APPENDIX

Opinions of the Committee on Standards of Official Conduct

Subject:	Advisory Opinion No.
Communications with Federal agencies	1
Clerk-hire allowance	2
Travel at expense of foreign governments	3
Acceptance of nonpaid transportation	4

ADVISORY OPINION NO. 1

(Issued January 26, 1970)

ON THE ROLE OF A MEMBER OF THE HOUSE OF REPRESENTATIVES IN COMMUNICATING WITH EXECUTIVE AND INDEPENDENT FEDERAL AGENCIES

Reason for Issuance.—A number of requests have come to the Committee for its advice in connection with actions a Member of Congress may properly take in discharging his representative function with respect to communications on constituent matters. This advisory opinion is written to provide some guidelines in this area in the hope they will be of assistance to Members.

Background.—The first Article in our Bill of Rights provides that "Congress shall make no law . . . abridging the . . . right of the people . . . to petition the Government for a redress of grievances." The exercise of this Right involves not only petition by groups of citizens with common objectives, but increasingly by individuals with problems or complaints involving their personal relationships with the Federal Government. As the population has grown and as the Government has enlarged in scope and complexity, an increasing number of citizens find it more difficult to obtain redress by direct communication with administrative agencies. As a result. the individual turns increasingly to his most proximate connection with his Government, his Representative in the Congress, as evidenced by the fact that congressional offices devote more time to constituent requests than to any other single duty.

The reasons individuals sometimes fail to find satisfaction from their petitions are varied. At the extremes, some grievances are simply imaginary rather than real, and some with merit are denied for lack of thorough administrative consideration.

Sheer numbers impose requirements to standardize responses. Even if mechanical systems function properly and timely, the stereotyped responses they produce suggest indifference. At best, responses to grievances in form letters or by other automated means leave much to be desired.

Another factor which may lead to petitioner dissatisfaction is the occasional failure of legislative language, or the administrative interpretation of it, to cover adequately all the merits the legislation intended. Specific cases arising under these conditions test the legislation and

provide a valuable oversight disclosure to the Congress.

Further, because of the complexity of our vast Federal structure, often a citizen simply does not know the appropriate office to petition.

For these, or similar reasons, it is logical and proper that the petitioner seek the assistance of his Congressman for an early and equitable resolution of his problem.

Representations.—This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:

—request information or a status report;

—urge prompt consideration;

—arrange for interviews or appointments;

—express judgment;

—call for reconsideration of an administrative response which he believes is not supported by established law, Federal regulation or legislative intent;

—perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

Principles To Be Observed.—The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also other self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.

2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.

3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

Clear Limitations.—Attention is invited to United States Code, Title 18, Sec. 203(a) which states in part: "Whoever . . . directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another

(1) at a time when he is a Member of Congress . . .; or

(2) at a time when he is an officer or employee of the United States in the . . . legislative . . . branch of the government . . .

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission . . .

Shall be fined not more than $10,000 or imprisoned for not more than two years or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to *any compensation, directly or indirectly, for services by himself or another.* In this connec-

tion, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation for any such services which may be performed by a law firm in which the Member retains a residual interest.

It should be noted that the above statute applies to officers and employees of the House of Representatives as well as to Members.

ADVISORY OPINION NO. 2

(Issued July 11, 1973)

ON THE SUBJECT OF A MEMBER'S CLERK HIRE

Reason for issuance.—A number of requests have come to the Committee for advice on specific situations which, to some degree, involve consideration of whether moneys appropriated for Members' clerk hire are being properly utilized.

A summary of the responses to these requests forms the basis for this Advisory Opinion which, it is hoped, will provide some guidelines and assistance to all Members.

Background.—The Committee requested the Congressional Research Service to examine in depth the full scope of the laws and the legislative history surrounding Members' clerk hire. The search produced little in the way of specific parameters in either case law or congressional intent, concluding that ". . . no definitive definition was found . . .". It is out of this absence of other guidance the Committee feels constrained to express its views.

Clerk hire allowance for Representatives was initiated in 1893 (27 Stat. 757). The law providing it spoke of providing clerical assistance to a Representative "in the discharge of his official and representative duties . . .". The same phraseology is used today in each Legislative Appropriations bill and by the Clerk of the House in his testimony before the Subcommittee on Legislative Appropriations. An exact definition of "official and representative duties" was not found in the extensive materials researched. Remarks concerning various bills, however, usually refer to "clerical service" or terms of similar import, thus implying a consistent perception of the term as payment for personal services.

