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FOIA F05-139/01 COOK 32RW

Box Number

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	LETTER	TO DAVID MARGOLIS RE LEGAL QUESTION ON GAMBLING	1	12/16/1982	B6	563
2	LETTER	FROM ALFRED N. KING RE. ADVICE ON VIOL. OF FEDERAL GAMBLING LAW [RELEASED IN PART - 02/03/06 - MJD]	2	1/18/1983	B6	565
3	LETTER	TO MARK S. FOWLER ADVICE ON FEDERAL GAMBLING LAWS	1	4/4/1983	B6	568
4	LETTER	FROM SHELDON GUTTMANN RE. FED. GAMBLING LAWS Released in part 4/21/06	1	4/21/1983	B6	569
5	LETTER	RE. PROPOSAL INTERSTATE SPORTS WAGERING NETWORK	4	7/22/1983	B6	570

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE

WASHINGTON

December 9, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Section 332 Investigation of the Foundry Industry (Brock Recommendation)

Richard Darman has asked for comments by noon Monday, December 12 on a proposal by Ambassador Brock that the President authorize an investigation by the United States International Trade Commission (ITC) into the competitive conditions of the foundry industry. Under 19 U.S.C. § 1332(g) the ITC "shall make such investigations and reports as may be requested by the President...." Brock's memorandum to the President contends an ITC investigation is needed because of declines in foundry production and employment and because pertinent data to assess this decline is not readily available. A request for an investigation does not legally commit the Administration to any action.

Brock has attached a draft letter from himself to ITC Chairman Alfred Eckes requesting the investigation. The letter notes that the request is "at the direction of the President...pursuant to section 332(g) of the Tariff Act of 1930." I have reviewed the letter and have no legal objection to it.

Attachment

THE WHITE HOUSE

WASHINGTON

December 9, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Section 332 Investigation of the Foundry Industry (Brock Recommendation)

Counsel's Office has reviewed the proposed letter from Ambassador Brock to Chairman Alfred Eckes of the United States International Trade Commission (ITC), and finds no objection to it from a legal perspective. That letter conveys a request by the President that the ITC investigate competitive conditions in the foundry industry. Such a request is authorized under 19 U.S.C. § 1332(g).

FFF:JGR:aea 12/9/83
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 9, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Section 332 Investigation of the Foundry Industry (Brock Recommendation)

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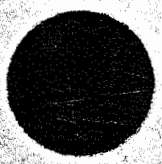
FFF:JGR:aea 12/9/83
cc: FFFielding/JGRoberts/Subj/Chron

ID # 178060 CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /



Name of Correspondent: Richard G. DARMAN

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Section 332 Investigation of the Foundry Industry (Brock recommendation)

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CWHOLL	ORIGINATOR	83/12/09			/ /
	Referral Note:				
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	Referral Note:				
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	Referral Note:				
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	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
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DISPOSITION CODES:
A - Answered
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C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

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Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
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5/81

Document No. 178060CS

WHITE HOUSE STAFFING MEMORANDUM

DATE: 12/8/83 ACTION/CONCURRENCE/COMMENT DUE BY: 12/12 - Noon

SUBJECT: SECTION 332 INVESTIGATION OF THE FOUNDRY INDUSTRY

(BROCK RECOMMENDATION)

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	HICKEY	☐	☐
MEESE	☐	☑	JENKINS	☐	☐
BAKER	☐	☑	McFARLANE	☐	☑
DEAVER	☐	☑	McMANUS	☐	☐
STOCKMAN	☑	☐	MURPHY	☐	☑
DARMAN	☐P	☑S	ROGERS	☐	☐
DUBERSTEIN	☑	☐	SPEAKES	☐	☑
FELDSTEIN	☐	☐	SVAHN	☑	☐
FIELDING	☑	☐	VERSTANDIG	☑	☐
FULLER	☐	☐	WHITTLESEY	☑	☐
GERGEN	☑	☐	_____	☐	☐
HERRINGTON	☐	☐	_____	☐	☐

REMARKS:

May we have your comments on the attached recommendation by 12:00 Noon on Monday, December 12. Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702

DEC 7

Received 83
1983 DEC -8 AM 10:54

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

November 30, 1983

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: WILLIAM E. BROCK

SUBJECT: Section 332 Investigation of the Foundry Industry

This memorandum is to request your authorization to initiate a Section 332 investigation of the U.S. foundry industry. Section 332 authorizes you to request the U.S. International Trade Commission (USITC) to analyze the competitive position of an industry in both the domestic and international markets. Such a request does not, however, commit you to take any action whatsoever based on the Commission's analysis.

