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THE WHITE HOUSE

WASHINGTON

July 22, 1982

MEMORANDUM FOR WHITE HOUSE STAFF

FROM: JAMES A. BAKER III

SUBJECT: Use of Official Vehicles for
Transportation to Partisan
Political Meetings and Events

Absent express authorization, monies appropriated by Congress may not be used for partisan political purposes. Accordingly, in prior Administrations, official White House vehicles have not been used to transport staff to and from the offices of political organizations, such as the Republican National Committee, for the transaction of purely partisan political business, or for participation in other partisan political activities. With the Fall elections only several months away, and the attendant need for trips to the RNC and similar political organizations increasing, I want to affirm that this continues to be the policy of this Administration.

THE WHITE HOUSE

WASHINGTON

July 22, 1982

MEMORANDUM FOR JAMES A. BAKER III

FROM: FRED F. FIELDING

SUBJECT: Use of Official Vehicles for
Transportation to Partisan
Political Meetings and Events

Attached for your review and signature, per our earlier discussion, is a memorandum for the White House staff on the use of official White House vehicles for transportation to and from partisan political meetings and activities.

Attachment

FFF:JML:aw 7/22/82

cc: FFFielding
JMLuttig
Subj.
Chron

THE WHITE HOUSE
WASHINGTON

Date 6/7/83

MEMORANDUM

FOR: Claude Gingrich
FROM: H.P. Goldfield
Associate Counsel to the President

- For your information
 For your review and comment
 As we discussed
 For your files
 Please see me
 Return to me after your review

Comment

TED STEVENS, ALASKA
LOWELL P. WEICKER, JR., CONN.
JAMES A. MC CLURE, IDAHO
PAUL LAXALT, NEV.
JAKE GARN, UTAH
HARRISON SCHMITT, N. MEX.
THAO COCHRAN, MISS.
MARK ANDREWS, N. DAK.
JAMES ABDNOR, S. DAK.
ROBERT W. KASTEN, JR., WIS.
ALFONSE M. D'AMATO, N.Y.
MACK MATTINGLY, GA.
WARREN RUDMAN, N.H.
ARLEN SPECTER, PA.

WILLIAM PROXMIRE, WIS.
JOHN C. STENNIS, MISS.
ROBERT C. BYRD, W. VA.
DANIEL K. INOUE, HAWAII
ERNEST F. HDLLINGS, S.C.
THOMAS F. EAGLETON, MO.
LAWTON CHILES, FLA.
J. BENNETT JOHNSTON, LA.
WALTER D. HUDDLESTON, KY.
QUENTIN N. BURDICK, N. DAK.
PATRICK J. LEAHY, VT.
JIM SASSER, TENN.
DENNIS DE CONCINI, ARIZ.
DALE BUMPERS, ARK.

United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

August 11, 1982

J. KEITH KENNEDY, STAFF DIRECTOR

THOMAS L. VAN DER VOORT, MINORITY STAFF DIRECTOR

Mr. James A. Baker, III
The White House
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

Dear Jim:

As you may know, I am conducting a survey of the use of government vehicles by officials of executive agencies. In fairness, I have also requested data from the legislative and judicial branches and am writing to you so that I can include relevant data relating to the White House.

The relevant legislation -- Title 31, Section 638a of the United States Code -- states that government automobiles may only be used for "official purposes," and that "official purposes" does not include being driven to and from home. In addition, cars may not be assigned for the exclusive use of officials. There are some exceptions to the law, namely the President, the Secretary of a Department (not under secretaries, heads of agencies, boards, etc.), doctors on out-patient duty, individuals on field service great distances from their officies, etc.

I would, therefore, like to make the following inquiries about the use of cars under your jurisdiction.

- 1) What officials by title, if any, are driven to and from home?
- 2) To what officials is a car assigned for his or her exclusive use?
- 3) If an official is driven to and from home, in view of Title 31, Section 638a, what is the specific legal jurisdiction for the practice? Please cite the precise language of the law or your rationale for permitting such a practice to exist.
- 4) What is the annual cost of the chauffeurs or drivers of such vehicles, including their overtime pay?
- 5) What is the annual cost of the vehicle in terms of depreciation, maintenance, gas, oil, etc.?

I fully appreciate the many other pressing matters to which you must devote your attention but I hope your staff will have the time to prepare this information in the next week. As I have informed the other agencies, all replies will become a part of the public record.

Sincerely,

TDR



Washington, D.C. 20530

Honorable William Proxmire
United States Senate
Washington, D. C. 20510

Dear Senator Proxmire:

This is in response to your letter of June 28, 1982, which requests information about the use of government cars by Department of Justice officials. Our responses have been numbered to correspond to your questions.

1. The Attorney General, the Deputy Attorney General, and the Director, Federal Bureau of Investigation (FBI) are driven to and from home. This service was also provided to the Solicitor General, as discussed below, during the recent Supreme Court term.
2. The Attorney General and the Director, FBI have motor vehicles assigned for their exclusive use.
3. 31 USC Section 638a provides the Agency head the latitude to approve such use of vehicles. In addition, in 54 Comp. Gen. 855 at 857, (1975) the Comptroller General stated:

In construing the specific restriction in (31 USC § 638a(c)(2)) against employee use of Government-owned vehicles for transportation between domicile and place of employment, our Office has recognized that its primary purpose is to prevent the use of Government vehicles for the personal convenience of an employee. In this regard, we have long held that use of a Government vehicle does not violate the intent of the cited statute where such use is deemed to be in the interest of the Government. We have further held that the control over the use of Government vehicles is primarily a matter of administrative discretion, to be exercised by the agency concerned within the framework of applicable laws. (Emphasis added).

a. Transportation between home and work has been authorized for the Deputy Attorney General for the following reasons:

- (1) He serves as Acting Attorney General in the absence of the Attorney General.

(2) As Chairman of the government's Crisis Management Committee he is responsible for providing the government's law enforcement response to civil disturbances, refugee crises, prison riots and domestic terrorist incidents. As Deputy Attorney General, he also works very closely with the Federal Emergency Management Agency to develop and implement plans for emergency situations that may arise. It is, therefore, mandatory that he be able to communicate with the Attorney General, other Department officials such as the Director of the FBI and other Federal Departments and Agencies during crisis situations while en route to home or work.

(3) It is necessary to protect sensitive official documents he transports home for review and decisions.

(4) The personal security of senior Department officials is of paramount importance. The Deputy Attorney General's law enforcement responsibilities make him a potential target of kidnapping or violence. He is, therefore, provided transportation with a driver who is a trained Special Deputy United States Marshal.

b. This same home to work transportation is provided to the Director of the FBI for a number of reasons:

(1) Numerous threats against the life of the Director warrant that adequate protection be provided for his personal security. For this reason special agents are assigned as drivers.

(2) It is mandatory that the Director be able to communicate with key members of his staff during fast breaking matters which demand his immediate attention.

(3) Another consideration is the protection of official documents he will take home from the office in order to read and make appropriate decisions.

c. It was also determined that it was in the best interest of the government to authorize transportation for the Solicitor General between his home and work while the Supreme Court was in session this past year. While this service is no longer required, such transportation was provided for the following reasons:

(1) His extremely heavy workload in connection with case preparation for appearances before the Supreme Court, coupled with a busy schedule and short deadlines, mandated the requirement that he take sensitive official documents with him and work on them while in transit between home and office.

