

RPWG
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PUBLIC PARTICIPATION WORK GROUP
JUNE 25, 1992
8:30 a.m.

Attendees:

Ken Rice
LJ Evans
Barbara Iseah
Sandy Rabinowitch
Marty Rutherford
Tim Steele
Peg Kehrer

The following agenda items were continued from the June 23, meeting:

OPERATING PROCEDURES

14. **Financial Procedures** - one basic question is will ex-officio and officio members be reimbursed for travel; Ken stated that ex-officio members could pay for their own travel and per diem; Sandy raised the question of whether there will be a need for federal representation since the ex-officio members represent the state; Pam's suggested wording was accepted regarding reimbursement; Tim suggested lowering the cost of expenditures to \$100 per month per member; it was decided that \$150 is a more reasonable amount; regarding Pam's suggestion of receipts and justification for expenditures, Tim suggested using normal governmental processes which require receipts; the following statement was added: normal federal reimbursement procedures and requirements will be followed; Pam's statement regarding review by the Administrative Director of submittals will be added.
15. **Additional Operating Procedures** - the Trustee Council has made a policy decision that these procedures are in draft until the PAG is operating and can review the operating procedures.

The Trustee Council will be provided an information copy of the changes made, possibly at the August meeting; Tim will provide Marty with the revised procedures as soon as possible for review by the Financial Committee.

FEDERAL AND STATE ETHICS LAWS

The Trustee Council asked the Restoration Team to review the state and federal ethics laws to determine if they: a) do apply or b) should apply; Ken was told to talk with Regina Sleater for an interpretation but has received no response; Marty provided copies of the state ethics laws; Ken stated he would be reluctant for this group to deal with these issues until legal comment is received;

Ken will contact Maria Lisowski for more information; Peg added that the ethics question should be clear at the beginning; Marty will contact Maria and Craig O'Connor to see if they want to be involved with Regina and Alex Swiderski in reviewing the ethics laws; a minimum of one state and one federal opinion will be requested; Tim stated that Regina usually comes back with a very restrictive interpretation, and he is nagged by the fact that by definition the PAG has a conflict of interest; the state's ethics laws do not preclude this; Tim stated that this is an advisory board and not a decision-making board; Ken stated that this could give the illusion that this group has more ability to influence the Trustee Council than they actually have; Marty stated that since this is not a decisional body, the code of ethics may not apply; Barbara will obtain a copy of the federal ethics laws and provide copies to each Public Participation Work Group member.

PUBLIC INFORMATION

Peg would like to look at public information and writing a proposal for planning public information; many comments have been received regarding the need for understandable information about this process and overall restoration; Tim argued that the process has not been defined; Sandy suggested setting up a working meeting to discuss what could be done to better inform the public; Ken suggested that the experts can put together the elements of a public involvement strategy, which could be brought back to the group for discussion; LJ and Peg were tasked as a working subgroup to 1) identify the elements of an effective public information strategy and 2) put together some reading materials prior to the next meeting.

LJ's LETTERS

Dave Gibbons gave LJ a stack of letters to develop standard replies, 100 of which have been replied to; a decision needs to be made whether these letters should be made a part of the new database tracking system; Marty stated that these letters should be a part of the electronic public record; Tim disagreed and thought that these letters should be dealt with as pre-automation correspondence and filed; Peg stated that a two line note could be used stating these letters were received prior to the automation period; Marty raised the question of what are other groups doing with pre-automation correspondence; LJ has the letters filed by subject; Tim stated that future comments will need feedback as to how they were responded to; LJ will bring a copy of these comments to Public Participation Work Group meetings in the future; Marty asked if the work group boxes are standing boxes or merely for a particular issue; it was decided that these are standing boxes; Sandy stated that comments to RPWG are dealt with as they are received and the plan is the response; Tim stated that letters should be initially screened by Dave and forwarded to the work groups for input; LJ stated that the responses to letters need to be handled at a second

level by someone making policy decisions; LJ will share these comments with the Process Work Group for some decisions on processing of comments; the Process Work Group asked LJ to write steps for this process; it was decided that the old letters will not be factored into the automation process, and LJ will give these to Peg Thompson for the Administrative Record; LJ stated that most of the letters are regarding habitat protection; Marty will review the letters on Thursday.

MEETING

The next meeting is August 10, 9:00 - 2:00, and the agenda may include PAG implementation. Meeting adjourned at 10:15.