Summary Opinion.—This Committee is of the opinion that the funds appropriated for Members' clerk hire should result only in payment for personal services of individuals, in accordance with the law relating to the employment of relatives, employed on a regular basis, in places as provided by law, for the purpose of performing the duties a Member requires in carrying out his representational functions.

The Committee emphasizes that this opinion in no way seeks to encourage the establishment of uniform job descriptions or imposition of any rigid work standards on a Member's clerical staff. It does suggest, however, that it is improper to levy, as a condition of employment, any responsibility on any clerk to incur personal expenditures for the primary benefit of the Member or of the Member's congressional office operations, such as subscriptions to publications, or purchase of services, goods or products intended for other than the clerk's own personal use.

The opinion clearly would prohibit any Member from retaining any person from his clerk hire allowance under either an express or tacit agreement that the sal-

ary to be paid him is in lieu of any present or future indebtedness of the Member, any portion of which may be allocable to goods, products, printing costs, campaign obligations, or any other nonrepresentational service.

In a related regard, the Committee feels a statement it made earlier, in responding to a complaint, may be of interest. It states: "As to the allegation regarding campaign activity by an individual on the clerk hire rolls of the House, it should be noted that, due to the irregular time frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual workweek—at others, some less. Thus employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated, but this Committee expects Members of the House to abide by the general proposition."

ADVISORY OPINION NO. 3

(Issued June 26, 1974)

ON THE SUBJECT OF FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE HOUSE OF REPRESENTATIVES AT THE EXPENSE OF FOREIGN GOVERNMENTS

Reason for Issuance.—The Committee has received a number of requests from Members and employees of the House for guidance and advice regarding acceptance of trips to foreign countries, the expenses of which are borne by the host country or some agent or instrumentality of it.

The Committee is advised that similar inquiries recently have been put to the Department of State with respect to other Federal employees.

In order to provide widest possible dissemination to views expressed in response to the requests, and to coordinate with statements likely to be forthcoming from other areas of the Federal government in this regard, this general advisory opinion is respectfully offered.

Background.—The United States Constitution, at Article I, Section 9, Clause 8, holds that:

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

This provision, described as stemming from a "just jealousy of foreign influence of every sort," is extremely broad as to whom it covers, as well as to the "presents" or "emoluments" it prohibits—speaking of the latter as *of any kind whatever*. (emphasis provided)

It is narrow only in the sense that the framers, aware that social or diplomatic protocols could compel some less than absolute observance of a prohibition on the receipt or exchange of gifts, provided for specific exceptions with "the consent of the Congress."

Congress dealt from time to time with these exceptions through public and private bills addressed to specific situations, and dealt generally, commencing in 1881,

with the overall question of management of foreign gifts.

In 1966 Congress passed the latest and the existing Public Law 89–673, "an Act to grant the consent of Congress to the acceptance of certain gifts and decorations from foreign governments." That law is presently codified at Title 5, United States Code, Section 7342, a copy of which is attached.

The law is quite explicit in virtually all particulars, save whether the expense of a trip paid for by a foreign government is a ". . . present or thing, other than a decoration, tendered by or received from a foreign government; . . ."

It is on this point that this Opinion lies.

Basis of Authority for Opinion.—Since this matter impinges equally on all Federal employees, the Committee sought advice from the Comptroller General as legal adviser to the Congress, and from the Secretary of State as the implementing authority over 5 U.S.C. 7342.

Copies of their official responses are attached to this Opinion.

Summary Opinion.—It is the opinion of this Committee, on its own initiative and with the advice of the Comptroller General and the Assistant Secretary of State, that acceptance of travel or living expenses in specie or in kind by a Member or employee of the House of Representatives from any foreign government, official agent or representative thereof is not consented to in 5 U.S.C. 7342, and is, therefore, prohibited. This prohibition applies also to the family and household of Members and employees of the House of Representatives.

§ 7342. Receipt and disposition of foreign gifts and decorations

(a) For the purpose of this section—

(1) "employee" means—

(A) an employee as defined by section 2105 of this title;

(B) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or of the District of Columbia;

(C) a member of a uniformed service;

(D) the President;

(E) a Member of Congress as defined by section 2106 of this title; and

(F) a member of the family and household of an individual described in subparagraphs (A)–(E) of this paragraph;

(2) "foreign government" means a foreign government and an official agent, or representative thereof;

(3) "gift" means a present or thing, other than a decoration, tendered by or received from a foreign government; and

(4) "decoration" means an order, device, medal, badge, insignia, or emblem tendered by or received from a foreign government.