(2) It was considered essential that he have the capability for constant communication with the Attorney General or Deputy Attorney General while travelling from home to office. This could only be accomplished by using a vehicle equipped with radio and/or telephone communication.

d. Transportation also has been authorized for the Director, Bureau of Prisons because of threats made against his life. In a recent incident, gunshots were fired into his home. For his safety, the Director has been authorized to drive a vehicle that permits constant radio communication with a security detail from the United States Marshals Service.

4. With regard to the vehicles assigned for exclusive use, the salaries of the Attorney General's drivers (a primary and a backup) were \$52,206.70, including \$18,678.70 for overtime, during Calendar Year 1981.

No salary or overtime figures are applicable to the drivers of the vehicle assigned to the Director of the FBI; he is driven by FBI special agents drawn from a rotating pool.

With regard to the provision of home to work transportation services during Calendar Year 1981, the cost for the Deputy Attorney General was \$1,587.80 and for the Solicitor General, \$1,039.50. These are overtime costs for drivers assigned to the central motor pool. The average annual salary of these drivers is \$17,000 including overtime.

There were no salary or overtime costs for transporting the Director of the BOP because he drives a vehicle, which is equipped with special radio communications, to and from work himself.

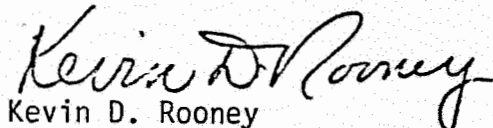
5. The Attorney General's vehicle is a leased vehicle with an annual cost for gas, oil, maintenance and rental of \$4,519.31.

The FBI vehicle is an FBI-owned vehicle which, amortized over a five year period, costs \$2,600 annually, with gas and oil costing an additional \$2,100.

The vehicles utilized by the motor pool in providing services for the Deputy Attorney General and Solicitor General are leased vehicles with an average annual cost for gas, oil, maintenance and rental of \$3,425.00.

The BOP vehicle is a leased vehicle and the annual cost for gas, oil, maintenance and rental is \$3,037.04.

Sincerely,



Kevin D. Rooney
Assistant Attorney General
for Administration

AUG 27 1979

MEMORANDUM FOR ROBERT J. LIPSHUTZ
Counsel to the President

Re: Home-to-Work Transportation of Executive Branch
Officials.

This responds to Margaret McKenna's request of July 20, 1979.

Home-to-work transportation in government vehicles is governed by 31 U.S.C. § 638a(c)(2).^{1/} It prohibits generally the transportation of executive branch officials between their homes and places of employment by Government-owned passenger motor vehicles. Exceptions are provided for the following: (1) medical officers on out-patient medical service; (2) officers engaged in field work where approved by the head of the department concerned; (3) official use of the President and heads of executive departments, and (4) ambassadors and other principal diplomatic and consular officials. The statute covers independent establishments and other agencies, wholly-owned Government corporations, and the government of the

1/ The text of the statute is as follows:

(c) Unless otherwise specifically provided, no appropriation available for any department shall be expended -

* * *

(2) for the maintenance, operation, and repair of any Government-owned passenger motor vehicle or aircraft not used exclusively for official purposes; and "official purposes" shall not include the transportation of officers and employees between their domiciles and places of employment, except in cases of medical officers on out-patient medical service and except in cases of officers and employees engaged in field work the character of whose duties makes such transportation necessary and then

District of Columbia, but not members of Congress and the Architect of the Capitol.^{2/}

We understand from conversations with your staff that our opinion is wanted with respect to the following particularized questions:

- (1) The scope of the Comptroller General's implied exception to § 638a(c)(2) permitting home-to-work travel "in the interest of the government";
- (2) Whether an appropriation for the purchase and operation of passenger motor vehicles implicitly authorizes their use for home-to-work transportation;
- (3) Whether the statutory exception for "ambassadors . . . and other principal diplomatic and consular officers" extends to officials in the United States whose duties involve national defense and foreign policy;
- (4) The nature of "field work" in which home-to-work transportation may be allowed by an agency head;
- (5) Whether it applies to independent regulatory agencies and, if so, whether the President is empowered to promulgate regulations implementing the statute for those agencies.

1/ (Cont.)

only as to such latter cases when the same is approved by the head of the department concerned. Any officer or employee of the Government who willfully uses or authorizes the use of any Government-owned passenger motor vehicle or aircraft leased by the Government, for other than official purposes or otherwise violates the provisions of this paragraph shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month, and shall be suspended for a longer period or summarily removed from office if circumstances warrant. The limitations of this paragraph shall not apply to any motor vehicles or aircraft for official use of the President, the heads of the executive departments enumerated in section 101 of Title 5, ambassadors, ministers, charges d'affaires, and other principal diplomatic and consular officials.

2/ Section 638a(c)(2) was enacted as § 16 of the Administrative Expenses Act of 1946, 60 Stat. 810. Section 18 of that Act, 41 U.S. § 5a, defines "department" as follows:

(Cont. on p. 3)

We will address these questions seriatim:

1. Your first question concerns the scope of the Comptroller General's view that home-to-work transportation may be provided when it is in the Government's interest and not merely for personal convenience. In our opinion, the scope of that exception is very narrow.

Section 638a(c)(2) has a sparse and unilluminating legislative history. Between 1935 and 1946 it appeared sporadically in appropriation acts 3/ and was enacted into permanent law in 1946. 4/ Neither the committee reports nor the debates discuss it. 5/ Its enactment appears to have been prompted by a recommendation of the Joint Committee on the Reduction of Unnecessary Federal Expenditure stating that the use of government vehicles should be curtailed, both to save money and to conserve fuel in wartime. The Joint Committee expressed concern over both the private use of government vehicles and the general level of use. 6/

The statute prohibits expenditure of funds for the operation of any Government motor vehicle not used exclusively for "official purposes." It excludes from "official purposes" home-to-work transportation for government employees, other than those specifically excepted. Despite the plain language of the statute, the Comptroller General in a series of three opinions holds that an additional exception may be implied for situations in which an agency decides that such transportation is "in the interest of the Government." 7/

2/ (Cont.)

The word "department" as used in this Act shall be construed to include independent establishments, other agencies, wholly owned Government corporations . . . and the government of the District of Columbia, but shall not include the Senate, House of Representatives, or office of the Architect of the Capitol, or the officers or employees thereof.

See also 41 C.F.R. § 1-1.202 (1978).

3/ See Act of March 15, 1934, ch. 70, § 3, 48 Stat. 450; Independent Officer Appropriation Act, 1944, ch. 148, § 202(a), 57 Stat. 195.

4/ Administrative Expenses Act of 1946, ch. 744, § 16, 60 Stat. 810.

5/ See H.R. Rep. No. 109, 78th Cong., 1st Sess.; S. Rep. No. 247, 78th Cong., 1st Sess.

6/ See S. Doc. 5, 78th Cong., 1st Sess., at 2-4; 89 Cong. Rec. 895-96 (1943); 88 Cong. Rec. 4225-26 (1942).

7/ 54 Comp. Gen. 1066 (1948); 54 Comp. Gen. 854 (1975); 25 Comp. Gen. 844 (1946).