UNITED STATES
CODE
ANNOTATED

Title 5

Government
Organization
and Employees
§§ 7101 to 8500

SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

§ 7211. Employees' right to petition Congress

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

Added Pub.L. 95-454, Title VII, § 703(a)(3), Oct. 13, 1978, 92 Stat. 1217.

Historical Note

Effective Date. Section effective 90 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title. **Legislative History.** For legislative history and purpose of Pub.L. 95-454, see 1978 U.S.Code Cong. and Adm.News, p. 2723.

Library References

United States 40.

C.J.S. United States §§ 38 to 40.

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I. REGULATION OF CONDUCT

Sec.

7301. Presidential regulations.

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

7311. Loyalty and striking.

7312. Employment and clearance; individuals removed for national security.

7313. Riots and civil disorders.

SUBCHAPTER III—POLITICAL ACTIVITIES

7321. Political contributions and services.

7322. Political use of authority or influence; prohibition.

7323. Political contributions; prohibition.

7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.

7325. Penalties.

7326. Nonpartisan political activity permitted.

7327. Political activity permitted; employees residing in certain municipalities.

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

[7341. Repealed.]

7342. Receipt and disposition of foreign gifts and decorations.

SUBCHAPTER V—MISCONDUCT

7351. Gifts to superiors.

7352. Excessive and habitual use of intoxicants.

Historical Note

1968 Amendment. Pub.L. 90-351, Title V, § 1001(b), June 19, 1968, 82 Stat. 235, substituted "Employment Limitations" for "Loyalty Security, and Striking" as the subchapter II heading and added item 7313. **1967 Amendment.** Pub.L. 90-83, § 1(46), Sept. 11, 1967, 81 Stat. 209, inserted "Gifts and" preceding "Decorations" in the heading for subchapter IV, deleted item 7341, and added item 7342.

SUBCHAPTER I—REGULATION OF CONDUCT

§ 7301. Presidential regulations

The President may prescribe regulations for the conduct of employees in the executive branch.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 524.

Historical and Revision Notes

Derivation: United States Code Revised Statutes and Statutes at Large
 5 U.S.C. 631 (last 16 words) R.S. § 1753 (last 16 words).

Explanatory Notes

The words "employees in the executive branch" are substituted for "persons who may receive appointments in the civil service".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Delegation of Functions. For the delegation to the Office of Personnel Management of authority of the President to establish regulations for the conduct of persons in the civil service under former section 631 of this title, see section 601 of Ex.Ord.No.11222, May 8, 1965, 30 F.R. 6469, set out as a note under section 201 of Title 18, Crimes and Criminal Procedure.

For the delegation to the Office of Personnel Management of various functions vested in the President, see Ex.Ord.No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

Emergency Preparedness Functions. For assignment of certain emergency preparedness functions to the Office of Personnel Management, see Parts 1, 28, and 30 of Ex.Ord.No.11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2292 of Title 50, Appendix, War and National Defense.

Code of Ethics for Government Service. House Concurrent Resolution No. 175, July 11, 1958, 72 Stat. B12 provided that:

"Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

"CODE OF ETHICS FOR GOVERNMENT SERVICE

"Any person in Government service should:

"1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government Department.

"2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

"3. Give a full day's labor for a full day's pay: giving to the performance of his duties his earnest effort and best thought.

"4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

"5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not: and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

"6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

"7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

"8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

"9. Expose corruption wherever discovered.

"10. Uphold these principles, ever conscious that public office is a public trust."

EXECUTIVE ORDER NO. 9845

Ex.Ord.No.9845, Apr. 28, 1947, 12 F.R. 2799, formerly set out as a note under this section, which permitted Bureau of Reclamation employees to accept appointments as constables or deputy sheriffs under state or territorial laws, was revoked by Ex.Ord.No.11408, Apr. 25, 1968, 33 F.R. 6459.

EXECUTIVE ORDER NO. 11491

Ex.Ord.No.11491, Oct. 29, 1969, 34 F.R. 17605, as amended, is now set out as a note under section 7101 of this title.

Library References

United States 41.

C.J.S. United States § 41.

Code of Federal Regulations

Determinations, etc., of suitability, see 5 CFR 731.201 et seq.

Employment of relatives, see 5 CFR 310.101 et seq.

Federal labor relations organization, programs, etc., see 5 CFR chap. XIV.