The U.S. foundry industry is in dire need of a comprehensive, competitive analysis. The industry needs this information to assess its own position in the market and has requested that a Section 332 investigation be conducted. Data on the industry is not readily available because it is highly fragmented, encompassing 3,400 firms and 400,000 workers.

This lack of data has made it difficult for the industry and the government to analyze the true impact of international trade on the industry. Both foundry production and employment have fallen substantially in recent years, partly because of the recession and partly because of increased import competition. The USITC analysis will identify the extent to which both of these factors have contributed to the industry's decline.

The Trade Policy Committee, without dissent, agrees that we should request the USITC to undertake a Section 332 study. If you approve this recommendation, I will send the attached letter on your behalf asking the USITC to conduct an investigation.

_____Approve _____Disapprove _____Discuss with me

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

DRAFT

November 30, 1983

The Honorable Alfred Eckes
Chairman, United States International
Trade Commission
701 E Street, N.W.
Washington, D.C. 20436

Dear Mr. Chairman:

The U.S. foundry industry is one of our basic industries. Composed of some 3,400 units, it produces a large and diverse array of ferrous and nonferrous cast metal products which are used in 90 percent of all manufactured items, and in all machinery used in manufacturing. Although 80 percent of U.S. foundries employ less than 100 persons each, the number of production workers employed by the industry as a whole has totaled over 400,000.

Because of the pervasive use of its products, the health of the foundry industry historically has been closely aligned with the general state of the national economy. The recent performance of the industry, however, appears to be below that of the national economy. A number of factors may be contributing to this situation, including increased imports of foundry products and of manufactured items using foundry products.

It is difficult for the industry to analyze the problems because no good breakdown of data on this industry's production and trade composition exists. What data exists is fragmented and incomplete. As a result neither the industry nor the U.S. Government has adequate information to evaluate the industry's problems on a sound quantitative basis.

To assist us in assessing the situation of this industry, including its current and future role in the U.S. economy, we need a complete factual analysis of the competitive conditions in which it is operating. To provide us with such an analysis, at the direction of the President, I am requesting the U.S. International Trade Commission, pursuant to section 332 (g) of the Tariff Act of 1930, to conduct an investigation and report to me on the competitive position of the U.S. foundry industry in domestic and world markets. The report should include an overview of the entire foundry industry, together with a detailed analysis of selected key products which should be important to the U.S. foundry industry and to the extent possible representative of major segments of the entire foundry industry in terms of manufacturing process, import competition, marketing, and financial condition.

DRAFT

The product analysis should cover the following points: (1) current profile of the U.S. and foreign foundry industries; (2) conditions of competition between U.S. and foreign foundry producers; (3) factors affecting the future competitive posture of domestic and foreign foundry operations; and, (4) the implications of the U.S. competitive position on the foundry industry itself, related industries, and the U.S. economy as a whole.

The investigation should begin as soon as possible, with the final report to be submitted to the United States Trade Representative within eight months from the receipt of this request.

Very truly yours,

WILLIAM E. BROCK

WEB:mmb

THE WHITE HOUSE

WASHINGTON

December 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Private Citizen Request for Legal Opinion

Faye Karson of Riverside, Connecticut has written Nancy Kennedy, apparently at the suggestion of Senator Weicker, to obtain an opinion concerning the legality of a gambling club she proposes to establish. Members of the club would transmit bets to a computer in Nevada through various wireless means, to avoid triggering 18 U.S.C. § 1084. That criminal provision prohibits use of a wire communication facility in interstate commerce by anyone engaged in the business of betting or wagering. Karson explained in her letter why she did not think her proposal would fall under 18 U.S.C. § 1084, and asked for "a definition of the gray areas" of that statute.