He reasoned as follows:

In construing the specific restriction in this statute against employee use of government-owned vehicles for transportation between domicile and place of employment, our Office has recognized that its primary purpose is to prevent the use of Government vehicles for the personal convenience of an employee. In this regard we have long held that use of a Government vehicle does not violate the intent of the cited statute where such use is claimed to be in the interest of the Government. We have further held that the control over the use of Government vehicles is primarily a matter of administrative discretion, to be exercised by an agency within the framework of applicable laws. 25 Comp. Gen. 844 (1946).

But this sweeping language has been applied narrowly by both the Comptroller General and this department.

The implicit exception theory first appeared in dictum at 25 Comp. Gen. 844, 846-47 (1946). That decision involved a claim for cab fare from an employee's home to the place where he obtained a government car for official travel. The claim was disallowed on the general principle that an employee must bear his own commuting expenses. In passing, the Comptroller General said that § 638a(c)(2) would not have prohibited the employee from "using a Government automobile to drive to his residence when it is in the interest of the Government that he start on official travel from that point, rather than from his place of business." Id. at 847.

He applied this implicit exception in two cases in 1975. In the first, he held it to be in the government interest to provide home-to-work transportation for military employees abroad where the Defense Department determined that there was a "clear and present" danger of terrorism. But the decision cautioned that it would be best for the Defense Department to obtain specific statutory authority for this 9/ and concluded that it would be an abuse of discretion to provide transportation in countries where no clear and present threat existed. 54 Comp. Gen. 854, 857-58

9/ It appears that no such authority was obtained.

(1975).^{10/} In the second case, the Comptroller General approved the transportation of essential employees where a strike rendered normal public transportation unavailable. To avoid personal benefit to the employees, however, the decision states that transportation must be limited to "temporary emergencies" and that employees must pay the equivalent of commercial fares. 54 Comp. Gen. 1066, 1067-68 (1975).

This Department has determined that home-to work transportation may be provided for the Director, FBI, the Assistant to the President for National Security Affairs, and the Assistant Attorney General, Office for the Improvements in the Administration of Justice. For the first two individuals, it was the judgment of the responsible officers that a genuine threat to their personal safety existed. In our opinion, travel for the Assistant Attorney General was primarily in the interest of the government because his personal services were unique and indispensable and a temporary medical condition made it impracticable for him to use other transportation.^{11/}

With respect to both the Director, FBI, and the Assistant to the President, additional factors were cited. Both were said to need communications equipment in the car to be able to respond to crises. In addition, it was said that the government automobile permitted the Director to protect official documents which he took home. Standing by themselves, we doubt that these factors justify home-to-work transportation. They are common to large numbers of senior officials with duties involving national defense, foreign policy, or law enforcement. Rather than being the product of forces beyond the control of the employing agency, they are inherent in the position. If such common circumstances made home-to-work transportation primarily for the government's convenience, the statute's express prohibition would be a dead letter for a significant number of senior officials. Nothing in its text, background, or prior interpretation supports a reading so contrary to its plain meaning.

^{10/} See OLC Memorandum of November 1978, to Robert J. Lipshutz, "Home to Work Transportation of White House Employees"; Letter of November 16, 1978, to Senator Proxmire from the Assistant Attorney General for Administration. Copies of these are attached.

^{11/} Memorandum of August 29, 1977, "Automobile Transportation for Assistant Attorney General Meador". A copy is attached. Transportation for Mr. Meador was originally approved for 60 days. It has been subsequently extended indefinitely because his medical condition proved permanent.

This is true a fortiori of another justification sometimes given for home-to-work transportation, namely, that it conserves the valuable time of senior officials by permitting them to work while being transported. There is hardly a senior officer to whom this rationale would not, in fact or fancy, apply. It would also make the statute nearly a dead letter for any officer with sufficient status to have a regularly assigned automobile. A senior official may lengthen his or her working day, if necessary, by coming earlier, leaving later, and living closer to the office. Using government transportation instead is a matter of personal convenience.12/

We are aware of nothing that supports a broad application of the exception implied by the Comptroller General. That exception may be utilized only when there is no doubt that the transportation is necessary to further an official purpose of the government. As we view it, only two truly exceptional situations exist: (1) where there is good cause to believe that the physical safety of the official requires his protection, and (2) where the government temporarily would be deprived of essential services unless official transportation is provided to enable the officer to get to work. Both categories must be confined to unusual factual circumstances.

2. The second question is whether an appropriation for the purchase, operation, or hire of passenger motor vehicles implicitly authorizes their use for home-to-work transportation. In our opinion it does not.

Section 638a(a) provides that, "[u]nless specifically authorized by the appropriation concerned or other law," no appropriation may be used to hire or purchase passenger motor vehicles other than those for the President and heads of the executive departments. As part of the Administrative Expenses Act, this provision also applies to all executive establishments. See footnote 2, supra. Its purpose is to retain Congressional control over procurement of passenger cars.13/ Accordingly, appropriations specifically provide for the purchase or hire of passenger motor vehicles.14/

12/ Cf. 23 Comp. Gen. 352, 357 (1943); 19 Comp. Gen. 836, 837 (1940).

13/ See generally 44 Comp. Gen. 117 (1964).

14/ See, e.g., Act of June 30, 1976, Pub. L. No. 94-330, 90 Stat. 778; Military Construction Appropriation Act, 1966, Pub. L. No. 89-202, § 105, 79 Stat. 837; Department of Justice Appropriation Act, 1950, Pub. L. No. 179, 63 Stat. 460.

And § 638a(c)(2) similarly states that an appropriation must "specifically" provide that it is available for home-to-work transportation. We are aware of only one instance in which Congress has done so. ^{15/} Since the exceptions to § 638a call for two separate "specific" statements serving two separate purposes, an appropriation for the procurement of passenger automobiles for official use plainly does not imply authority to use them for home-to-work transportation. Were this not so, any agency that could buy automobiles could use them without regard to § 638a(c)(2).

3. The third question is whether the "ambassadors, ministers, charges d'affaires, and other principal diplomatic and consular officers" excluded from the prohibition of § 638a(c)(2) include officials in the United States whose duties involve national defense or foreign relations. Our opinion is that they do not.

These terms are not defined in the statute or discussed in its legislative history. They do, however, have a well-established connotation of persons who represent a government abroad. They have been construed as, respectively, the accredited representatives of the United States abroad and of foreign states here.^{16/} Their technical meaning is that ambassadors, ministers, and charges d'affaires are the chief officers of a diplomatic mission abroad.^{17/} By familiar principles of statutory construction, Congress should be understood as having used these terms in accord with their technical meaning as reinforced by prior legal usage.^{18/} The named officials refer to senior diplomatic officials representing this country abroad. By the principle of ejusdem generis, the class of "other principal diplomatic and consular officers" is limited to persons of the same type; that is, senior officials who represent the United States abroad. This interpretation confines the exclusion to a well-defined group that Congress rationally could have set apart for reasons of protocol, prestige, and usage, and thus it is not inconsistent with the general purpose of § 638a(c)(2).

4. The next question is the nature of the limited exception for "field work." This is also a technical term. For purposes of pay and classification, the civil service laws distinguished

^{15/} See Legislative Branch Appropriation Act, 1979, 92 Stat. 786 (Shuttle Busses for Library of Congress employees).