Nondisciplinary separations, etc., see 5 CFR 715.201 et seq.

Political activities, see 5 CFR 733.101 et seq.

Notes of Decisions

Power of federal government 1

State regulation or control 2

2. State regulation or control

Congress must clearly manifest an intention to regulate for itself activities of its employees, which are apart from their governmental duties, before the police power of the state is powerless. *Railway Mail Ass'n v. Corsi*, N.Y.1945, 65 S.Ct. 1483, 326 U.S. 88, 89 L.Ed. 2072.

1. Power of federal government

The federal government has power to control objectionable official conduct by its employees and officers. *State of Ohio v. U. S. Civil Service Commission*, D.C. Ohio 1946, 65 F.Supp. 770.

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

Historical Note

1968 Amendment. Pub.L. 90-351, Title for "Loyalty, Security, and Striking" in V, § 1001(c), June 19, 1968, 82 Stat. 235, the heading substituted "Employment Limitations"

§ 7311. Loyalty and striking

An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

(1) advocates the overthrow of our constitutional form of government;

(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts

the right to strike against the Government of the United States or the government of the District of Columbia.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 524.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 118p [Uncodified]	Aug. 9, 1955, ch. 690, § 1, 69 Stat. 624. June 29, 1956, ch. 479, § 3, (as applicable to the Act of Aug. 9, 1955, ch. 690, § 1, 69 Stat. 624), 70 Stat. 453.

Explanatory Notes

The word "position" is coextensive with and is substituted for "office or employment".

In paragraphs (1) and (2), the words "in the United States" in former section 118p(1), (2) are omitted as unnecessary in view of the reference to "our constitutional form of government".

In paragraphs (3) and (4), the reference to the "government of the District of Columbia" is added on authority of

the Act of June 29, 1956, in order to make these paragraphs meaningful with respect to individuals employed by the government of the District of Columbia. The words "From and after July 1, 1956", appearing in the Act of June 29, 1956, are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EXECUTIVE ORDER NO. 10450

Apr. 27, 1953, 18 F.R. 2489, as amended by Ex.Ord.No.10491, Oct. 15, 1953, 18 F.R. 6583; Ex.Ord.No.10531, May 27, 1954, 19 F.R. 3069; Ex.Ord.No.10548, Aug. 3, 1954, 19 F.R. 4871; Ex.Ord.No.10550, Aug. 6, 1954, 19 F.R. 4981; Ex.Ord.No.11605, July 2, 1971, 36 F.R. 12831, Ex.Ord.No.11785, June 4, 1974, 39 F.R. 20053; Ex.Ord.No.12107, Dec. 28, 1978, 44 F.R. 1055.

SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYEES

Whereas the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

Whereas the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:

Now, Therefore, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) [now sections 3301 and 7301 of this title]; the

Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632 et seq.) [now section 1101 et seq. of this title]; section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j) [now sections 3333 and 7311 of this title]; and the act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22-1 et seq.) [now section 7501 et seq. of this title], and as President of the United States, and deeming such action necessary in the best interests of the national security it is hereby ordered as follows:

Section 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951 the provisions of that act shall apply to all other departments and agencies of the Government.

Sec. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly con-

sistent with the interests of the national security.

Sec. 3. (a) The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law-enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: Provided, that upon request of the head of the department or agency concerned, the Office of Personnel Management may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: Provided, that a person occupying a sensitive position at the time it is designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: And provided further, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field pre-appointment investigation has not been completed if the head of the department or agency concerned finds

that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

Sec. 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.

Sec. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

Sec. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interest of the national security and, following such investigation and review as he deems necessary the head of the department or agency concerned shall terminate the employment of such suspended officer in the interests of the national security, or employee whenever he shall determine such termination necessary or advisable in accordance with the said act of August 26, 1950.

Sec. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the

same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: Provided, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Office of Personnel Management that such person is eligible for such employment.

Sec. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security:

(i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(ii) Any deliberate misrepresentations, falsifications or omissions of material facts.

(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction or sexual perversion.

(iv) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts threat or preparation therefor, or conspiring with, or aiding or abetting another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy,

traitor, seditionist, anarchist, or revolutionist, or with any espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

(5) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

(6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Office of Personnel Management, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Office. The Office shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the com-

petitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the investigative facilities of the Office of Personnel Management and other departments and agencies may use such facilities under agreement with the Office.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (8) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

Sec. 9. (a) There shall be established and maintained in the Office of Personnel Management a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Office under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 28, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Office of Personnel Management information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto ex-

cept with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 28, 1950, as may be required for the efficient conduct of Government business.