Karson's attorney raised the question with the Justice Department by letter dated December 16, 1982. The Department replied on January 18, 1983, that Department policy prohibited issuing advisory opinions to private parties. There is no specific statutory authority for such a practice, and it would raise serious problems of competition with the private bar. More importantly, the Government's interest in securing compliance with the law is promoted by compelling private parties who would probe the limits of a criminal prohibition to do so at their peril. The Department may not be able to opine that Karson's proposed conduct is definitely illegal, but the policy of the statute is served if the fear of illegality prevents Karson from entering what she describes as the "gray area." I see no reason for the Department to remove that fear by what would amount to a premature exercise of prosecutorial discretion.

For obvious reasons, the White House should not issue an advisory opinion on whether certain conduct violates the criminal laws when the Justice Department has declined to do so. I have prepared a reply to Karson declining to answer her inquiry, and a memorandum to Nancy Kennedy advising her of our disposition.

Attachment

THE WHITE HOUSE

WASHINGTON

December 14, 1983

Dear Ms. Karson:

Your letter of December 3 to Nancy Kennedy, Special Assistant to the President, has been referred to this office for consideration and reply. In that letter and accompanying materials you outlined your proposed "U BET" enterprise, and requested our advice concerning whether the contemplated enterprise would violate 18 U.S.C. § 1084. Through counsel you raised this question with the Department of Justice, and were advised that long-standing policy prevented the Department from issuing advisory opinions upon the request of private parties.

We must abide by that policy as well. The enforcement of federal criminal laws such as 18 U.S.C. § 1084 is the responsibility of the Department of Justice. Any decision concerning the appropriateness of issuing advisory opinions to private parties concerning compliance with the federal criminal laws accordingly rests with that agency. We can only recommend that you obtain the advice of private counsel concerning the legality of your contemplated enterprise, about which we can express no opinion.

I am sorry we cannot be more responsive to your inquiry. Thank you for writing.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Ms. Faye Karson
14 Surrey Drive
Riverside, CT 06878

FFF:JGR:aea 12/14/83
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 14, 1983

MEMORANDUM FOR NANCY KENNEDY
SPECIAL ASSISTANT TO THE PRESIDENT
FOR LEGISLATIVE AFFAIRS

Orig. signed by FFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Private Citizen Request for Legal Opinion

You forwarded to this office a letter you received from Faye Karson, concerning her proposed "U BET" enterprise. Ms. Karson sought an opinion as to whether her contemplated enterprise would violate a specific federal criminal statute. For sound legal and policy reasons, the Department of Justice declines to render advisory opinions upon request of private parties, and in fact declined a previous request of Ms. Karson's for such an advisory opinion. In my reply to Ms. Karson, I advised her that we must abide by the Department's policy. A copy of my reply is attached for your information.

Attachment

FFF:JGR:aea 12/14/83
cc: FFFielding/JGRoberts/Subj/Chron

DR

ID # 191329 CU

RE

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Faye Larson

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Writes Nancy Kennedy re: U BET, a Sports wagering club

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOO		ORIGINATOR DD	83/12/10			/ /
		Referral Note:				
CUOT	18	D DD	83/12/12		S	83/12/27
		Referral Note:				
			/ /			/ /
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Comments: Dec 83 Nancy Kennedy memo to Diana Holland attached

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 8, 1983

TO: DIANA HOLLAND

FROM: NANCY KENNEDY NK

SUBJECT: Inquiry from Senator Weicker

If you will recall our conversation of a couple of weeks ago concerning the request I received from Senator Lowell Weicker about Faye Karson, I am enclosing pertinent information which she has forwarded to me.

Please let me know of the outcome.

Many thanks.

December 3, 1983
14 Surrey Dr.
Riverside, CT 06878
203/637-5238

Ms. Nancy Mohr Kennedy
Special Assistant to the President
Legislative Affairs
The White House
Washington, D.C. 20500

191329 cc

Dear Nancy:

It was a pleasure speaking with you last week. Per our conversation, it is imperative that I obtain a definition of the gray areas contained in Title 18 U.S.C.A. 1084. Attached please find copies of letters with reference to previous attempts to determine same, copies of Title 18 U.S.C.A. 1084 and the legislative history, and an explanation of U BET and how it will work.