^{16/} Ex parte Gruber, 269 U.S. 302, 303 (1925); In re Baiz, 135 U.S. 403, 424-25, 432 (1890); 7 Op. Atty. Gen. 186, 190-92 (1855). See also The Federalist, No. 81, at 510-11 (Harvard ed. 1961).

^{17/} See 7 Whitman, Digest of International Law, §§ 2, 15; 4 Hackworth Digest of International Law § 370 at 394-96; id., § 371, at 398.

^{18/} See Bradley v. United States, 410 U.S. 605, 609 (1973); Standard Oil Corp. v. United States, 221 U.S. 1, 51 (1911).

^{19/} See, e.g., Cleveland v. United States, 329 U.S. 14, 18 (1946); United States v. Stever, 222 U.S. 167, 174-75 (1911).

between the "departmental" service on the one hand and the "field" service on the other. As explained in a decision by the Comptroller of the Treasury, 21 Comp. Dec. 708, 711 (1915):

The executive departments of Government execute the laws which Congress enacts through the instrumentalities sometimes designated "departmental" and "field" establishments. What is known as the "field force" is engaged, directly or indirectly, in locally executing the laws, while the "departmental force" is engaged in general supervisory and administrative direction and control of the various field forces. 20/

Field employees are located, for the most part, out of Washington. In many cases, such as inspectors, extension agents, or law enforcement personnel, their work involves visits to scattered locations away from their office. Departmental employees, on the other hand, would be concentrated in Washington, and their routine duties would be performed at their post.

As we have said above, Congress is usually understood to have used a technical legal term in accordance with its legal meaning. Thus, "field work" consists of the execution of statutory programs by individuals below the policy level stationed away from the seat of government. It often saves considerable time for these individuals to go directly from their homes to a work place away from their office and it reasonably can be viewed as within the government's interest for them to do so.21/ The "field work" exception therefore should be viewed as an express recognition by Congress that it is in the government's interest for official vehicles to be used in this way, subject to the control of the agency head.

5. Your final question is whether § 638a(c)(2) applies to independent regulatory agencies and, if so, whether the President has the power to promulgate regulations implementing the statute for these agencies. We believe that the statute does apply to independent regulatory agencies, and that the President does have the power to promulgate implementing regulations for that purpose.

20/ Accord, 19 Comp. Gen. 630, 631 (1940); 5 Comp. Gen. 272, 273-74 (1925).

21/ See 25 Comp. Gen. 844, 847 (1946).

Section 638a(c)(2) provides that no appropriation available for any "department" shall be expended for the use of vehicles for other than official purposes. We have pointed out above,^{22/} that the Administrative Expenses Act of 1946, provides that the term "department" shall be construed to include "independent establishments, other agencies, wholly owned Government corporations . . . and the government of the District of Columbia" (Emphasis added)

The President may promulgate regulations to enforce § 638a for both executive departments and independent establishments. The President's authority has two sources. First, 5 U.S.C. § 7301 empowers him "to prescribe regulations for the conduct of employees in the executive branch." Under this authority, the President and his delegates have promulgated regulations governing employee conduct in agencies throughout the executive branch, including the independent regulatory agencies.^{23/} Authority under § 7301 has been held to include regulations relating to the use of government property.^{24/}

The second source of authority is the Federal Property and Administrative Services Act, 40 U.S.C. § 471 et seq. This statute applies to all of the executive agencies including independent establishments.^{25/} Its general purpose is to provide an efficient and economical system for the procurement, supply, and utilization of government personal property.^{26/} Under it, the Administrator of General Services has the power to "procure and supply personal property . . . for the use of executive agencies in the proper discharge of their responsibilities" to the extent that he determines it advantageous in terms of economy and efficiency.^{27/} The President may prescribe policies and directives "not inconsistent" with the provisions of the Act that he considers necessary and these are binding on executive agencies generally.^{28/}

^{22/} See pp. 1-2 and note 2 supra.

^{23/} See Exec. Order No. 11222 (1965); 5 C.F.R. § 735.102(a) (Civil Service Commission); 16 C.F.R. § 5.2 (FTC); 29 C.F.R. Part 100 (NLRB); 29 C.F.R. § 1600.735-1 (EEOC); 47 C.F.R. § 19.735-107 (FCC); 49 C.F.R. Part 1000 (ICC).

^{24/} See Kaplan v. Corcoran, 545 F.2d 1073, 1077 (7th Cir. 1976). See generally Old Dominion Branch No. 496, AFL-CIO v. Austin, 418 U.S. 264, 273 n. 5 (1974).

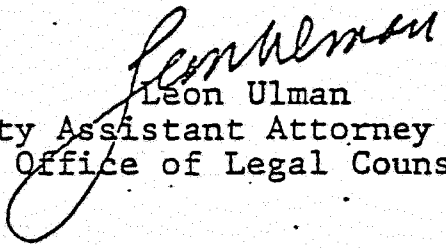
^{25/} 40 U.S.C. § 472(a).

^{26/} 40 U.S.C. § 471.

^{27/} 40 U.S.C. § 481(a)(3).

^{28/} 40 U.S.C. § 486(a).

Subject to the President's authority the Administrator may issue such regulations as he considers necessary to effectuate his functions under the Act.^{29/} At present, there is a specific GSA regulation directing all executive agencies, which includes independent establishments,^{30/} to comply with § 638a(c)(2).^{31/}


Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

^{29/} 40 U.S.C. § 486(c).

^{30/} See p. 9 and note 25 infra.

^{31/} 41 C.F.R. § 101-38.1304(c) (1978).

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 17, 1981

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN BOLTON *JRB*

RE:

Portal-to-Portal Transportation

We have been asked for our opinion of the legality of government cars being used for portal-to-portal transportation services. After examining the applicable statutes, regulations and prior legal opinions, we conclude that portal-to-portal transportation is available for Executive Level I personnel, for their respective Deputies when such Deputies are serving in an "acting" capacity, for a highly limited number of senior White House staff personnel, and for certain diplomatic officials.

The controlling statute is 31 U.S.C. §638a(c)(2), which provides in pertinent part:

"Unless otherwise specifically provided, no appropriation available for any department shall be expended--" *date*

.... (2) for the maintenance, operation, and repair of any Government-owned passenger motor vehicle or aircraft not used exclusively for official purposes; and "official purposes" shall not include the transportation of officers and employees between their domiciles and places of employment, except in cases of medical officers on out-patient medical service and except in cases of officers and employees engaged in field work the character of whose duties makes such transportation necessary and then only as to such latter cases when the same is approved by the head of the department concerned....The limitations of this paragraph shall not apply to any motor vehicles or aircraft for official use of the President, the heads of the executive departments enumerated in section 101 of Title 5, ambassadors, ministers, chargés d'affaires, and other principal diplomatic and consular officials."
(emphasis added)

The principal impact of §638a(c)(2) is to limit dramatically the availability of government vehicles for portal-to-portal transportation. Any interpretation of that provision should adhere to its plain words and its clear legislative intent.