Sec. 10. Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

Sec. 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Office of Personnel Management on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: Provided, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of Investigation or the Office of Personnel Management on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

Sec. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked.

Sec. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

Sec. 14. (a) The Office of Personnel Management with the continuing advice and collaboration of representatives of

such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of or directly or indirectly weaken, the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Office of Personnel Management shall report to the National Security Council, at least semiannually, on the results of such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.

EXECUTIVE ORDER NO. 11605

Ex.Ord.No.11605, July 2, 1971, 36 F.R. 12831, which amended Ex.Ord.No.10450, Apr. 27, 1953, 18 F.R. 2489, set out above, which related to security requirements

(b) All departments and agencies of the Government are directed to cooperate with the Office of Personnel Management to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

(c) To assist the Office of Personnel Management in discharging its responsibilities under this order, the head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this order, advise the Office as to the action taken with respect to such officer or employee. The information furnished by the heads of departments and agencies pursuant to this section shall be included in the reports which the Office of Personnel Management is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.

Sec. 15. This order shall become effective thirty days after the date hereof.

for government employees, was revoked by Ex.Ord.No.11785, June 4, 1974, 39 F.R. 20053, set out below.

EXECUTIVE ORDER NO. 11785

June 4, 1974, 39 F.R. 20053

SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYEES

By virtue of the authority vested in me by the Constitution and statutes of the United States, including 5 U.S.C. 1101 et seq., 3301, 3571, 7301, 7313, 7501(c), 7512, 7532, and 7533 [sections 1101 et seq., 3301, 3571, 7301, 7313, 7501(c), 7512, 7532, and 7533 of this title]; and as President of the United States, and finding such action necessary in the best interests of national security, it is hereby ordered as follows:

Section 1. Section 12 of Executive Order No. 10450 of April 27, 1953, as amended [set out as a note above], is revised to read in its entirety as follows:

"Sec. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked."

Sec. 2. Neither the Attorney General, nor the Subversive Activities Control

Board, nor any other agency shall designate organizations pursuant to section 12 of Executive Order No. 10450, as amended, nor circulate nor publish a list of organizations previously so designated. The list of organizations previously designated is hereby abolished and shall not be used for any purpose.

Sec. 3. Subparagraph (5) of paragraph (a) of section 8 of Executive Order No. 10450, as amended, is revised to read as follows:

"Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advo-

cates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United

States or any State or subdivision thereof by unlawful means."

Sec. 4. Executive Order No. 11605 of July 2, 1971, is revoked.

RICHARD NIXON

Cross References

Affidavit that acceptance of office will not violate this section, see section 3333 of this title.

Disloyalty and asserting the right to strike against the government, public officers and employees, see section 1918 of Title 18, Crimes and Criminal Procedure.

Library References

Officers 25.
United States 36.

C.J.S. Officers § 34.
C.J.S. United States §§ 36, 37, 62 to 64.

Notes of Decisions

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2. Constitutionality

Dismissal of government employees on loyalty grounds is not unconstitutional per se. *Vitarelli v. Seaton*, 1958, 253 F.2d 338, 102 U.S.App.D.C. 316, reversed on other grounds 79 S.Ct. 968, 350 U.S. 535, 3 L.Ed.2d 1012.

Former section 118j of this title [now covered in sections 3333 and 7311 of this title and section 1918 of Title 18] which made it unlawful for a government employee to have membership in an organization advocating overthrow of government of United States was valid, since Congress may prescribe qualifications of government employees and attach conditions to their employment. *Joint Anti-Fascist Refugee Committee v. Clark*, 1949, 177 F.2d 79, 85 U.S.App.D.C. 255, reversed on other grounds 71 S.Ct. 624, 341 U.S. 123, 95 L.Ed. 817.

Former section 118j of this title [now covered in sections 3333 and 7311 of this title and section 1918 of Title 18] or loyalty program did not deprive organization designated as subversive or its members of any property rights, freedom of speech and assembly or freedom of thought and belief, since anyone was free to join organization and give it his support and encouragement in accordance with constitutional rights to do such things, but no one has a constitutional right to be a government employee. *Id.*

Congress has obligation to ensure that machinery of federal government continues to function at all times without interference, and prohibition of strikes by its employees is reasonable implementation of such obligation. *United Federation of Postal Clerks v. Blount*, D.C.D.C. 1971, 325 F.Supp. 879, affirmed 92 S.Ct. 80, 404 U.S. 802, 30 L.Ed.2d 38.

