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WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name ROBERTS, JOHN: FILES

Withdrawer

MJD 8/7/2005

File Folder JGR/PERSONNEL PRACTICES

FOIA

F05-139/01

Box Number 36

COOK

38MJD

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	JOHN ROBERTS TO FRED FIELDING RE BLAIR HOUSE [partial]	1	6/14/1983	B6	1017
2	MEMO	CHASE UNTERMAYER TO FRED FIELDING RE BLAIR HOUSE (ANNOTATED)	1	1/17/1983	B6	1024
3	MEMO	JOHN ROBERTS TO FRED FIELDING RE BLAIR HOUSE (ANNOTATED) [partial]	1	6/14/1983	B6	1026
4	MEMO	CHASE UNTERMAYER TO FRED FIELDING RE BLAIR HOUSE (ANNOTATED)	1	1/17/1983	B6	1028
5	MEMO	JOHN ROBERTS TO FRED FIELDING RE ALLEGED IMPROPRIETY	1	9/29/1983	B6	1030
6	REFERRAL	NUMBER 29995	1	8/23/1983	B6	1035

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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E.O. 13233

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

THE WHITE HOUSE
WASHINGTON

TO: *John Roberts*

FROM: *Richard A. Hauser*
Deputy Counsel to the President

FYI:  _____

COMMENT: _____

ACTION: _____

6/22/2014 10:04 AM

JAN 14 1983

*Personnel
Practices*

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

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

In Reply Refer To:

Your Reference:

JAN 13 1983

Mr. Richard Hauser
Deputy Counsel to the President
The White House
Washington, D.C.

Dear Mr. Hauser:

For your information I am furnishing a summary of provisions that govern appointment of attorneys to serve in legal offices of Executive department and agencies. Agency attorneys, other than those assigned to the Senior Executive Service, are members of the civil service and are covered by a number of conditions set forth in Title 5, United States Code, and in regulations promulgated by the Office of Personnel Management.

Although Executive branch attorneys are in the civil service, because Congress prohibits examination of attorney candidates by OPM, they are not in the competitive service. Rather, they are appointed under the authority of 5 C.F.R. § 213.3101 in Schedule A of the excepted service, which is available for "positions other than those of a confidential or policy-determining character for which it is impracticable to examine." Attorneys who are selected for confidential or policy-determining rather than legal positions, of course, are placed in Schedule C, pursuant to 5 C.F.R. § 213.3301 et seq.

The basic qualification for appointment to an attorney position, as stated in Federal Personnel Manual Chapter 930, Subchapter 3, is bar membership. Position classification standards in OPM's X-118 Handbook contain criteria for determining the appropriate grade level of a position in the GS-905 attorney series, based upon an assessment of the complexity of work and the degree of responsibility. Each Executive agency prescribes its own procedures for accepting and rating applications for attorney positions, but the procedures must comply with the requirements of Part 302, Title 5, Code of Federal Regulations, "Employment in the Excepted Service."

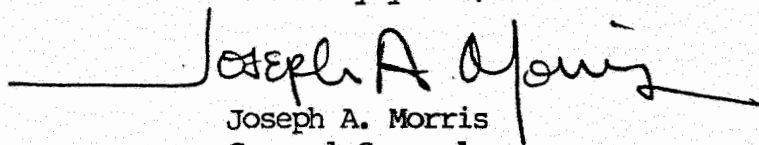
Attorneys who hold Schedule A positions in the civil service are covered by the performance appraisal provisions of Chapter 43 of Title 5, United States Code, and may be removed for poor performance only in accordance with procedures set forth in 5 U.S.C. § 4303. Attorneys have no right to appeal performance-based removals to the Merit Systems Protection Board, however, unless they have preference eligibility as

veterans. Similarly, attorneys cannot appeal disciplinary actions taken because of misconduct without preference eligibility. Attorneys who have been affected by a reduction in force, however, may appeal to the Board if they believe that procedures required by OPM's regulations in Part 351 were applied incorrectly.

Finally, Schedule A attorneys are covered by laws and regulations prohibiting impermissible discrimination on the basis of race, color, religion, sex, national origin, or political affiliation. In addition, Schedule A attorneys are subject to both the Hatch Act and the Ethics in Government Act.

Please do not hesitate to call on me if you desire additional information or if I can otherwise be of assistance.