Certain of the exceptions to the statute are readily apparent. The thirteen Cabinet Secretaries (i.e., those enumerated in 5 U.S.C. §101) are clearly permitted portal-to-portal transportation.*/ It should be clear also that the United States Ambassador to the United Nations and the Special Trade Representative, both of which positions are also at Executive Level I, and both of which are "principal diplomatic ... officials" are also within the provision's exceptions.**/ By the same logic, the two remaining Cabinet-level officials, the Counsellor to the President and the White House Chief of Staff, should also receive portal-to-portal transportation. Their positions are the functional and organization equivalents of Cabinet Secretaries. Indeed, providing transportation for these two positions is tantamount to the President's own official use of the transportation. In a very real sense, these two officials are the "alter egos" of the President himself. Cf. Gravel v. United States, 408 U.S. 606, 616-17 (1972) ("the day-to-day work of such [Senatorial] aides is so critical to the Members' performance that they must be treated as the latter's alter egos....").

Whether any other officials are entitled to portal-to-portal transportation is a question of considerable difficulty.***/

*/ It follows that Deputy Secretaries may utilize portal-to-portal transportation only when they are "Acting Secretary" in the absence of their immediate superiors.

**/ Certain statutes specifically preclude the operation of §638a(c)(2)'s prohibition. See, e.g., 22 U.S.C. §§1138a and 2678, and 38 Id. §233(b). Any similar statutory provisions would justify exceptions to the general principles discussed in the text, supra.

***/ Since §638a(c)(2) specifically excludes from its prohibitions "principal diplomatic and consular officials," some definition of this phrase needs to be established so that the availability of portal-to-portal transportation is not abused. We believe that Executive Level II personnel in the Department of State, and their counterpart agency heads in foreign-policy related areas who are also at Executive Level II, are within the provision's exception. Further exemptions should be prohibited except upon a showing of extraordinary circumstances. This result is consistent with a 1979 OLC opinion letter to the then Counsel to the President (copy attached) in that the group permitted portal-to-portal transportation is highly limited and intended for reasons of protocol.

We see no reason, however, why other agency heads may, as a general practice, receive portal-to-portal transportation.

The Comptroller General has, however, interpreted §638a(c)(2) in ways that provide some guidance. In a 1975 opinion, the Comptroller General ruled that:

"in construing this general prohibition [in §638a(c)(2)] to the use of Government vehicles for home to work transportation, this Office has recognized that its primary purpose is to prevent the use of Government vehicles for the personal convenience of the employee. We have long held that use of a Government vehicle does not violate the intent of the above statute where the use of the vehicle is deemed to be in the best interest of the Government." 54 Comp. Gen. 855, 857 (1975).

The Comptroller General concluded that a "Government interest which transcends considerations of personal convenience" would justify limited exceptions to the overall prohibition of §638a(c)(2). Id. In a 1978 opinion, the Comptroller General again stressed that the "primary purpose [of §638a(c)(2)] is to prevent the use of Government vehicles for the personal convenience of employees." 57 Comp. Gen. 226, 227 (1978). See also Clark v. United States, 162 Ct. Cl. 477, 484 (1963).

Moreover, the Comptroller General has also recognized that "control over the use of a Government vehicle is primarily a matter of administrative discretion to be exercised by the agency concerned within the framework of applicable laws." Id. at 857; see also 25 id. 844, 847 (1946). "The specific conditions of each particular situation" indicate that decisions should be made on a case-by-case basis where no general principles are apparent. 57 Comp. Gen. 226, 228 (1978); 54 id. 1066, 1067-68 (1975).

Further guidance is provided by a 1978 opinion from the Office of Legal Counsel in the Department of Justice ("OLC") to the then-Counsel to President Carter (copy attached). That opinion concluded that portal-to-portal transportation for the then-National Security Advisor and Chairman of the National Security Council was justified under §638a(c)(2). The statutory exception applied because of the need for the President to be in touch with this official at all times, and to avoid against possible terrorist attacks. Under the logic of this OLC opinion, the present incumbent in the aforementioned positions would also qualify for portal-to-portal transportation.

Since the OLC opinion was directed only to one White House staff position, the question may arise as to whether other White House personnel, at levels comparable to that of the National Security Advisor, should also be deemed to fall within the exception contained in §638a(c)(2). We suggest that the same essential criteria applied in the 1978 opinion -- the critical needs of

the Presidency itself -- be used to judge the applicability of the statutory prohibition. Where an inability to communicate with an advisor and a need to have that advisor secure and readily available "transcend considerations of personal convenience," and are essential to informed Presidential decision making, then portal-to-portal transportation is not merely justified, it is virtually required.*/

We believe that the foregoing standards comport fully with the strictures of §638a(c)(2), and with the 1979 OLC opinion to the then-Counsel to the President. In such circumstances, we believe abuses are highly unlikely, particularly in light of the substantial penalties which can be incurred if §638a(c)(2)'s provisions are violated.**/

*/ The Department of Justice has previously concluded that the Director of the FBI is entitled to portal-to-portal transportation. See Letter from the Deputy Assistant Attorney General, OLC, to the Counsel to the President, August 27, 1979. We see no reason to disturb that finding.

**/ Section 638a(c)(2) itself provides that persons who violate its provisions should be suspended without pay for at least one month. If circumstances warrant, removal from office could also result. See also 40 U.S.C. §491.

Criminal penalties under 18 U.S.C. §641 (prohibiting conversion of United States property to personal use) are also possible, ranging up to fines of \$10,000 and/or ten years in prison.

Department of Justice
Washington, D.C. 20530

DEC 5 1978

MEMORANDUM FOR ROBERT J. LIPSHUTZ
Counsel to the President

Re: Letter from Senator Proxmire to Hugh Carter--
Home to Work Transportation of
White House Employees

This responds to your memorandum of November 9, 1978 on the above subject. Senator Proxmire's letter calls Mr. Carter's attention to 31 U.S.C. § 638a(c)(2), which prohibits, with certain exceptions, the use of Government vehicles to provide employees with transportation between their homes and offices. Your memorandum requests that we prepare a draft response to questions (3) and (4) in the letter, which are as follows:

- 3) If an official is driven to and from home, in view of Title 31, Section 638a, what is the specific legal justification for the practice? Please cite the precise language of the law.
- 4) If any official not exempted by Title 31, Section 638a is driven to and from home, how is the practice justified in view of the energy shortage and the fact that such a practice means four trips a day instead of two trips a day?

We understand that Dr. Zbigniew Brzezinski is the only White House official driven between his home and his office. He has been authorized to use a White House limousine because he needs its communications facilities to remain in contact with the White House and because the military driver provides him with security.

The statute in question, 31 U.S.C. § 638a(c)(2), provides in pertinent part:

Unless otherwise specifically provided, no appropriation available for any department shall be expended--

* * * * *

(2) for the maintenance, operation, and repair of any Government-owned passenger motor vehicle or aircraft not used exclusively for official purposes; and 'official purposes' shall not include the transportation of officers and employees between their domiciles and places of employment, except in cases of medical officers on out-patient medical service and except in cases of officers and employees engaged in field work the character of whose duties makes such transportation necessary and then only as to such latter cases when the same is approved by the head of the department concerned . . . The limitations of this paragraph shall not apply to any motor vehicles or aircraft for official use of the President, the heads of the executive departments enumerated in section 101 of Title 5, ambassadors, ministers, charges d'affairs, and other principal diplomatic and consular officials.

