to hold a fundraiser to help retire the outstanding campaign debt owed to him by his campaign committee. We are prepared to give him appropriate guidance concerning conflict of interest and other matters in connection with such activity. Coyne is, however, presently paid as an SES employee of the Department of Commerce and accordingly is subject to the restrictions of the Hatch Act, 5 U.S.C. § 7324. That Act, and implementing regulations, 5 C.F.R. § 733.122(b), prohibit political fundraising activities on the part of covered federal employees. While Coyne's situation is unusual in that the contemplated fundraising is to retire a debt from a past campaign, neither the Act nor the regulations draw a temporal distinction, and I cannot confidently advise that Coyne would not run afoul of the Hatch Act's prohibitions.

The pertinent provisions of the Hatch Act do not apply to "an employee paid from the appropriation for the office of the President." 5 U.S.C. § 7324(d)(1). Accordingly, if Coyne were so paid, he could hold a fundraiser, subject to our standard advice on conflict of interest and related matters. To ensure that we encounter no Hatch Act problems, I recommend that Coyne's employment status be adjusted, if possible, so that he is "paid from the appropriation for the office of the President," at least until his fundraising activity is completed.

cc: John F.W. Rogers

FFF/JGR:sts FFFielding JGRoberts✓ Subj. Chron.

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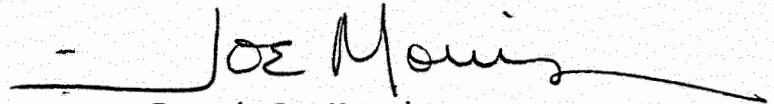
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We hope you find this information helpful.

Sincerely yours,

A handwritten signature in black ink that reads "Joe Morris". The signature is written in a cursive style and is underlined with a long horizontal line extending to the right.

Joseph A. Morris  
General Counsel

THE WHITE HOUSE

WASHINGTON

April 5, 1983

MEMORANDUM FOR THE HONORABLE JAMES COYNE  
SPECIAL ASSISTANT TO THE PRESIDENT  
PRIVATE SECTOR INITIATIVES

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Retirement of the Debts of the  
James Coyne for Congress Committee

As a Special Assistant to the President for Private Sector Initiatives, you are in a unique position with regard to your efforts to retire the campaign debts of your 1982 Congressional Campaign Committee (the "Committee"). As a Special Assistant to the President, and an SES employee of the Department of Commerce detailed to the White House, you are subject to the Standards of Ethical Conduct for Government Officers and Employees as set forth in Executive Order No. 11222, and, as a matter of policy, the Standards of Conduct for White House Employees, 3 C.F.R. § 100.735. Further, several provisions of the Federal Criminal Code, 18 U.S.C. §§ 201, 203, 209, 210, 211, 602, 603 and 607 are applicable to you as a Federal employee and should be reviewed carefully in the course of retiring the Committee's debts. Since the Committee owes a substantial debt to you as an individual, contributions to the Committee must be considered indirect payments to you.

Outlined below is our analysis of the restrictions of each of the statutory provisions \*/ and the Executive Order noted above which are or should be considered applicable to your activities in connection with any efforts to retire the debts of the Committee. Additionally, we have attached a summary of the general guidelines which you and your campaign committee should follow in planning the Committee's fundraising activities to retire the Committee's debts.

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\*/ All references to statutory requirements contained herein, unless otherwise specifically noted, are paraphrases of the referenced statutes. Accordingly, when in doubt as to the applicability of these statutory provisions to specific facts or circumstances, reference should be made directly to the statute in question.

As an initial matter, it should be noted that the Hatch Act, 5 U.S.C. § 7324, applies to you as an employee of the Department of Commerce. We have, however, been advised by the General Counsel of the Office of Personnel Management that the Hatch Act would not preclude efforts by the James Coyne for Congress Committee to retire pre-existing debts it owes you from past elections. You personally, however, should not engage in soliciting contributions or organizing fundraising events, although you may attend events organized by the Committee. Fundraising efforts by the Committee should be strictly limited to retiring debts from your past campaign.

18 U.S.C. § 201: provides in part that any public official may not solicit, accept, receive or agree to receive anything of value for himself or for any other person or entity, in return for being influenced in his performance of any official act; for being induced to do or omit any act in violation of his official duty; or being influenced in his testimony under oath in any proceeding before any court or Congressional hearing. Violations of this provision are punishable by fine, imprisonment or both, and possible disqualification from holding any office of honor or trust under the United States.

Additionally, 18 U.S.C. § 201 prohibits any public official from soliciting, accepting, receiving or agreeing to receive anything of value for himself or for another person or entity for or because of any official act, including testimony before any court or Congressional committee, to be performed by him. Violations of this provision are punishable by fine, imprisonment or both.

Under certain circumstances these restrictions may preclude you or the Committee from accepting any contributions from individuals or political committees, including political action committees (PAC's), whose specific purpose in making such contribution is to influence your official acts. To avoid any appearance of a violation of this provision, you and the Committee should not solicit or accept contributions from any individual, political committee or organization which has interests or represents individuals or organizations having interests that are now or will be affected by the actions or non-actions of the Office of Private Sector Initiatives.