Sincerely yours,


Joseph A. Morris
General Counsel

Administratively Sensitive

ADMINISTRATIVELY SENSITIVE - not to be released
without authority of the Counsel to the President

THE WHITE HOUSE
WASHINGTON

June 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Blair House

You asked that I check the employment status of [redacted] a butler at Blair House. I did so through the Legal Adviser's Office at the State Department. Gene Malmborg of that office advised me that [redacted] was one of a number of Blair House workers who were hired intermittently on an as needed basis. Until recently, these workers were considered by State to be independent contractors. After a review of the situation in conjunction with the IRS, however, it was determined that these individuals -- [redacted] -- should be considered State Department employees and not independent contractors. State thereupon advised them that they would no longer be hired as before, but that State would obtain their services through caterers. Now State simply advises the particular caterer for an event when it needs a butler, for example, and the caterer will provide one. Whether the caterer would hire [redacted] is up to the caterer.

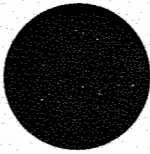
b6

b6

b6

b6

11/03/83 10:11 AM



Date 6.14.83

Suspense Date _____

MEMORANDUM FOR: John

FROM: **DIANNA G. HOLLAND**

ACTION

- Approved
- Please handle/review
- For your information
- For your recommendation
- For the files
- Please see me
- Please prepare response for _____ signature
- As we discussed
- Return to me for filing

COMMENT

John Roberts -

Please check employment status
of "Manuel" + advise -

Thanks

[Handwritten mark] 6/12/83

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No of Doc Date Restriction

NO Document Description

pages

tions

2 MEMO

1 1/17/1983 B6

1024

CHASE UNTERMAYER TO FRED FIELDING RE
BLAIR HOUSE (ANNOTATED)

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

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E.O. 13233

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

THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: *JO* JOHN G. ROBERTS

SUBJECT: Blair House *GR*

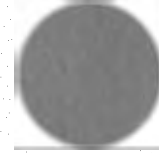
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b6

John
Thanks for the prompt response.
If you consider there any potential problems of the past we now resolved, we'll close the chapter - pls advise

→ 6/14

THE WHITE HOUSE
WASHINGTON



Date 6.14.83

Suspense Date _____

MEMORANDUM FOR: John

FROM: **DIANNA G. HOLLAND**

ACTION

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- For your recommendation
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COMMENT

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of "Manuel" + advise -*

Thanks

J 6/12/83

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<i>NO Document Description</i>	<i>pages</i>		<i>tions</i>

4 MEMO

1 1/17/1983 B6

1028

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BLAIR HOUSE (ANNOTATED)

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E.O. 13233

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

THE WHITE HOUSE

WASHINGTON

August 8, 1983

*Personnel
Proposals*

Good

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: State Department Objections to OPM
Proposal to Amend 5 U.S.C. § 8312

Back in June OMB circulated for comments a proposal by OPM to amend 5 U.S.C. § 8312 to withhold federal retirement pay from employees convicted of a felony arising out of the performance of their official duties. I submitted a memorandum on this proposal on June 17, and that same day you signed a memorandum to OMB noting no legal objection to the proposal. Copies of both are attached.

The State Department has now raised several concerns about the bill:

1. State considers the language "occurred in connection with the individual's employment" too broad, suggesting it might cover a government chauffeur who negligently runs someone down and commits a felony while doing so. I cannot conceive of a felony based on negligence in such a circumstance, however, and accordingly do not share State's concern.
2. State contends that the bill would complicate plea bargaining. It probably would, but this is true of the existing statute, and such complication is probably not too high a price to pay to cut off federal retirement pay for those who used their federal jobs to engage in felonious conduct.
3. State contends employees view their pension as an earned right rather than a reward that can be taken away, but of course the pension is whatever the law, within constitutional limits, says it is, and I consider the bill to be within constitutional limits.
4. State argues that the bill would penalize possibly innocent spouses and children of the offending employee.

So long as the family remains together after the felony conviction, however, I see no way around this, and it is simply reflective of the fact that the families of felons suffer when the felons are caught.

5. State suggests the Social Security bill should also be amended, but I see no reason to single out (new) federal employees with respect to such a generally applicable program.

I do not think we should enter the dispute between OPM and State, and least not until we have specifically been asked to resolve irreconcilable differences. We should wait to see what the other agencies think and whether the differences can be worked out.