I feel that U.S.C.A 1084 will not be violated when applied to U BET applications for the following reasons:

1. U BET will not be engaged in the business of betting and wagering. U BET will be located in Nevada where wagers on major sporting events from individual club members will be transmitted intrastate via computers to legal Nevada sports books.

2. U BET members will originate their transmission from the privacy of their homes or offices by touchtone digits from wireless, cellular or other wireless methods (mentioned in the attached letter from my FCC attorney, Wilkinson, Barker, Knauer and Quinn). directly into a computer in each state. That data will then be sent directly up to a satellite via uplinks and then downlinks into U BET computers in Nevada, processed and evaluated, and subsequently transmitted to Nevada sports books. No transmissions will be on interstate lines.

3. U BET will not derive any income from wagers or payment from sports books. Income will be obtained from:

   a. Annual club membership fees (similar to obtaining an American Express card).

   b. Account service charges to cover monthly account statement expenses and mailings.

   c. Interest and proceeds of investments obtained while holding account monies.

4. Since the Justice Department has allowed AT&T to operate outside of FCC control, the system intended for use is not within direct Federal control.

This system of sports wagering will enable the IRS to collect revenues from winnings and losers to claim deductions from their income taxes. These revenues presently fall between the cracks when people wager by many different methods presently available to them. The intent for establishing this business would be to provide a lawful method by which people can participate in placing wagers while enjoying their favorite sporting events.

Your assistance in obtaining a determination will be most greatly appreciated. Please call me if you have any questions.

Looking forward to hearing from you soon. Many thanks.

Sincerely,

Faye Karson

Faye Karson

§ 1084. Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State where betting on that sporting event or contest is legal into a State in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored. Added Pub.L. 87–216, § 2, Sept. 18, 1961, 75 Stat. 491.

U BET is a Nevada based, computerized membership club which enables club members to place bets on major professional sporting events from anywhere in the United States, and possibly overseas.

Membership applications are available from advertisements in major sports magazines, direct credit card mail campaigns, or by telephone or written request to the club. Social security numbers are required on all applications to enable income taxes to be paid on winnings.[1]

Membership cards cost approximately $50.00 per membership annually.[2] *U BET* member accounts must contain a minimum sum of $200.00 plus membership costs initially, and thereafter a minimum $200.00 base prior to any bets being accepted.[3] Members have the option of allowing their winnings to remain in their *U BET* account; or designate payment to be enclosed within their monthly statement of account.

[1]Legal when income taxes are paid.

[2]To be based on operating costs.

[3]*U BET* reserves the right to limit amounts on bets accepted.

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DOC NO	Document Type / Document Description	No of pages	Doc Date	Restrictions	
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E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

U.S. Department of Justice

ANK:raj

Washington, D.C. 20530

January 18, 1983

[redacted] b6

Dear [redacted]

Your [redacted] has been forwarded for my attention. I have reviewed the enclosed materials and your request for [redacted] b6 However, as set forth below, providing any such advise would be contrary to existing departmental policy.

It has been the opinion of several Attorneys General that the Department is without specific authority to issue advisory opinions upon the request of private parties. See, 43 Op. AG. No. 28, Oct. 2, 1980, page 4, footnote 1; cf. 28 U.S.C. §511 (Attorney General to advise the President), 28 U.S.C. §512 (Attorney General to advise heads of executive departments). In light of this longstanding policy, I believe it would be improper for the Organized Crime and Racketeering Section [redacted] b6 Part of the reason for this policy is to prevent competition with the private bar.

The upshot of this policy is that any opinion rendered to your client must be yours, not ours. In structuring your research, however, you may want to further consider the case of Martin v. United States, 389 F.2d 895 (4th Cir. 1968), which appears to be dispositive of the issues raised in your

letter. The court in that case held that the United States, under Section 1084, has the authority to prohibit the "interstate transmission of wagers." Id. at 899, see also, United States v. Pezzino, 535 F.2d 483, 484 (9th Cir. 1976).

