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THE WHITE HOUSE

WASHINGTON

March 18, 1986

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: White House Curator

You have asked that I review several issues surrounding the position of the White House Curator and the various groups concerned with the preservation of the historic aspects of the White House, including the Committee for the Preservation of the White House ("the Committee"), the White House Historical Association ("the Association"), and the White House Preservation Fund ("the Fund"). In particular, you have asked that I review a proposal to revise Executive Order 11145, which established the Committee and provided for a Curator, that would change the name of and alter the composition of the Committee. In addition, you asked that I consider whether the Curator may be paid by the Association or the Fund for his Government service.

In brief, I have no legal objection to the proposal to revise the Executive Order. Several minor changes will need to be made in the suggested revision submitted to you by the President of the Fund, but the general substance of that revision presents no problems. I have also concluded that the Curator may be paid by the Association or the Fund to serve as Curator. The Office of Legal Counsel of the Department of Justice concurs in this conclusion. That office strongly recommends, however, that the description of the duties of the Curator be revised in the new Executive Order to eliminate the most serious potential conflict of interest problem that would arise if the Curator were paid by the Association or the Fund. Justice would, however, clear the new Executive Order even if this recommendation were not adopted.

### Payment of Curator By Private Organization

The White House Curator may serve without Federal compensation, and as a general matter may be paid by a private organization for serving as Curator. In a memorandum opinion for you dated February 9, 1982, Assistant Attorney General for the Office of Legal Counsel, Theodore B. Olsen, concluded that "the White House Office may hire employees without compensation." Congress has set no minimum salary levels for White House Office employees, see 3 U.S.C. § 105, and the prohibition in 31 U.S.C. § 665(b) on acceptance of "voluntary service" does not apply to "gratuitous service," including service "provided by a government employee under a prior agreement assuring that the employee has no right to reimbursement from the Government." OLC Op., 3. The OLC opinion recommended that papers relating to the employment of volunteers specify that they will not receive government compensation; this should be done in the present case as well.

Not only may the Curator serve without Government compensation, he may also be paid for his service to the Government by a private organization. The OLC opinion cited above concluded that "[t]here is no blanket prohibition against private organizations paying the salaries of White House Office volunteers." OLC Op., 8. The prohibition in 18 U.S.C. § 209(a) against a Federal officer or employee receiving any salary or supplementation of salary from a private source as compensation for government service does not apply to employees serving without compensation, see 18 U.S.C. § 209(c).

### Conflict of Interest

The OLC opinion cited above emphasized, however, that conflict of interest rules may "substantially limit the type of organizations that may pay the salaries of [volunteer] employees." OLC Op., 8. The opinion addressed the question of payment of White House volunteers by political organizations; conflicts problems are obviously less severe when the private organization is a 501(c)(3) entity not seeking any business relationship with the White House or Federal government in the usual sense. Nonetheless, as the recent controversy involving Lee Iacocca demonstrated, serious conflicts problems can arise, even in the context of advisory positions and 501(c)(3) organizations.

Under Executive Order 11145 the Curator is given responsibilities in two areas: Section 1(a) specifies that the Curator "shall assist in the preservation and protection" of the historical materials in the White House. Section 1(b) specifies

that the Curator shall also report to the President concerning which articles the President should determine to be of historic or artistic interest pursuant to the Act of September 22, 1961, 3 U.S.C. § 110 note. Since the Association and Fund are involved in raising funds that may be used to acquire articles to be designated under the Act, it was the view of the Office of Legal Counsel that the Curator, if paid by the Association or Fund, would be presented with a serious conflict of interest in rendering advice on the designation question. The Office of Legal Counsel strongly urged deleting the Section 1(b) responsibilities in the new Executive Order, although it advised that it would clear a new order even if this change were not made.

I think deletion of the Section 1(b) responsibilities for the Curator makes eminent sense if he is to be paid by the Association or Fund. The clearest conflict that could arise under the proposed scenerio is the same one that arose with Lee Iacocca's simultaneous service on the 501(c)(3) organization raising funds for the Statue of Liberty restoration and the advisory committee formed to provide advice on how the funds should be spent. The Fund raises money that may be used to acquire specific historic articles, but the Curator -- paid by the Fund -- would be called on to provide advice to the President on the historic character of the articles.

Deletion of the Section 1(b) responsibilities also makes eminent sense in conjunction with a revitalization of the Committee in the new Executive Order -- this would give the new Committee something significant to do. Under Executive Order 11145 the Committee already advises the Director of the Park Service on his duties under the Act of September 22, 1961, and provides general advice on the White House furnishings. In the new Executive Order, the Committee can be given the Section 1(b) responsibilities of the Curator to advise the President on the designation of historic objects.

Under the proposed new Executive Order the Curator would serve on the Committee, as he does under Executive Order 11145. Obviously, in light of the foregoing analysis, he should not serve on the new Committee. A representative of the Association and the Fund may serve on the Committee, as proposed in the new Executive Order, since they will serve in a representational capacity and thus avoid conflicts problems.

### New Executive Order

I have no objection to the proposal to alter the composition of the Committee in a new Executive Order. As noted, however, the Curator should be dropped from the Committee if he is paid by the Association or Fund, and if the Committee takes over the Curator's advisory responsibilities as discussed above. In addition, the order should provide that the President's appointments to the Committee include a representative of the Association and a representative of the Fund, not simply that such representatives serve on the Committee -- the choice must remain the President's.

I would also revise the description of the Curator's responsibilities in the new order as discussed above, and specify in the order that the Curator serve without government compensation. Finally, the new order should contain the typical advisory committee boilerplate. This language does not appear in Executive Order 11145 because that order antedates the Federal Advisory Committee Act.

If you agree, I will prepare a new draft of a proposed Executive Order.

cc: David B. Waller