THE WHITE HOUSE

WASHINGTON

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WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

HP

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Naomi R. Sweeney

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Dept. of State views on OPM draft bill to prohibit payment of annuities under any Federal retirement system to Federal employees or former Federal employees convicted of a felony related to Federal employment that is punishable by imprisonment for two or more years

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CU Holland</u>	ORIGINATOR	<u>DD 8310711</u>		<u>1 1</u>
<u>CU ATOZ</u>	A/D	<u>DD 8310711</u>	S	<u>8310711</u>
		<u>1 1</u>		<u>1 1</u>
		<u>1 1</u>		<u>1 1</u>
		<u>1 1</u>		<u>1 1</u>

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
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 7, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Office of Personnel Management
Department of Defense
Department of Justice
Central Intelligence Agency

1539686

SUBJECT: Department of State views letter on OPM draft bill to prohibit payment of annuities under any Federal retirement system to Federal employees or former Federal employees convicted of a felony related to Federal employment that is punishable by imprisonment for two or more years.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than August 8, 1983.

Questions should be referred to Frank White (395-6156) or to Hilda Schreiber (395-4650), the legislative analyst in this office.

(Signed) Naomi R. Sweeney

Naomi R. Sweeney for
Assistant Director for
Legislative Reference

Enclosures
cc: ✓ Fred Fielding, WH
Mike Horowitz
Tom Stanners
Arnie Donahue
Jim Barie
Frank Seidl

JUL 6 1983

Dear Mr. Stockman:

We appreciate the opportunity to comment on the draft bill proposed by the Office of Personnel Management (OPM) which would prohibit the payment of annuities to federal employees or former federal employees (and their survivors) who are convicted of a felony related to their federal employment.

The draft bill raises a number of issues which we believe should be called to OPM's attention for clarification and/or resolution. These issues are enumerated below:

1. Subsection (d)(1) of the draft bill uses a broad, ambiguous phrase "occurred in connection with the individual's employment," whereas the analysis in the accompanying OPM letter uses the narrower, clearer phrase "using his office to engage in felonious conduct." The former might, probably wrongly, apply to the Government chauffeur who negligently runs someone down and violates a felony law in so doing.

2. The bill would introduce a substantial new element into prosecutorial bargaining and complicate resolution of criminal charges. It would operate as a significant disincentive to the employee to plead guilty to any felony charge, even though no two-year sentence would in fact be imposed, and require that a full trial be held.

3. Most employees look at the Federal Retirement System as "deferred compensation" and an earned right, not a reward that may be taken away as summarily as this bill proposes.

4. In the Foreign Service, the spouse is generally recognized as a working member of a team, without whose contributions the mission would be less successfully accomplished. If, after a spouse accompanied the employee abroad for thirty years, the employee in an impulsive moment committed a felony, this bill would also punish the spouse (as well as children) for actions beyond their control.

The Honorable
David A. Stockman, Director,
Office of Management and Budget.

5. Section 814 of the Foreign Service Act of 1980 provides Former Spouse Benefits that are unique and would appear to require special legislative mention, unless the draft bill was intended to also deprive the former spouse from receiving benefits.

6. For the draft bill to be applied equally to other employees who violate their employers' trust, the Social Security Act should be similarly amended, especially relative to new federal employees who enter on duty after January 1, 1984.

With cordial regards,

Sincerely,

Powell A. Moore
Assistant Secretary
for Legislative and
Intergovernmental Affairs



United States
**Office of
Personnel Management**

Washington, D.C. 20415

In Reply Refer To:

Your Reference:

The Honorable George Bush
President
United States Senate
Washington, D.C. 20510

Dear Mr. President:

The Office of Personnel Management submits herewith a legislative proposal "To amend section 8312 of title 5, United States Code, to provide that an individual may not be paid an annuity under the civil service retirement system or other retirement system of the Government of the United States for service as a Federal employee if convicted of any felony which occurred in connection with his employment as a Federal employee and is punishable by imprisonment for two or more years, and for other purposes."

As the title of the bill indicates, its purpose is to preclude the payment of an annuity of the Government of the United States to an individual (or his survivor or beneficiary) if the individual has been convicted of a job-connected felony under State or Federal law which is punishable by at least two years imprisonment. The bill amends section 8312 of title 5, United States Code which presently denies Government annuities to individuals convicted of national security related offenses.

In addition the bill amends section 8318 of title 5, which presently provides for restoration of annuity or retired pay withheld under section 8312 after Presidential pardon. The amendment would provide for restoration on the basis of a pardon by the Governor in the case of a conviction of a felony under State law.

We believe that the withholding of a Government annuity is fully justified where the Federal employee breaks faith with the American people by using his office to engage in felonious conduct. By limiting the application of this legislation to felonies which are punishable by imprisonment for at least two years, we eliminate the less serious offenses where denial of an annuity might not be justified.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this proposal to the Congress. A similar letter is being sent to the Speaker of the House of Representatives.