18 U.S.C. § 203: prohibits Members of Congress, or officers or employees of the Federal government from receiving, soliciting, or seeking any compensation for services rendered by them or any other person on behalf of another person in relation to any proceeding, request for a ruling or other determination, controversy or particular matter in which the United States is a party or has a direct and substantial interest. Violation of this provision is punishable by fine, imprisonment or both. Accordingly, you and the Committee should not accept contributions from any

individual, political committee or organization if the acceptance of such contribution could reasonably be perceived as compensation for anticipated services to be rendered by you as a Federal employee on behalf of such individuals or groups represented by such political committees. Hence you and the Committee should not solicit or accept contributions from entities which have or will have interests pending before the Office of Private Sector Initiatives or before other Federal government agencies which could reasonably be construed to be subject to significant influence by you.

18 U.S.C. § 209: prohibits supplementation of the salary of a Federal official as compensation for his services as a Federal official. No payments to the Committee may be solicited or accepted as additional compensation for your services as a Special Assistant to the President. Contributions may only be solicited and accepted to retire the Committee's preexisting debt. As a general matter, you and the Committee should not accept any contributions which you have reason to believe would not have been made but for your current Federal employment.

18 U.S.C. § 210: prohibits the payment of money or anything of value to any person, firm or corporation in consideration of the use or promise to use any influence to procure any appointive office in the United States.

18 U.S.C. § 211: prohibits the solicitation or receipt, either as a political contribution or personal emolument, of any money or thing of value in consideration for the promise of support or use of influence in obtaining for any person any appointive office in the United States.

Out of an abundance of caution, these prohibitions should be viewed by you and the Committee as prohibiting the acceptance of any contributions from individuals whom you may wish to appoint to positions within your office, or who are seeking appointments to positions within your office or any other position within the Federal government.

18 U.S.C. § 602: prohibits any candidate for the Congress, any Senator or Congressman, or any officer or employee of the United States or any department or agency thereof, from knowingly soliciting political contributions from any other such officer or employee.

Thus, you and the Committee should take the steps necessary to ensure that no Senators or Congressmen, or officers or employees of the Federal government, are knowingly solicited for contributions to the Committee.

18 U.S.C. § 603: prohibits an officer or employee of the Federal government from making political contributions to their supervising officers in the Federal government. For purposes of this provision, a contribution to a political



committee authorized by an officer of the Federal government is considered a contribution to such officer.

The Committee, therefore, should not accept any contributions from individuals presently employed by your office.

18 U.S.C. § 607: prohibits the solicitation or acceptance of a political contribution in a Federal building. There is an exception to this prohibition for the receipt of contributions in Federal buildings by persons on the staff of a Senator or Congressman under specific circumstances, but such exception would no longer be applicable to you or the Committee.

This provision would preclude all solicitation of contributions at the Office of Private Sector Initiatives. Further, in the event that any political contributions to the Committee are received at your office, such contributions should be returned directly to the donor with instructions as to the appropriate mailing address for the Committee.

Section 201(c) of Executive Order No. 11222 provides in part:

It is the intent of this section that employees avoid any action . . . which might result in, or create the appearance of:

- (1) using public office for private gain;
- (2) giving preferential treatment to any organization or person;
- (3) impeding government efficiency or economy;
- (4) losing complete independence or impartiality of action;
- (5) making a government decision outside official channels; or
- (6) affecting adversely the confidence of the public in the integrity of the Government.

You and the Committee should, therefore, avoid soliciting or accepting unsolicited contributions whose receipt will create the appearance of precluding your exercise of independent judgment or impartial action with regard to the issues coming before you. Accordingly, you and the Committee should not accept contributions from individuals or political committees who have not previously contributed to your political committees and whose contributions, in light of your current position, could be viewed as efforts to affect your independence and impartiality in issues

coming before you. Additionally, the Committee should not solicit contributions in any manner that suggests that you are using your appointment to Federal office for personal gain. Solicitations by the Committee referring to your current position could create such an appearance, and should, therefore, be avoided.

Finally, the issues raised by settlement of the debts of the Committee for less than their full amount are governed by the provisions of the Federal Election Campaign Act of 1971, as amended, and its regulations. Although a full discussion of those provisions is beyond the scope of this memorandum, you should be aware that all of the above considerations which apply to contributions would also apply to the forgiveness of all or part of an existing debt.

If you have any questions concerning the appropriateness of accepting any particular contributions, or concerning any other matters discussed in this memorandum, please do not hesitate to contact this office for guidance.

Attachment

SUMMARY OF GENERAL GUIDELINES FOR  
ACCEPTANCE OF POLITICAL CONTRIBUTIONS

I. GENERAL RULE:

The Committee should not solicit or accept contributions from any individual, political committee, or organization (a) if the individual or entities represented by the Committee or organization has interests in matters which are or may be pending before your office or is affected or regulated by any policies, decisions or regulations of your office, or (b) if such solicitation or acceptance would create the appearance of precluding your exercise of independent judgment or impartial action with regard to the issues coming before you, or otherwise affect adversely the confidence of the public in the integrity of the government.