(b) An employee may not request or otherwise encourage the tender of a gift or decoration.

(c) Congress consents to—

(1) the accepting and retaining by an employee of a gift of minimal value tendered or received as a souvenir or mark of courtesy; and

(2) the accepting by an employee of a gift of more than minimal value when it appears that to refuse the gift would be likely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States.

However, a gift of more than minimal value is deemed to have been accepted on

behalf of the United States and shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this section.

(d) Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the agency, office or other entity in which the employee is employed and the concurrence of the Secretary of State. Without this approval and concurrence, the decoration shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this section.

(e) The President may prescribe regulations to carry out the purpose of this section. Added Pub. L. 90–83 § 1(45)(C), Sept. 11, 1967, 81 Stat. 208.

DEPARTMENT OF STATE,
Washington, D.C., May 9, 1974.

Hon. MELVIN PRICE,
Chairman, Committee on Standards of Official Conduct, House of Representatives.

DEAR MR. CHAIRMAN: I am replying to your letter of April 17 to Mr. Hampton Davis, of the Office of the Chief of Protocol, requesting comment on Congressman Kemp's suggestion that your Committee issue a briefing paper on the propriety of acceptance by Congressional Members and staff of trips offered them at the expense of foreign governments.

Various Federal agencies have put similar questions to the Department of State on a number of occasions in behalf of their employees who have received but not yet acted on offers of such trips. It has been the Department's consistent position that the offer of an expenses-paid trip is an offer of a gift and that, therefore, if tendered by a foreign government or any representative thereof to a Federal employee, the Foreign Gifts and Decorations Act of 1966 would require its refusal. A trip cannot qualify under the special provision permitting acceptance of a gift of more than minimal value on the ground that to refuse it would appear likely to "cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States". This follows from the requirement that the donee, being deemed to have accepted such a gift on behalf of the United States, deposit it for use and disposal as property of the United States in accordance with the implementing regulations, since the recipient of a trip could not fulfill that requirement.

Precisely because of the impossibility of surrendering the gift of a trip once it has been accepted and taken, we believe it would be highly advisable for your Committee to issue the briefing paper on the subject which Congressman Kemp has suggested. In this connection the Committee may be interested to know that the Department is planning a new informational program designed to improve understanding and compliance with the Foreign Gifts and Decorations Act and the implementing regulations. The program will be aimed not only at those within the Federal establishment who might become donees or who may have responsibility for briefing potential donees, but also at the foreign governments that appear to be less than fully aware of the stringent legal restrictions

that we operate under in this area. We shall be happy to see that the Committee is included in the distribution of the material being developed.

I hope that we have been helpful in this matter and that you will feel free to call upon us at any time you think we can be of assistance.

Sincerely yours,

LINWOOD HOLTON,
Assistant Secretary for Congressional Relations.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., May 9, 1974.

B–180472.

Hon. MELVIN PRICE,
Chairman, Committee on Standards of Official Conduct, House of Representatives.

DEAR MR. CHAIRMAN: Your letter of April 17, 1974, with attachments, requests our comments on the advisability of issuing a briefing paper on the legal ramifications of the acceptance by Members of Congress, or staff, of trips abroad that are paid for by foreign governments.

We are not aware of any decision by any forum as to the legality of such trips. The question arises because of the prohibition contained in article I, section 9, clause 8, of the United States Constitution, which reads as follows:

"No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title of any kind whatever, from any King, Prince, or foreign State."

In connection with this provision, we have viewed the term "present" as "synonymous with the term 'gift'," denoting "something voluntarily given, free from legal compulsion or obligation." 34 Comp. Gen. 331, 334 (1955); 37 Comp. Gen. 138, 140 (1957). "Emolument" has been defined as profit, gain, or compensation received for services rendered. 49 Comp. Gen. 819, 820 (1970); B–180472, March 4, 1974. Accordingly, and in view of the emphatic language of the Constitution (i.e., present or emolument "of any kind whatever"), we see no basis whereby trips paid for by foreign governments may be accepted by Members of Congress or members of their staffs without the consent of the Congress. If payment of the cost of a trip in a particular case be considered as an emolument for services to be rendered acceptance thereof would be categorically prohibited by the above-cited constitutional provision unless consented to by the Congress.