Sincerely,

Donald J. Devine
Director

A BILL

To amend section 8312 of title 5, United States Code, to provide that an individual may not be paid an annuity under the civil service retirement system or other retirement system of the Government of the United States for service as a Federal employee if convicted of any felony which occurred in connection with his employment as a Federal employee and is punishable by imprisonment for two or more years, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8312 of title 5, United States Code, relating to denial of annuities for conviction of certain offenses, is amended by adding at the end thereof the following:

"(d) An individual, or his survivor or beneficiary, may not be paid an annuity on the basis of service as an employee if the individual is convicted of any felony under State or Federal law which -

"(1) occurred in connection with the individual's employment by the United States;

"(2) is punishable by imprisonment for two or more years; and

"(3) was committed on or after the date of the enactment of this subsection."

(b) Section 8318 of title 5, United States Code, relating to restoration of annuity or retired pay, is amended by inserting after "is pardoned by the President" the following: "(or by the Governor of a State, in the case of a felony under the law of that State as described in section 8312(d) of this title)".

Section Analysis of Bill "To amend section 8312 of title 5, United States Code, to provide that an individual may not be paid an annuity under the civil service retirement system or other retirement system of the Government of the United States for service as a Federal employee if convicted of any felony which occurred in connection with his employment as a Federal employee and is punishable by imprisonment for two or more years, and for other purposes."

Subsection (a) of the bill amends sections 8312 of title 5, United States Code, which provides for denial of United States Government annuities for conviction of certain national security-related offenses, to add a subsection (d). The new subsection would prohibit the payment of an annuity to an individual or his survivor or beneficiary on the basis of his service as an employee if the individual is convicted of a job-related felony under State or Federal law which is punishable by imprisonment for two or more years. Existing section 8311 of title 5 defines for purposes of the subchapter, including section 8312, "employee" to include Federal employees and Members of Congress and "annuity" as a retirement benefit payable by an agency of the Government of the United States on the basis of service as a civilian employee and other creditable service. Existing section 8316, which provides for refund of contributions and deposits when annuity or retired pay is denied, would apply in cases covered by this proposed legislation.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: OPM Proposal to Amend 5 U.S.C. § 8312

OMB has asked for our views on OPM's proposal to submit legislation to amend 5 U.S.C. § 8312. Currently 5 U.S.C. § 8312 withholds retirement pay from federal employees convicted of specified offenses, typically offenses relating to national security. OPM's proposal would extend the list of offenses to include any state or federal felony punishable by imprisonment for two or more years and which occurred in connection with the employee's federal service. As OPM states in its proposed letter to the President of the Senate and the Speaker of the House, it believes the withholding of a government annuity is justified when a public official uses his office to engage in serious (punishable by two or more years) felonious conduct.

You may recall that 5 U.S.C. § 8312 was passed in response to the case of Alger Hiss and his confreres (its popular name is the "Hiss Act"), and was held unconstitutional as applied to them on ex post facto grounds. Hiss v. Hampton, 338 F. Supp. 1141 (D.D.C. 1972) (3-judge court). OPM's proposal avoids this pitfall by specifying that the predicate felony must have been committed on or after the date of enactment of the amendment.

I have no strong views on the policy behind the proposal. I would suppose federal employees convicted of a serious felony would be in enough trouble without losing their pension to boot, but the requirement that the predicate felony be employment-related does present a strong case for revoking the retirement benefits. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

June 17, 1983

MEMORANDUM FOR JEFFREY A. WEINBERG
OFFICE OF MANAGEMENT AND BUDGET

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

SUBJECT: OPM Proposal to Amend 5 U.S.C § 8312

Counsel's Office has reviewed OPM's proposal to amend 5 U.S.C. § 8312, and finds no objection to it from a legal perspective.

FFF:JGR:aw 6/17/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 17, 1983

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FFF:JGR:aw 6/17/83

cc: FFFielding
JGRoberts
Subj.
Chron

PE008

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Reverts

Date Correspondence Received (YY/MM/DD) 1 1 1

Name of Correspondent: J. A. Weinberg

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

Subject: Legislative Referral Memorandum -- amendment
section 8312 of title 5, USC, re: retirement
compensation for felons