As National Security Advisor to the President, Dr. Brzezinski does not come within the exceptions enumerated in the statute, and we are aware of no other statute that specifically excepts employees in the Executive Office of the President from § 638a(c)(2). ^{1/} However, the Comptroller General has construed the statute to provide an implicit exception, and it is our view that Dr. Brzezinski's case is within the Comptroller General's exception.

^{1/} We note that 31 U.S.C. § 638a was enacted as § 16 of the Administrative Expenses Act of 1946, 60 Stat. 806. Section 18 of the Act, 41 U.S.C. § 5a, defines a "department" to include "independent establishments [and] other agencies," thus including the Executive Office of the President.

In a recent opinion, the Comptroller General states that 31 U.S.C. § 638a(c)(2) generally prohibits the use of a government vehicle to transport an employee between his home and office. "However," the opinion continues, 54 Comp. Gen. 1066, 1068 (1975):

in construing this general prohibition to the use of Government vehicles for home to work transportation, this Office has recognized that its primary purpose is to prevent the use of Government vehicles for the personal convenience of the employee. We have long held that use of a Government vehicle does not violate the intent of the above statute where the use of the vehicle is deemed to be in the best interest of the Government. We have also held that control over the use of a Government vehicle is primarily a matter of administrative discretion to be exercised by the agency concerned within the framework of applicable laws. Use of Government Vehicles, 54 Comp. Gen. 855 (1975) and 25 id. 844 (1946). 2/

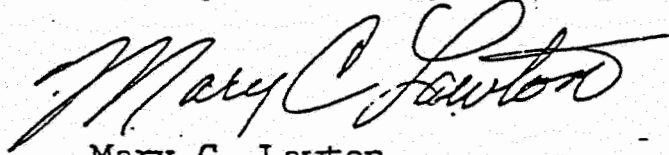
Thus, the Comptroller General has permitted agencies to provide home to office transportation for employees in extraordinary circumstances where a government interest "which transcends considerations of personal convenience" could reasonably be found by the agency to require it. See, e.g., 54 Comp. Gen. 855, 857-58 (1975). As that opinion notes, however, the broad scope of the prohibition in § 638a(c)(2) and the existence of specific statutory exceptions to it suggest "that the exercise of administrative discretion . . . should be reserved for the most essential cases." Id. at 858.

There are two reasons unrelated to Dr. Brzezinski's personal convenience why the best interests of the Government require that he be driven between his home and office in an official car. As National Security Advisor to the President and Chairman of the National Security

2/ This interpretation is consistent with the legislative history of § 638a(c)(2), which states only that the statute would prohibit "the operation of automobiles for the personal use of employees, with certain exceptions." H.R. Rept. 2186, 79th Cong., 2nd Sess., at 9 (1946); S. Rept. 1636, 79th Cong., 2nd Sess., at 9 (1946).

Council, he must be able to communicate with the President and the White House at all times. He cannot be caught in traffic, out of contact, during an emergency, and he has therefore been provided with a car equipped with radio and radio-telephone facilities. Unfortunately, his position also makes him an important potential target for terrorists or disturbed persons. To protect him against assault or abduction, he has been given a military driver trained in defensive, counter-terrorist driving techniques. It is our opinion that the Comptroller General would consider these to be sufficient justification for providing Dr. Brzezinski with door-to-door transportation, particularly since he is the only White House official who receives this service.

We also believe that the above points respond to Senator Proxmire's question concerning the energy shortage.

A handwritten signature in cursive script, reading "Mary C. Lawton". The signature is written in black ink and is positioned above the typed name and title.

Mary C. Lawton
Deputy Assistant Attorney General
Office of Legal Counsel

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

file
Portal to
Portal

June 13, 1983

TO: Ambassador Lighthizer
FROM: Claud Gingrich
SUBJECT: Use of Government Automobiles

In response to your inquiry regarding the appropriate use of government vehicles, I present the following conclusions:

1. There is no statutory prohibition against the use of a government car to take a government employee from his office to attend an after-hours work-related diplomatic/social event and then to return to his office in order to take personal transportation home.
2. There is a nearly complete prohibition against the use of a government car for transportation portal-to-portal (i.e. commuting) except for specific exceptions.

The following discussion addresses the use of a government vehicle by members of the Executive Branch. Specifically, it speaks to the use of such a vehicle for 1) official purpose and 2) portal-to-portal use.

I. Official Purpose

The statute governing the use of government passenger cars is 31 U.S.C. § 1344 (successor to 31 U.S.C. § 638 (c)(2)) which authorizes the appropriation of funds for an automobile for use for an "official purpose." The statute specifically prohibits the use of government cars for the transportation of employees from their homes to their offices (see Portal-to-Portal discussion, infra).

There is little case law and discussion on this point. The Comptroller General, however, has given some guidance on the interpretation of this statute's predecessor in a 1975 opinion which states, in part, "control over the use of a government vehicle is primarily a matter of administrative discretion to be exercised by the agency concerned within the framework of applicable laws." 54 Comp. Gen. 855, 857 (1975).

With regard to a government vehicle, its use for an "official purpose" is specifically granted by statute and carries with it no risk of liability.

The question posited for consideration here was in reference to a proposed use of a government car and driver for transportation from the office to an after-hours work-related social/diplomatic function and then to return to the office in order to take personal transportation home.

Insofar as the after-hours function is work-related, and it differs in no meaningful way from the usual day use of automobiles available for senior staff at the agency, there is no statutory prohibition against the use of a car and driver in this manner.

II. Portal-to-Portal Use

As mentioned above, the use of a government vehicle to take a government employee from his home to place of employment is not within the purview of "official purpose" and is prohibited under the statute 31 U.S.C. § 1344 (and its predecessor 31 U.S.C. § 638 (c)(2)). The portal-to-portal (or commuting) provisions have certain strict exceptions, which are for: The President, the heads of executive departments and "principle diplomatic and consular officials." (This statute was recently amended to exclude "ambassadors" within this exception, although the law had already been construed to apply only to senior officials who represent the United States abroad.)

A February 1981 White House memorandum concluded "that portal-to-portal transportation is available for Executive Level I personnel, for their respective Deputies when such Deputies are serving in an "acting" capacity for a highly limited number of senior White House staff personnel, and for certain diplomatic officials." In practice, the use of government cars for commuting has been very restricted beyond the enumerated exceptions, except when the personal safety of the individual was concerned (the Director of the FBI) or national security required constant communications with the President (the National Security Advisor).

The strict construction of the statute is likely due to the penalties related to it: the suspension without pay for at least one month, or removal from office. 31 U.S.C. § 1349. Criminal liabilities may also attach. 18 U.S.C. §641.

THE WHITE HOUSE

WASHINGTON

January 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Portal to Portal Transportation

Mike Horowitz, purportedly at the behest of Joe Wright, is pressing for a decision on how to respond to the June 3, 1983, Comptroller General opinion on 31 U.S.C. § 1344, the portal to portal statute. Horowitz first raised this issue in November, at which point we discussed it in a general way but reached no resolution.