[redacted] B6

[redacted] You may, further, wish to consider the possible application of other Federal statutes to this activity, such as 18 U.S.C. §§1952 and 1955.

I hope this response is of some value to you.

Sincerely,

Alfred N. King

Alfred N. King
Executive Assistant to the
Chief, Organized Crime and
Racketeering Section
Criminal Division

OPINION OF THE ATTORNEY GENERAL OF THE UNITED STATES

LOAN GUARANTEES—OF THE SECRETARY OF THE TREASURY TO ISSUE LOAN GUARANTEES UNDER NEW YORK CITY LOAN GUARANTEE ACT OF 1978

The authority of the Secretary of the Treasury to issue guarantees under the New York City Loan Guarantee Act of 1978, P.L. 95-339 and P.L. 95-415, was not affected by a rider in the Senate appropriation bill, H.R. 7631, under Sec. 101(a)(3) of the Continuing Appropriations Resolution, P.L. 96-369, 94 Stat. 1351.

Section 101(a)(3) of the Continuing Appropriations Resolution was intended to distinguish between matters considered by both the Senate and the House of Representatives in their appropriations bills, for which the more restrictive of the two provisions on an agency's authority is to govern, and matters considered by only one House in its appropriations bill, for which the authority and conditions of FY 1980 appropriations are to govern.

The restriction on the Secretary of the Treasury's authority to issue guarantees under the New York City Loan Guarantee Act of 1978 is found only in the Senate version of the appropriations bill pertaining to the New York City Loan Guarantee program and had not been considered by the House of Representatives; therefore, the Senate rider did not operate [under section 101(a)(3) of the Continuing Appropriations Resolution] to restrict the Secretary's authority to issue New York City loan guarantees.

The Attorney General does not have the authority to issue opinions on questions arising out of a business transaction between a private person and the Government when the private person has insisted on receiving an Attorney General opinion for his benefit and the requesting department head has no real concern about the question.

The Attorney General will issue opinions related to business transactions between the Government and private persons only when the transaction raises a substantial and genuine issue of law arising in the administration of a Department.

The Attorney General will not issue opinions concerning a business transaction between a private person and the Government solely because a private person feels the opinion is necessary to protect him or guide him in the transaction.

Vol. 43, Op. No. 28

October 2, 1980.

THE SECRETARY OF THE TREASURY.

MY DEAR MR. SECRETARY: You have asked my opinion whether a rider contained in the Senate-passed version of H.R. 7631, concerning administrative funds for the New York City Loan Guarantee program, affects your authority to issue guarantees pursuant to the New York City Loan Guarantee Act of 1978, P.L. 95-339 and 95-415. For reasons elaborated below, I conclude that the rider in question has not taken effect, and therefore does not restrict your authority under the Guarantee Act.

In pertinent part, H.R. 7631, as passed by the Senate, provided:

> For necessary administrative expenses as authorized by the New York City Loan Guarantee Act of 1978 (Public Law 95-415), $922,000: *Provided, That none of these funds may be used to administer programs to issue loan guarantees to New York City for the purpose of permitting the Municipal Assistance Corporation to use the proceeds of its borrowings in fiscal years 1981 and 1982 to meet the City's financing needs after fiscal year 1982.*

The italicized language is the rider, which was a committee amendment. 126 Cong. Rec. S. 12589 (daily ed. Sept. 15, 1980). There is no provision similar to the rider in the House-passed version of the bill.

As Fiscal Year 1980 drew to a close, there was no opportunity for the normal conference procedure to resolve differences between the bills, and Congress found it necessary to provide continuing appropriations through H.J. Res. 610 for a number of agencies having pending appropriations. For agencies whose appropriations had passed both Houses, the Resolution provides as follows, in §101(a)(3):

> Whenever the amount which would be made available or the authority which would be granted under an Act listed in this subsection as passed by the House as of October 1, 1980, is different from that which would be available or granted under such Act as passed by the Senate as of October 1, 1980, the pertinent project or activity shall be continued under the lesser amount or the more restrictive authority: *Provided,* That where an item is in-

> cluded in only one version of an Act as passed by both Houses as of October 1, 1980, the pertinent project or activity shall be continued under the appropriation, fund, or authority granted by the one House, but at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower, and under the authority and conditions provided in applicable appropriation Acts for the fiscal year 1980.