ROUTE TO:	ACTION	DISPOSITION			
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CJH011</u>	<u>ORIGINATOR</u>	<u>8310615</u>	<u>WS</u>		<u>1 1</u>
<u>CJAT 18</u>	<u>Referral Note:</u>	<u>8310615</u>	<u>WS</u>		<u>5 8310615</u>
	<u>Referral Note:</u>	<u>1 1</u>			<u>1 1</u>
	<u>Referral Note:</u>	<u>1 1</u>			<u>1 1</u>
	<u>Referral Note:</u>	<u>1 1</u>			<u>1 1</u>

ACTION CODES:

- A - Appropriate Action
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- 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
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
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Comments: _____

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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

June 13, 1983

LEGISLATIVE REFERRAL MEMORANDUM

1479580

TO: Legislative Liaison Officer

Department of Justice
Department of State
Department of Defense
Central Intelligence Agency

SUBJECT: OPM draft bill, "To amend section 8312 of title 5, United States Code, to provide that an individual may not be paid an annuity under the civil service retirement system or other retirement system of the Government of the United States for service as a Federal employee if convicted of any felony which occurred in connection with his employment as a Federal employee and is punishable by imprisonment for two or more years, and for other purposes."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than July 8, 1983.

Questions should be referred to Frank White (395-6156) or to Hilda Schreiber (395-4650), the legislative analyst in this office.

(signed J.A. Weinberg)
Jeffrey A. Weinberg for
Assistant Director for
Legislative Reference

Enclosures

cc: Fred Fielding, WH
Mike Horowitz
Tom Stanners
Frank Seidl
Arnie Donahue
Jim Barie



United States
**Office of
Personnel Management**

Washington, D.C. 20415

In Reply Refer To:

Your Reference:

The Honorable George Bush
President
United States Senate
Washington, D.C. 20510

Dear Mr. President:

The Office of Personnel Management submits herewith a legislative proposal "To amend section 8312 of title 5, United States Code, to provide that an individual may not be paid an annuity under the civil service retirement system or other retirement system of the Government of the United States for service as a Federal employee if convicted of any felony which occurred in connection with his employment as a Federal employee and is punishable by imprisonment for two or more years, and for other purposes."

As the title of the bill indicates, its purpose is to preclude the payment of an annuity of the Government of the United States to an individual (or his survivor or beneficiary) if the individual has been convicted of a job-connected felony under State or Federal law which is punishable by at least two years imprisonment. The bill amends section 8312 of title 5, United States Code which presently denies Government annuities to individuals convicted of national security related offenses.

In addition the bill amends section 8318 of title 5, which presently provides for restoration of annuity or retired pay withheld under section 8312 after Presidential pardon. The amendment would provide for restoration on the basis of a pardon by the Governor in the case of a conviction of a felony under State law.

We believe that the withholding of a Government annuity is fully justified where the Federal employee breaks faith with the American people by using his office to engage in felonious conduct. By limiting the application of this legislation to felonies which are punishable by imprisonment for at least two years, we eliminate the less serious offenses where denial of an annuity might not be justified.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this proposal to the Congress. A similar letter is being sent to the Speaker of the House of Representatives.

Sincerely,

Donald J. Devine
Director

A BILL

To amend section 8312 of title 5, United States Code, to provide that an individual may not be paid an annuity under the civil service retirement system or other retirement system of the Government of the United States for service as a Federal employee if convicted of any felony which occurred in connection with his employment as a Federal employee and is punishable by imprisonment for two or more years, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8312 of title 5, United States Code, relating to denial of annuities for conviction of certain offenses, is amended by adding at the end thereof the following:

"(d) An individual, or his survivor or beneficiary, may not be paid an annuity on the basis of service as an employee if the individual is convicted of any felony under State or Federal law which -

"(1) occurred in connection with the individual's employment by the United States;

"(2) is punishable by imprisonment for two or more years; and

"(3) was committed on or after the date of the enactment of this subsection."

(b) Section 8318 of title 5, United States Code, relating to restoration of annuity or retired pay, is amended by inserting after "is pardoned by the President" the following: "(or by the Governor of a State, in the case of a felony under the law of that State as described in section 8312(d) of this title)".

Section Analysis of Bill "To amend section 8312 of title 5, United States Code, to provide that an individual may not be paid an annuity under the civil service retirement system or other retirement system of the Government of the United States for service as a Federal employee if convicted of any felony which occurred in connection with his employment as a Federal employee and is punishable by imprisonment for two or more years, and for other purposes."