You will recall that the Comptroller General opinion concluded that the interpretation of 31 U.S.C. § 1344 by most agencies was too permissive, and that many Executive Branch officials who now receive Government-provided transportation between home and work were not legally entitled to the service. Recognizing that agencies may have relied on apparent Congressional acquiescence in a broader view of 31 U.S.C. § 1344, as well as "dicta" in earlier GAO decisions, the opinion noted that GAO would not seek reimbursement for past portal to portal misuse of vehicles and would apply the restrictive reading of the statute only after the close of the current Congress. GAO recommended that Congress consider clarifying legislation on this topic in the interim.

Horowitz has been advised that GAO has fixed the date for enforcement of the opinion at the time Congress adjourns for the elections, probably in early October. His concern is that unless action is taken GAO may create an election eve issue by enforcing the statute against political appointees in October. Horowitz recommends initiating negotiations with the Comptroller General and Congressman Jack Brooks on a broad portal to portal bill that would provide such transportation to all senior EOP officials, Cabinet officers, and others down to Undersecretary or comparable rank. He considers the issue urgent since such legislation, to have any chance of passage, would have to be acted upon well in advance of the election.

In my view, an Administration initiative for expanded portal to portal authority would be just as politically costly as the potential actions for reimbursement feared by Horowitz. If Congress is willing to enact clarifying legislation, as

recommended by GAO, we should not block it, but I do not think we should take an affirmative, leading role in an effort to obtain such legislation, as recommended by Horowitz. The problem envisioned by Horowitz -- reimbursement actions on election eve -- can be readily avoided by following GAO's restrictive interpretation of 31 U.S.C. § 1344, at least for the relatively brief period between the close of Congress and the election. After that we can consider whether to seek legislation, to disagree with the GAO opinion and act on one of our own, or simply to follow a more restrictive portal to portal practice for the second term. In sum, I do not share Horowitz's sense of urgency, nor do I concur in his view that we should take affirmative steps to secure "corrective" legislation.

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Subject: Memo from Mike Horowitz Re: Portal to Portal Transportation

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

GENERAL COUNSEL

November 8, 1983

MEMORANDUM FOR: Joe Wright
FROM: Mike Horowitz *MH*
SUBJECT: Portal to Portal Transportation

On June 3, 1983, the Comptroller General issued a sweeping opinion, in connection with inquiries arising from the Departments of Defense and State, which concluded that Executive Departments and agencies have for many years improperly interpreted the statute permitting portal to portal transportation. He took the position that, except in very narrowly defined circumstances, such transportation was legally available only for 12 Cabinet secretaries -- and not for other Cabinet level officials or lower ranking Executive Branch appointees. His opinion also narrowly construed the provision which allowed such transportation for those officials whose physical safety may be in jeopardy.

Recognizing that the agencies had interpreted earlier GAO opinions as sanctioning broader availability of transportation and that Congress apparently had acquiesced in such interpretations, the Comptroller General stated that he would not begin to enforce his opinion "until the close of this Congress" in order to permit consideration of remedial legislation. I have been advised by GAO officials that the Comptroller General currently intends to begin enforcing his opinion after Congress recesses for the 1984 election; i.e. as early as October, 1984. This poses the risk that, in the superheated weeks immediately preceding the election, Administration officials could be the subject of well-publicized demands for reimbursement if they continue to use such transportation.

As I read the Comptroller General's opinion, no one in the Executive Office of the President would be permitted home to office transportation, with the possible exception of those for whom safety is the determining factor. (The opinion is so sweeping that it may even leave open to doubt the Vice President's entitlement to such transportation.) An OLC opinion, issued during the Carter administration, adds little to agency discretion afforded by the Comptroller General. It states that the usual rationales for going beyond the language of the statute -- protection of the official and the professed need to be in communication at all times -- justify provision of portal to portal transportation only in "unusual factual circumstances."

The Department of Defense has submitted legislation for clearance by OMB which would authorize such transportation for eight high ranking Defense officials, including the Joint Chiefs. There is no immediate pressure for clearance of the draft bill.

In these circumstances, the question arises what should be our response to the GAO opinion and the proposed Defense legislation. We have four options.

1. Submit generic legislation to amend the present law for all agencies. Without amendment of the law or a drastic curtailment in the use of transportation by Executive officials, the Comptroller General, as noted, may seek to recover costs for such transportation as early as October, 1984.

If we propose legislation, we are likely to be attacked for seeking "limousine service" for high ranking officials. On the other hand, legislation could be defended as narrowing past practice and as more equitable, i.e., in permitting transportation for all persons of similar rank and for those with special needs, such as the handicapped.

Any general legislation would almost certainly be referred to the Government Operations Committees. Unfortunately, we are off to somewhat of a bad start here. Jack Brooks wrote Dave in early June asking for our recommendations on legislation, and, through a processing error, his letter never was answered.

2. Leave it to each agency to handle the situation for itself. Instead of proposing a generic solution, we could do nothing and permit the agencies to attempt to cut special deals with their authorizing committees and the Comptroller General. For example, we could clear the Defense bill and other appropriate proposals deemed necessary by the agencies. Piecemeal submission might not prevent a joint referral of such bills to the Government Operations Committees, but, with the help of powerful authorizing Committees like Armed Services, would probably enable some Departments and agencies to gain enactment of their proposals in this Congress. The reaction to these bills also would provide a more precise reading of Congressional sentiment on the generic issue.

In the same vein, the State Department recently struck a separate deal with the Comptroller General by which the Chief of Protocol is to be permitted transportation. GAO crafted an exception to

its strict interpretation of the law due to the "uniqueness" of her position and the minimal additional costs involved in providing such transportation at all times, rather than only those clearly identifiable as work related. We could thus also permit other agencies to seek special relief from the Comptroller General, through submission of requests for individual rulings based on the equities of particulars of given jobs. There is slim likelihood, however, that such clearance will be given by GAO for persons such as the Cabinet level members of the White House staff and the OMB Director.

3. Seek a Justice opinion that GAO is wrong in its narrow interpretation. I am prepared to issue an opinion, for OMB, that the Comptroller General's ruling is too narrow in the light of Congressional acceptance of earlier agency and GAO interpretations. To be effective government-wide, however, the Office of Legal Counsel would have to issue a similar opinion. The principal basis for such a ruling would have to be Congressional acquiescence in this longstanding practice and the fact that Congress knows how to end such transportation when it wishes. (In the HUD appropriations bill, the heads of 12 independent agencies are expressly prohibited from receiving portal to portal transportation; the language relied upon by the Comptroller General is treated as merely exempting the Secretary of HUD from this ban).

If the Justice Department were to disagree with GAO, there would be no enforcement mechanism available for the recovery of funds used for transportation deemed improper by the Comptroller General. He has no independent enforcement authority but can only recommend prosecution by Justice. While some agencies may be reluctant to persevere with a more liberal reading in the face of such a dispute, I believe many General Counsels would be prepared to take the heat if they had such legal justification from OLC.

In light of the earlier OLC opinion, however, our chance of success in this area is problematic, at best. Furthermore, pursuing this option runs the risk that, in the worst case, the Comptroller General could be requesting Justice to initiate enforcement actions in the weeks immediately preceding the election.

4. Negotiate a more reasonable implementation date with GAO. Another option would be to attempt to reach an informal agreement with the Comptroller General that he would not begin enforcement of his opinion until the 99th Congress convenes in January 1985. This would carry current users through this term and avoid the possibility of an unpleasant October media event on this issue.