II. SPECIFIC PROHIBITIONS:

Fundraising activity is permitted only to retire debts from your past campaign. You personally should not actively engage in soliciting contributions or organizing fundraising activities.

Do not accept any contributions from individuals whom you may wish to appoint to positions within the Office of Private Sector Initiatives.

Do not accept any contributions from individuals who are seeking appointments within the Office of Private Sector Initiatives or any other position within the Federal government.

Do not solicit any Senators, Congressmen or officers or employees of the Federal government for contributions to the Committee.

Do not accept any contributions from individuals presently employed by the Office of Private Sector Initiatives.

Do not solicit or accept any contributions in your Federal offices. If any contributions are received at these offices, such contributions should be returned directly to donors with instructions as to the appropriate mailing address of the Committee.

Do not solicit contributions in any manner which suggests that you or the Committee are using your appointment to Federal office for your personal gain. Solicitations should not include reference to the fact of your current Federal employment.

THE WHITE HOUSE

WASHINGTON

April 21, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Retirement of James Coyne Campaign Debt

John Rogers has advised me that Jim Coyne is now on the White House payroll. This removes any Hatch Act problems, and we can now send out the memorandum giving Coyne guidance on retiring his campaign debts. You previously approved the bulk of this memorandum; I have indicated with a yellow tag the new portion.

Attachment

THE WHITE HOUSE

WASHINGTON

April 21, 1983

MEMORANDUM FOR THE HONORABLE JAMES COYNE  
SPECIAL ASSISTANT TO THE PRESIDENT  
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FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

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As an initial matter, we have been advised by the Office of Administration that you are now paid from the appropriation for the office of the President. Accordingly, the prohibitions on fundraising found in the Hatch Act, 5 U.S.C. § 7324, are not applicable. Fundraising efforts by you or the Committee should, however, be strictly limited to retiring debts from your past campaign.

18 U.S.C. § 201: provides in part that any public official may not solicit, accept, receive or agree to receive anything of value for himself or for any other person or entity, in return for being influenced in his performance of any official act; for being induced to do or omit any act in violation of his official duty; or being influenced in his testimony under oath in any proceeding before any court or Congressional hearing. Violations of this provision are punishable by fine, imprisonment or both, and possible disqualification from holding any office of honor or trust under the United States.

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- (2) giving preferential treatment to any organization or person;
- (3) impeding government efficiency or economy;
- (4) losing complete independence or impartiality of action;
- (5) making a government decision outside official channels; or
- (6) affecting adversely the confidence of the public in the integrity of the Government.

You and the Committee should, therefore, avoid soliciting or accepting unsolicited contributions whose receipt will create the appearance of precluding your exercise of independent judgment or impartial action with regard to the issues coming before you. Accordingly, you and the Committee should not accept contributions from individuals or political committees who have not previously contributed to your political committees and whose contributions, in light of your current position, could be viewed as efforts to affect your independence and impartiality in issues



coming before you. Additionally, the Committee should not solicit contributions in any manner that suggests that you are using your appointment to Federal office for personal gain. Solicitations by the Committee referring to your current position could create such an appearance, and should, therefore, be avoided.

Finally, the issues raised by settlement of the debts of the Committee for less than their full amount are governed by the provisions of the Federal Election Campaign Act of 1971, as amended, and its regulations. Although a full discussion of those provisions is beyond the scope of this memorandum, you should be aware that all of the above considerations which apply to contributions would also apply to the forgiveness of all or part of an existing debt.

If you have any questions concerning the appropriateness of accepting any particular contributions, or concerning any other matters discussed in this memorandum, please do not hesitate to contact this office for guidance.

Attachment

SUMMARY OF GENERAL GUIDELINES FOR  
ACCEPTANCE OF POLITICAL CONTRIBUTIONS

I. GENERAL RULE:

The Committee should not solicit or accept contributions from any individual, political committee, or organization (a) if the individual or entities represented by the Committee or organization has interests in matters which are or may be pending before your office or is affected or regulated by any policies, decisions or regulations of your office, or (b) if such solicitation or acceptance would create the appearance of precluding your exercise of independent judgment or impartial action with regard to the issues coming before you, or otherwise affect adversely the confidence of the public in the integrity of the government.

II. SPECIFIC PROHIBITIONS:

Fundraising activity is permitted only to retire debts from your past campaign.

Do not accept any contributions from individuals whom you may wish to appoint to positions within the Office of Private Sector Initiatives.

Do not accept any contributions from individuals who are seeking appointments within the Office of Private Sector Initiatives or any other position within the Federal government.

Do not solicit any Senators, Congressmen or officers or employees of the Federal government for contributions to the Committee.

Do not accept any contributions from individuals presently employed by the Office of Private Sector Initiatives.

Do not solicit or accept any contributions in your Federal offices. If any contributions are received at these offices, such contributions should be returned directly to donors with instructions as to the appropriate mailing address of the Committee.

Do not solicit contributions in any manner which suggests that you or the Committee are using your appointment to Federal office for your personal gain. Solicitations should not include reference to the fact of your current Federal employment.