Subsection (a) of the bill amends sections 8312 of title 5, United States Code, which provides for denial of United States Government annuities for conviction of certain national security-related offenses, to add a subsection (d). The new subsection would prohibit the payment of an annuity to an individual or his survivor or beneficiary on the basis of his service as an employee if the individual is convicted of a job-related felony under State or Federal law which is punishable by imprisonment for two or more years. Existing section 8311 of title 5 defines for purposes of the subchapter, including section 8312, "employee" to include Federal employees and Members of Congress and "annuity" as a retirement benefit payable by an agency of the Government of the United States on the basis of service as a civilian employee and other creditable service. Existing section 8316, which provides for refund of contributions and deposits when annuity or retired pay is denied, would apply in cases covered by this proposed legislation.

WITHDRAWAL SHEET

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5 MEMO

1 9/29/1983 B6

1030

JOHN ROBERTS TO FRED FIELDING RE
ALLEGED IMPROPRIETY

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.



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

ACCOUNTING AND FINANCIAL
MANAGEMENT DIVISION

AUG 30 1983

Mr. John Roberts
Associate Counsel to the President
Executive Office of the President

Dear Mr. Roberts:

The enclosed case summary is being carried on our records as referred to you for your follow-up on the alleged impropriety. We have also enclosed some pertinent policies concerning the personal use of free airline tickets obtained as a result of Government travel.

We would like to have your initial disposition of this case within 30 days and a final disposition when your inquiry is completed.

To enable us to keep track of this referral, we have assigned Control Number 29995 to it and request that this number be used in future correspondence with our Office concerning this matter.

If you have any questions please call me at 275-8651 or Barney Gomez at 275-5824.

Sincerely yours,

A handwritten signature in cursive script that reads "Gary W. Carbone".

Gary W. Carbone
Director
Fraud Referral and
Investigations Group

Enclosures - 2

WITHDRAWAL SHEET

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6 REFERRAL

1 8/23/1983 B6

1035

NUMBER 29995

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

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E.O. 13233

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AUG 20 1982

TO: GSA TRAVEL MANAGEMENT CENTER CONTRACTORS
TO: MANAGERS, SCHEDULED AIRLINES TRAFFIC OFFICES - CIVILIAN AGENCIES
TO: MEMBERS, INTERAGENCY COMMITTEE ON TRAVEL MANAGEMENT

In view of the continuing proliferation of promotional fares and "bonus" plans generated by the airline industry, we again invite your attention to certain restrictions involving the use of such fares or plans in relation to Federal official travel.

Agency administrative officials as well as official travelers are reminded that all rights to bonus flights, reduced-fare coupons or other similar gratuities obtained as the result of performing official travel accrue to the Government and not to the individual performing the travel.

The Department of Treasury Bulletin 79-09, August 2, 1979, states in part: "Any and all material (coupons, cash, merchandise, etc...) received by personnel while on official travel becomes the property of the United States Government."

The Comptroller General has stated, "It is a fundamental rule of law that a Federal employee is obligated to account for any gift, gratuity, or benefit received from private sources incident to the performance of official duty, and therefore an employee may not retain any "half-fare coupon," "bonus point," or similar item of value received from a commercial air carrier on the basis of the purchase of an airline ticket to be used for official travel." (B-199656, July 15, 1981)

Generally, most of the bonus travel type offers are of limited value to the Government because of the usually, very restricted transferability of the earned gratuity.

Airline plans, such as the Northwest Orient Airlines' recently introduced "Free Flight Plan II" also require a number of trips on the sponsoring carrier to qualify for the offered gratuity. They do not qualify travel on discounted fares such as GSA's city-pair contract fare (YCA) as applicable toward the bonus trip.

When airline passenger service is required between a city-pair for which a GSA contract air fare exists, the availability of noncontract airline promotional fares or bonus plans is not justification for avoiding the use of the GSA contract airline discount fares.

Sincerely yours,

(Signed) Ivan Michael Schaeffer

IVAN MICHAEL SCHAEFFER
Chairman
Interagency Committee
on Travel Management

cc: Official/Read Files - TTPR
T TT TA

✓ TTPR:JBMillington:jma:8/17/82 275-0651
Disk:TTP #5:Dkt. FARES, FARES1 (p. 2 - Chairman)

Concurrence:

TTP *[Signature]* 8/18

115821
DECISION



18920
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-199656

DATE: July 15, 1981

MATTER OF: Gifts or Prizes Acquired in the Course
of Official Travel Assignments

DIGEST: 1. It is a fundamental rule of law that a Federal employee is obligated to account for any gift, gratuity, or benefit received from private sources incident to the performance of official duty, and therefore an employee may not retain any "half-fare coupon," "bonus point," or similar item of value received from a commercial air carrier on the basis of the purchase of an airline ticket to be used for official travel.