Recommendation: We should first discuss the matter gingerly with the Comptroller General to determine whether (and if so how) he would support expansion of the law on portal to portal transportation. We should then -- and this is the critical element -- sit down with Jack Brooks to discuss the prospects of his supporting a broader bill which would, for example, provide transportation to senior EOP officials, all persons of Cabinet rank, and other officials down to Undersecretary or comparable rank. In this regard, I am strongly opposed to clearing the Defense bill. DOD and other agencies with favorable committees might be able to obtain legislation, but that would do nothing for senior White House staff, the OMB Director and if we decided to seek portal to portal transportation for them, non-Defense undersecretaries.

Given the sensitivity and breadth of this issue, I suggest that this soon be raised at a Meese Management meeting.

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PORTAL TO
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DECEMBER 13, 1983

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

B-211920

The Honorable Joseph P. Addabbo
Chairman, Subcommittee on Defense
Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

Subject: ~~Use of Government Vehicles for Home-to-Work
Transportation (GAO/NSIAD-84-27)~~

In your February 15, 1983, letter, you asked us to investigate the practice by executive departments and agencies of providing transportation to officers or employees between their homes and places of employment. Because your request was similar to a study that we were directed by the House Conference Report to perform, we briefed your office on March 10, 1983, on ongoing GAO work in this area. As agreed with your office, our report¹ in response to the House Conference Report satisfied most of your needs. However, your office requested that we report to you on (1) the amounts of overtime chauffeurs and drivers incurred in providing home-to-work transportation and the need for it, (2) the validity of reasons given for the need for such transportation taking into consideration such things as security, position, and grade, and (3) the cost effectiveness of using alternative methods of transportation.

OVERTIME INCURRED BY CHAUFFEURS
AND DRIVERS

Our study of home to work transportation provided to headquarters' officials by 13 executive departments and agencies in the greater Washington, D.C. metropolitan area showed that 15,676 hours of chauffeur and driver overtime costing \$202,148 were incurred from October 1 through December 31, 1982. The agencies' overtime costs were not detailed enough to identify overtime incurred for home-to-work transportation. The hours and costs of overtime are shown in enclosure I.

¹Use of Government Vehicles for Home-to-Work Transportation
(GAO/NSIAD-83-3, Sept. 28, 1983).

As shown in our September 28, 1983, report, more officials were being provided home-to-work transportation than were authorized by law. Compliance with the law should eliminate some overtime incurred to provide this transportation.

At least one agency has been able to reduce overtime by using staggered working hours or split shifts. Department of Defense officials informed us that they recently revised their chauffeurs' work schedules to eliminate 3 hours of overtime that were built into some drivers' daily schedules. This reduced overtime by about 100 hours every two weeks.

VALIDITY OF REASONS FOR PROVIDING
HOME-TO-WORK TRANSPORTATION

The reasons given for providing home-to-work transportation to officials in the 13 departments and agencies were:

- Personal safety/security.
- Security for classified documents.
- Capability of maintaining constant communication with officials.
- Need for extended workday.
- Attendance at official functions after work hours.
- Public transportation or parking for privately owned vehicles unavailable or inaccessible within a reasonable distance.

As a general rule, these reasons do not comply with existing law. Under existing law (31 U.S.C. 1344(b)), transportation between home and work is expressly made nonofficial business, except for a limited number of officials designated in the statute. These officials are primarily secretaries of cabinet departments (including the Secretaries of the Army, Navy, and Air Force), heads of foreign diplomatic or consular posts, and certain employees assigned to temporary "fieldwork" positions.

While GAO, by legal decision, has considered certain unique circumstances as warranting an exception to the statutory prohibition, the exceptions have been limited ones. For example, 54 Comp. Gen. 855 (1975) allowed the provision of home-to-work transportation for DOD employees who were stationed in a foreign country where there was serious danger to the employees because of terrorist activities. Such exceptions would not justify use

of Government vehicles for home-to-work transportation on a regular basis for the reasons cited by the departments and agencies we surveyed.

Our decision of June 3, 1983 (B-210555), discusses the statutory prohibition against home-to-work transportation and suggests consideration of legislative amendments to clarify allowable uses. We understand the Office of Management and Budget may submit proposed amendments during the current Congress.

COST EFFECTIVENESS OF ALTERNATIVE
METHODS OF TRANSPORTATION

Available information indicates that the use of a chauffeur driven government vehicle is generally the most costly method of providing such transportation. For example, the Office of the Secretary of Defense Executive Motor Pool has calculated the average cost of chauffeured vehicles to be \$2.82² per mile, while the use of commercial taxicabs in the Washington metropolitan area costs about \$1.70 for the first mile plus \$1.00 for each additional mile. According to the Department of Housing and Urban Development, its use of chauffeured vehicles costs \$4.93 per mile.

The relative cost per mode of transportation is also reflected in the priority order shown in the Office of the Secretary of Defense's regulations governing the use of motor vehicles. It states that for essential transportation before or after normal duty hours, the following methods should be considered in the order shown:

1. Department of Defense - scheduled bus service.
2. Scheduled public transportation.
3. Voluntary use of privately owned motor vehicles on a reimbursable basis.
4. Taxicab on a reimbursable basis.
5. Defense motor vehicle.

²This rate is based on 1982 costs for the executive motor pool and includes such items as salaries, overtime pay, gasoline, and maintenance and vehicle leasing.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to determine (1) the amounts of overtime chauffeurs and drivers incurred, (2) the validity of reasons given for providing home-to-work transportation, and (3) the cost effectiveness of using alternate methods of transportation. We limited the scope of our study to 13 selected executive branch departments and agencies in the greater Washington, D.C., metropolitan area. As agreed with your office, these were the same departments and agencies included in our study directed by the House Conference Report.

In March 1983 we sent letters to these departments and agencies requesting them to provide the information needed to satisfy our objectives. As agreed with your office, we did not perform a detailed analysis of the cost effectiveness of using alternative methods of transportation nor did we independently verify the information the departments and agencies provided.

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We are sending copies of this report to the Director, Office of Management and Budget, and to the heads of the federal departments and agencies mentioned in the report.

Sincerely yours,



Frank C. Conahan
Director

Enclosure

TOTAL DOLLARS AND HOURS OF OVERTIMEFOR CHAUFFEURS AND DRIVERSOCTOBER 1 to DECEMBER 31, 1982

<u>Departments/agencies</u>	<u>Overtime</u>	
	<u>Costs</u>	<u>Hours</u>
Office of Management and Budget	\$11,069	783
Department of Defense:		
Office of the Secretary of Defense Executive Motor Pool	61,423	4,375
Pentagon (Army) Motor Pool	44,565	4,396
Navy Motor Pool	<u>27,189</u>	<u>2,014</u>
Subtotal	<u>133,177</u>	<u>10,785</u>
Department of Health and Human Services	4,496	307
Department of Housing and Urban Development	5,027	355
Department of Justice	13,537	947
Department of Transportation	5,309	401
Central Intelligence Agency	8,670	578
Civil Aeronautics Board	320	27
Environmental Protection Agency	12,340	885
Federal Communications Commission	1,729	124
Federal Home Loan Bank Board	1,776	137
Federal Trade Commission	2,803	200
National Science Foundation	<u>1,895</u>	<u>147</u>
Total	<u>\$202,148</u>	<u>15,676</u>