The apparent purpose of §101(a)(3) is to distinguish between matters considered by both Houses, for which the more restrictive of the two provisions is to govern, and matters considered by only one House, for which the "authority and conditions" are to revert to those found in FY 1980 appropriations.

Because the rider is found only in the Senate version of the underlying 1981 appropriations bill, and the issue of restricting the mode of administering New York City loan guarantees was not taken up in the House, § 101(a)(3) of H.J. Res. 610 specifies that the rider falls within the proviso as an "item included in only one version of an Act." Therefore, it is superseded by the "authority and conditions" found in applicable 1980 appropriations.

This reading of the resolution is confirmed by the following explanation provided by the Managers in the Conference Committee Report on H.J. Res. 610:

> The Committee of Conference agrees that, for the purposes of this resolution, in interpreting the language contained in Section 101(a)(3) concerning restrictive authority included in only one version of an Act as passed by the House and Senate, the restrictive authority, as it applies to the proviso concerning the New York City Loan Guarantee Program, contained in the 1981 HUD Independent Agency Appropriation Act, must have been carried in the applicable Appropriation Act for Fiscal Year 1980, before it is operative in Fiscal Year 1981.

The rider was "included in only one version of an Act" within the meaning of the proviso to § 101(a)(3), and was therefore, by the terms of the proviso, superseded by the applicable appropriation act for FY 1980, which contains no such limitation. I therefore conclude that the rider has not taken effect,

and does not restrict your authority in administering the Guarantee Act.*

Sincerely,

BENJAMIN R. CIVILETTI.

* As you know, Attorney General Elliot Richardson adopted the formal policy on October 1, 1973, of not issuing opinions regarding the validity of guarantees or other obligations issued by federal agencies unless the opinion request raises a genuine issue of law. Successive Attorneys General including myself have adhered to this policy. In addition, Attorneys General have opined that they do not have the authority to issue opinions when it is apparent that the request has been made, not because the requestor has any real concern about his authority, but because private persons, who engage in transactions with the United States, have insisted upon such an opinion for their benefit. 38 Op. A.G. 11, 17-19 (1937); 20 Op. A.G. 463, 464 (1892). Because your request raises a genuine issue of law, I believe that an Attorney General's opinion on the narrow issue presented is appropriate. I am also persuaded that this is a legal issue over which you have a serious concern and, for that reason, I believe I have the authority to issue this opinion. I am troubled, however, by the insistence of private lawyers involved in the New York guarantee transaction on receiving an Attorney General opinion addressing this question. I ask you to inform private persons who transact business with your Department that the Attorney General will not issue opinions solely because they feel it is important to protect them or guide them in their transactions and that opinions related to business transactions with the Government will be issued only when the transaction raises a substantial and genuine issue of law arising in the administration of a Department.

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DOC NO	Document Type / Document Description	No of pages	Doc Date	Restrictions	
3	LETTER TO MARK S. FOWLER ADVICE ON FEDERAL GAMBLING LAWS	1	4/4/1983	B6	568

Freedom of Information Act - [5 U.S.C. 552(b)]

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FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

April 21, 1983

IN REPLY REFER TO:

[redacted] B6

Dear [redacted]

We are in receipt of your letter of April 4, 1983, requesting our opinion on a Department of Justice interpretation of 18 U.S.C. § 1084. As we understand the situation, you desire to establish an interstate communications network for the purpose of taking bets on sporting events and transferring them to computers. Justice has indicated that the use of American Bell's Advanced Information System-Net 1 for such purposes might be a violation of 18 U.S.C. § 1084.

Section 1084 is a criminal statute entirely within the jurisdiction of the Department of Justice. Thus, any determination regarding whether a particular activity violates Section 1084 is completely within Justice's discretion. We cannot alter Justice's decision either by order or through our licensing authority.