2. A Federal employee is entitled to keep prizes and gifts acquired from private sources through means that are unrelated to his official duties; hence, if an employee while traveling on official business happens to enter a contest sponsored by an air carrier which is open to the entire general public rather than to just ticket-holding passengers, then the transaction may properly be regarded as the employee's own personal affair, and in that particular situation he would not have a duty to account for any prizes won.

This action is in response to correspondence received from the Deputy Director for Finance, Office of Operations and Finance, United States Department of Agriculture, requesting a decision:

"* * * regarding the rights to items won from coupons or other material distributed by carriers to government employees in travel status when the receipt of the coupons or other material is not contingent upon the travel which is being performed."

We conclude that a Federal employee has a duty to account for any bonus or gift coupon received from an air carrier incident to the purchase of an airline ticket to be used for official travel. However, an employee may enter a

contest sponsored by an air carrier which is open to the entire general public, rather than to just ticket-holding passengers, and retain any prize he may win in that particular situation.

In requesting a decision in this matter, the Deputy Director notes that Department of Treasury Bulletin 79-09, issued August 2, 1979, states in part: "Any and all material (coupons, cash, merchandise etc...) received by personnel while on official travel becomes the property of the United States Government." He states that at the time the Bulletin was issued, it was mainly directed toward the recovery of "half-fare coupons" and similar promotional materials which were being received by employees from commercial air carriers incident to the purchase and use of airline tickets for official travel. However, he indicates that since then air carriers have also sponsored a variety of other promotional campaigns open to the general public in which individuals may win prizes without having to purchase or use any passenger tickets. In those situations, contest entry blanks or coupons may routinely be distributed to airline passengers, but members of the general public may also obtain the same entry blanks or coupons at no expense by writing to the air carrier or by other means not contingent upon the performance of travel. The Deputy Director feels that a distinction should be made between the promotional materials distributed in those circumstances, and the "half-fare coupons" or similar items of value distributed only to ticket-holding passengers. He suggests that Treasury Bulletin 79-09 was intended just to cover the latter situation, and that employees should be allowed to keep promotional materials which are made freely available to the entire general public.

Reimbursement of the necessary travel expenses of a Federal employee on official business is a matter for payment from appropriated funds in accordance with the provisions of statutory law contained in chapter 57 of title 5, United States Code, and implementing regulations issued by the General Services Administration. Our Office has long held that a Federal employee may not also be reimbursed from private sources for expenses incident to the performance of official travel, and any such payments tendered to the employee are

B-199656

viewed as having been received on behalf of the Government. See, generally, 59 Comp. Gen. 95, 96-97 (1979); 46 id. 689 (1967); 41 id. 806 (1962); 36 id. 268 (1956). The purpose for this is to avoid any conflict of interest, since it is fundamental that an employee must account for any gratuity received from private sources incident to the performance of official duty, and also to prevent double reimbursement to the employee for the same travel. Compare United States v. Carter, 217 U.S. 286 (1910); 59 Comp. Gen. 203, 206 (1980).

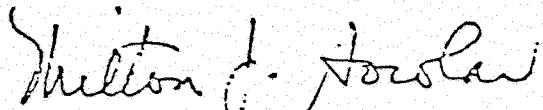
Treasury Bulletin 79-09 was issued on August 2, 1979, and it is founded upon the basic rule described above requiring a Federal employee to account for any gift, gratuity, or benefit received from private sources incident to the performance of his official duties. The purpose of that bulletin was to establish specific procedures for the recovery of bonuses or gifts issued by air carriers in conjunction with the purchase of airline tickets used for official business.

However, a Federal employee is entitled to keep prizes and gifts acquired from private sources through means that are wholly unrelated to his official duties. Thus, for example, an employee may properly retain a bonus or gift coupon received from an air carrier in conjunction with his purchase of an airline ticket at personal expense for personal rather than official travel. As another example, an employee in the course of an official business trip may, as a purely personal matter, have the occasion to enter a contest or lottery open to the general public which is sponsored by a private concern or local government agency. In that case he may properly retain any prize he may win, provided that his receipt of the prize is not in any way related to his taking any official action for the benefit of the sponsoring activity.

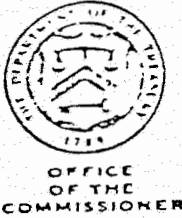
It is, therefore, our view that the particular factual situation presented by the Deputy Director is one in which a Federal employee would generally be entitled to keep any prize he might win. That is, if an employee while traveling on official business enters a contest sponsored by an air carrier which is in fact open to the entire general public rather than just ticket-holding passengers, then the transaction may properly be regarded as the employee's own personal affair,

and he would not have a duty to account for any prizes won. The concerned officials of the General Services Administration and the Treasury Department have informally advised us that they concur with this conclusion.