If on the other hand the payment of travel costs in a particular circumstance constitutes a gift, by enactment of section 7342 of title 5, United States Code, entitled "Receipt and disposition of foreign gifts and decorations," the Congress has given its consent to (quoting the Code provision in part)—

"(1) the accepting and retaining by an employee of a gift of minimal value tendered or received as a souvenir or mark of courtesy; and

"(2) the accepting by an employee of a gift of more than minimal value when it appears that to refuse the gift would be]ikely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States.

"However, a gift of more than minimal value is deemed to have been accepted on behalf of the United States and shall be deposited by the donee for

use and disposal as the property of the United States under regulations prescribed under this section."

The term "employee" is defined in section 7342 as including members of Congress.

By Executive Order 11320, the President delegated to the Secretary of State the authority to issue regulations implementing this statute. These regulations are contained in part 3 of title 22, Code of Federal Regulations (CFR). A "gift of minimal value" is defined as "any present or other thing, other than a decoration, which has a retail value not in excess of $50 in the United States." 22 CFR § 3.3(e). The statute and regulations do not specifically cover trips, and the legislative history of the Foreign Gifts and Decorations Act of 1966, of which section 7342 is a part, indicates that the statute contemplated gifts of tangible items. In any event, the intent seems clear that, although a gift of more than minimal value may be "accepted" in the limited situations indicated, the value of such gift is not to inure to the benefit of the individual recipient. Accordingly, it is our view that section 7342 would not permit the acceptance of gifts of trips abroad by Members of Congress or members of their staffs that are paid for by foreign governments.

We see no objection to the issuance of a briefing paper, setting forth the above views of our Office, in order to provide guidance to Members of the Congress regarding this matter.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General of the United States.

ADVISORY OPINION NO. 4

(Issued May 14, 1975)

ON THE PROPRIETY OF ACCEPTING CERTAIN NON-PAID TRANSPORTATION

Reason for Issuance.—The Committee has been requested in writing to express an opinion on the propriety of Members and staff of the U.S. House of Representatives accepting non-paid transportation provided under a number of circumstances. In order that all may be on notice, the response to that request is made in this Committee Advisory Opinion.

Background.—It is necessary and desirable that Members and employees of the U.S. House of Representatives, being public officials, maintain maximum contact with the public at large to provide information on the work of the House and to gain citizen input into the legislative process. To accomplish this, considerable travel is required. Under some circumstances, such travel may be appropriately provided by other than commercial means. Conversely, in some circumstances non-paid transportation offers should be declined. It is the intent of this Advisory Opinion to address both situations.

The distinction turns on the *purpose* of the transportation. At times, it will be clear that there is a single identifiable purpose. At other times there may be more than one purpose involved. The Committee stresses that the opinions hereafter stated deal with the *principal* purpose for taking the trip, such purpose to be fairly determined by the person involved, before acceptance of any nonpaid transportation.

Non-Paid Transportation Offers To Be Declined.—If the principal purpose of the trip is political campaign activity, and the host carrier is one who would be prohibited by law from making a campaign contribution, such non-paid transportation would amount to a political contribution in kind, and should not be accepted.

If the trip is principally for noncampaign purposes, and the person involved were to request the host carrier to schedule transportation expressly for the convenience of the congressional passenger, such request could be interpreted as abuse of one's public position and should be avoided.

Non-Paid Transportation Offers Which may be Accepted.—If the purpose of the trip is principally representational or even personal, and if the host carrier's purpose in scheduling the transportation is solely for the general benefit of the host, and the transportation is furnished on a space-available basis with no additional costs incurred in providing the accommodation, it would not be improper to accept such transportation.

If the purpose of the transportation is to enable the congressional passenger, in his role as a public official, to be present at an event for the general benefit of an audience, the accommodation should be construed as accruing to the benefit of the audience—not the passenger—and it would not be improper to accept such transportation.

The above principle can be similarly applied to situations in which a congressional passenger is transported in connection with the receipt of an honorarium. Under such circumstances, the transportation may be accepted in lieu of monetary reimbursement for travel to which the passenger would otherwise be entitled.

Congressional officials, like other public officials and private persons, are on occasion invited as guests on scheduled airlines' inaugural flights. Specific authority to provide such non-paid transportation is contained in 14 CFR 223.8 and 399.34. Assuming that the conditions of these sections are strictly met, the Committee finds that there would be nothing improper in the acceptance of such inaugural flights.