You have also inquired whether there are suitable wireless means of establishing such a system. Presumably, you have raised this alternative because Section 1084 only appears to be applicable to wire communications. Although we issue licenses for various types of wireless communications, most of those services have a limited range and would be unsuitable for a nationwide communications system without being interconnected to some kind of wire communications facilities. Accordingly, we cannot offer you any assurances that such systems would enable you to legally offer your proposed services. With regard to the types of wireless communications services that might be used, we suggest you contact an attorney specializing in communications law.

Sincerely yours,

Sheldon Guttmann

Sheldon M. Guttmann
Associate General Counsel

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DOC NO	Document Type / Document Description	No of pages	Doc Date	Restrictions	
5	LETTER RE. PROPOSAL INTERSTATE SPORTS WAGERING NETWORK	4	7/22/1983	B6	570

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
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B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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vice A-529-B, to which you refer, are merely declaratory of the same intention which must be accorded the subject quotation by necessary implication.

For the reasons stated, settlement of your supplemental bill on the basis of the through rate applicable from Polk to Fort Bragg is sustained. It is noted, however, that the inbound charges credited in your original bill, and also applied as a credit in the settlement issued here, exceeded the amount of the inbound charges actually paid by the sum of $292.60. A revised settlement will be issued for this amount and payment should reach you in due course.

Pay—Service Credits—Cadet, Midshipman, Etc.—Service Schools

Although the United States Merchant Marine Cadet School at San Mateo, California, is not a "service school" within the meaning of 10 U.S.C. 1333(2) and, therefore, attendance at the school as a cadet-midshipman, MMR, USNR, from August 1943 until April 1945 may not be credited in computing years of service upon retirement under 10 U.S.C. Chapter 67, relating to retired pay for non-Regular service, the period is allowable as "service, other than active service, in a reserve component" under 10 U.S.C. 1333(4), and is also creditable service for multiplier purposes for officers retiring with 20 years' service pursuant to 10 U.S.C. 6323, or for any of the purposes of any formula or other law enumerated in 10 U.S.C. 1405, which section groups the laws in one category and specifically includes in clause 4, service creditable under 10 U.S.C. 1333.

To the Secretary of Defense, November 25, 1969

Further reference is made to letter dated August 5, 1969, from the Assistant Secretary of Defense (Comptroller) forwarding a copy of Committee Action No. 433 of the Department of Defense Military Pay and Allowance Committee and presenting for decision the following three questions:

1. Does full time attendance at the U.S. Merchant Marine Cadet Basic School, San Mateo, California, as Midshipman, Merchant Marine Reserve, U.S. Naval Reserve, from August 1943 until April 1945, constitute attendance at a "prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned," within the meaning of 10 U.S.C. 1333(2) for the purpose of determining years of service for multiplier in the case of an officer retiring under Chapter 67, [10] U.S. Code?
2. Would such a period of attendance for the same purpose be properly allowable as "service (other than active service) in a reserve component of an armed force," within the meaning of 10 U.S.C. 1333(4)?
3. In the event of an affirmative answer to either or both of the above questions, could such service be considered properly allowable for multiplier under 10 U.S.C. 1405(4) in the case of an officer retiring under 10 U.S.C. 6323, or for any of the purposes of any formula or other law enumerated in 10 U.S.C. 1405?

The discussion attached to the submission makes reference to Committee Action No. 237 which was considered in our decision 38 Comp. Gen. 797 (1959), and points out that in June 1941 the Secretary of the Navy, pursuant to the Naval Reserve Act of 1938, established the

classification of midshipman, Merchant Marine Reserve; that in August 1942, all cadets, Merchant Marine Reserve, were appointed as midshipmen, Merchant Marine Reserve, and all cadets thereafter in the U.S. Merchant Marine Cadet Corps and State Maritime academies were appointed midshipmen, Merchant Marine Reserve, instead of cadets, in order to insure that cadets trained at Government expense for service at sea would be required to serve in the Merchant Marine or on active duty in the Navy.

The case involved in the present submission is that of an individual who, in the status of a cadet-midshipman, Merchant Marine Reserve, USNR, attended the Cadet Basic School at San Mateo, California. It appears that he accepted an appointment as a midshipman, MMR, USNR, in order to be permitted to attend that school, and that he had no other military status.