Of course, this conclusion does not alter the fundamental rule requiring a Federal employee to account for any benefit received from private sources as an incident to the performance of official duty. Hence, an employee remains obligated to account for any "half-fare coupon," "bonus point," or similar item of value he may receive from an air carrier which is only awarded incident to and on the basis of the purchase of an airline ticket used for official travel.



Acting Comptroller General
of the United States



DEPARTMENT OF THE TREASURY
FISCAL SERVICE
BUREAU OF GOVERNMENT FINANCIAL OPERATIONS
WASHINGTON, D.C. 20226

VOLUME I

TREASURY FISCAL REQUIREMENTS MANUAL FOR
GUIDANCE OF DEPARTMENTS AND AGENCIES

BULLETIN NO. 79-09

RETENTION: July 1, 1980

TO HEADS OF GOVERNMENT DEPARTMENTS, AGENCIES AND OTHERS CONCERNED:

1. PURPOSE

The purpose of this bulletin is to advise agencies of the appropriate treatment with respect to "Half-Fare Coupons" and similar promotional material received from any public carrier by personnel while on official travel.

2. AUTHORITY

* { Contractual arrangements between the United States Government and public carriers are not made for the benefit of participating employees and thus, any and all items given beyond the terms of said contracts become the property of the government.

3. BACKGROUND

During recent months, a variety of promotional campaigns were initiated by certain air-carriers to attract passenger volume. Any and all material (coupons, cash, merchandise etc...) received by personnel while on official travel becomes the property of the United States Government. Agencies must inform all personnel that any items received must be relinquished to the responsible office or designee.

This applies to the most recent campaigns and also to whatever may be initiated by Public carriers in the future including:

- a. Half-fare coupons which entitle a 50% discount on full fare round trip tickets purchased within a specific time period.
- b. Coupons which offer a cash surrender value.
- c. "Half-ounce gold nuggets".
- d. Direct cash compensation made due to delayed boarding and/or cancellation of a reservation.

4. PROCEDURES FOR COUPONS AND CASH

Coupons which carry only a cash surrender value should be redeemed immediately and the proceeds deposited to miscellaneous receipts (-1699). Any cash compensation (delayed boarding or cancellation of reservation) should be treated in the same manner as a miscellaneous receipt to the Treasury. Coupons which carry a

- discount for future travel should be integrated into agency travel plans to maximize the benefit to the Government, that is, such coupons should be applied to the extent possible for coast-to-coast or overseas travel (if permitted).

When a coupon is used, the appropriation should only be charged with the net amount required to cover the travel (full fare less the coupon value). If agency travel plans will not absorb all coupons presently held, the agency should forward the surplus with an accompanying description to the following address via certified mail:

General Services Administration
TPUS - TTT
Washington, D.C. 20406

5. PROCEDURE FOR "GOLD-NUGGETS"

Agencies holding the half-ounce gold nuggets should package the items in accordance with postal regulations with an accompanying description of the total avoirdupois weight (oz.) and forward via registered mail to the following address:

Superintendent - U.S. Assay Office
Bureau of the Mint
32 Old Slip
New York, N.Y. 10005

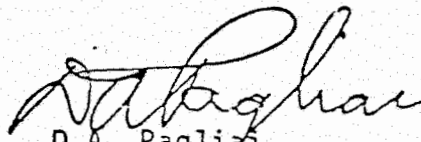
Upon receipt, the Assay Office will assume custody of the gold and determine the precise value. Proceeds of each gold deposit will be made to the miscellaneous receipts of the U.S. Treasury (201699). Notification will be made to the forwarding agency by the Mint.

6. BONUS GOODS

If agencies in the future receive merchandise given as bonus goods to traveling employees, procedures contained in 41 CFR 101-25.103 should be followed. This regulation provides that such merchandise be forwarded to the nearest government medical facility for its purposes. Merchandise received that is of no value to a medical facility should be disposed of or utilized in accordance with 41 CFR 101-43, 44, 45.

7. INQUIRIES

Any questions concerning this bulletin should be directed to the Government Accounting Systems Staff, Bureau of Government Financial Operations, Department of the Treasury, Treasury Annex No. 1, Washington, D.C. 20226 (Telephone 202-566-8374).


D.A. Paglian
Commissioner