The first two questions presented relate to the multiplier factor in Formula No. 3, 10 U.S.C. 1401, to be used in the computation of retired pay authorized in chapter 67 (sections 1331–1337), Title 10, U.S. Code. Under this formula, the retired pay of the person concerned is computed by multiplying the monthly basic pay of the highest grade held satisfactorily by him in the Armed Forces by the product of 2½ percent times the number of years creditable to him under 10 U.S.C. 1333. A person's years of creditable service are determined by adding the service specified in section 1333 including—

> (2) his days of full-time service * * * while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned:
>
> * * * * * * *
>
> (4) 50 days for each year before July 1, 1949, and proportionately for each fraction of a year, of service (other than active service) in a reserve component of an armed force, in the Army or Air Force without component, or in any other category covered by section 1332(a)(1) of this title except a regular component; and by dividing the sum of that addition by 360.

The first question is, in effect, whether the U.S. Merchant Marine Cadet Basic School, San Mateo, is a school designated as a service school within the meaning of section 1333(2).

Title 46, Code of Federal Regulations, Cumulative Supplement, chapter III, part 310, and the 1943–1945 Supplements thereto, governed the appointment and training of enrollees in the Merchant Marine, including cadets in the U.S. Merchant Marine Cadet Corps who attended the different academies and schools there mentioned, including the Merchant Marine Cadet Basic School at San Mateo. Nowhere in such regulations is a cadet basic school, or the U.S. Merchant Marine Academy, referred to as a "service school." No provision of law or regulation issued by the Secretary of a department concerned has been found which defined a school such as that here involved as

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a "service school" within the meaning of 10 U.S.C. 1333(2) and, hence, it must be concluded that a period of attendance at such school may not be credited in computing years of service under section 1333(2). The first question is answered in the negative.

In 47 Comp. Gen. 221 (1967), it was held that active service performed as a midshipman in a "non-academy" status properly may be included in establishing the multiplier factor under Formula No. 3, 10 U.S.C. 1401, in computing chapter 67 retired pay. It was also concluded that inactive service as a Reserve midshipman constitutes "service (other than active service) in a reserve component of an armed force," within the meaning of that phrase contained in clause 4, section 1333. The second question now presented is whether a period of attendance at the U.S. Marine Cadet School, San Mateo, is "service (other than active service)" within the meaning of that clause 4.

While our decision in 47 Comp. Gen. 221 related to midshipman service under the act of August 13, 1946, ch. 962, 60 Stat. 1057, the crediting of the member's service in that case was held to be authorized because of his status as a member of the Naval Reserve. The Merchant Marine Reserve was made a part of the Naval Reserve by sections 1 and 318 of the Naval Reserve Act of 1938, 52 Stat. 1175, 1185, section 318 providing that "The Merchant Marine Reserve shall be composed of those members of the Naval Reserve who * * *." It appears from such provisions that while attending the school at San Mateo a member of the Merchant Marine Reserve is also a member of the Naval Reserve. Thus, in the absence of a statute barring the crediting of such service, a cadet-midshipman, MMR, USNR, attending the Merchant Marine Cadet Basic School, from 1943 to 1945, may be given credit under 10 U.S.C. 1333(4) for such service as "service (other than active service) in a reserve component * * *." The second question is answered accordingly.

With respect to the third question, involving the crediting of such service for multiplier purposes for retirements under 10 U.S.C. 6323 or for any of the purposes of any formula or other law enumerated in 10 U.S.C. 1405, section 1405 provides that for the purposes specified therein the years of service of a member of the Armed Forces are computed by adding the service mentioned in clauses (1), (2), (3), and

> (4) the years of service, not included in clause (1), (2), or (3), with which he would be entitled to be credited under section 1333 of this title, if he were entitled to retired pay under section 1331 of this title.

Since all the laws enumerated in 1405 (including 10 U.S.C. 6323) are grouped in one category and the counting of service creditable under all parts of 10 U.S.C. 1333 is specifically included in clause 4 of section 1405, the third question is answered in the affirmative.