1. Common law

At common law, no employee, whether public or private, had constitutional right to strike in concert with his fellow workers. *United Federation of Postal Clerks v. Blount*, D.C.D.C. 1971, 325 F.Supp. 879, affirmed 92 S.Ct. 80, 404 U.S. 802, 30 L.Ed.2d 38.

It is not irrational or arbitrary, from standpoint of equal protection, for federal government to condition employment by it or by District of Columbia on promise not to withhold labor collectively, and to prohibit strikes by those in such public employment, whether such employees be regarded as in essential or nonessential work and whether or not some positions in private industry are arguably more affected with public interest than are some positions in government service. *Id.*

This section which prohibited government employees from asserting right to strike and administration of oath in which employee states that he will not assert the right to strike, violated U.S.C.A. Const. Amend. 1. *National Ass'n of Letter Carriers v. Blount*, D.C.D.C. 1969, 305 F.Supp. 546, appeal dismissed 91 S.Ct. 7, 400 U.S. 801, 27 L.Ed.2d 33.

This section prohibiting an individual from accepting or holding a position in the government of the United States or the government of the District of Columbia if he advocates the overthrow of the government or is a member of an organization which he knows to be engaged in such advocacy, together with employee's oath incorporating this section, is unconstitutional as abridging a person's right to freedom of association. *Stewart v. Washington*, D.C.D.C. 1969, 301 F.Supp. 610.

This section as applied requiring college instructor on faculty of Federal City College of District of Columbia to take an oath that he is not and will not knowingly become a member of organization that advocates overthrow of our constitutional form of government is unconstitutional because of overbreadth in that it covers passive and inert members of organization as well as leaders and active members and covers members indifferent or even opposed to that objective of organization as well as those specifically intending its furtherance. *Haskett v. Washington*, D.C.D.C. 1968, 204 F.Supp. 912.

3. Rules and regulations

President's failure to express disapproval of regulation which purported to authorize Loyalty Review Board to do things that Board was not authorized to do under Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a note under this section, could not be deemed to constitute President's acquiescence in such regulation and, thus, an implied extension by President of Board's power under the Executive Or-

der. *Peters v. Hobby*, App.D.C.1955, 75 S.Ct. 790, 349 U.S. 331, 99 L.Ed. 1129.

Right to strike is more vulnerable to regulation than right to organize and select representatives for lawful purposes of collective bargaining. *United Federation of Postal Clerks v. Blount*, D.C.D.C. 1971, 325 F.Supp. 879, affirmed 92 S.Ct. 80, 404 U.S. 802, 30 L.Ed.2d 38.

4. Administrative rulings, opinions and interpretations

Loyalty Review Board memorandum that if any federal employee is found to be a member of an organization seeking to alter the United States form of government by unconstitutional means his removal is mandatory was inconsistent with the scheme of the loyalty program which made disloyalty to the government the bar to employment, rather than membership in a designated organization, and, hence, the memorandum was void. *Kutcher v. Gray*, 1952, 199 F.2d 733, 91 U.S.App.D.C. 266.

Where postal employees were suspended by Postmaster General after finding by departmental loyalty board of reasonable grounds for belief of disloyalty, and finding of reasonable grounds was reversed by Loyalty Review Board of Civil Service Commission [now Office of Personnel Management], Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as note under this section making test for removal a reasonable doubt as to loyalty, Commission memorandum directing each department to adjudicate in accordance with latter test all loyalty cases in which unfavorable determinations made by any board had been reversed on appeal, did not require that employees petition for review of their suspension by departmental board before bringing suit for loss of salary during period of suspension. *Barnes v. U. S.*, Ct.Cl.1952, 108 F.Supp. 382.

5. Persons prohibited from striking

By virtue of their governmental employment, right of federal employees working aboard government vessels to join unions and to select bargaining representatives, unlike that of private seamen, exists only by express leave of President, and they are forbidden, under pain of discharge, fine and imprisonment, from exercising or asserting right to strike. *Amell v. U. S.*, Ct.Cl.1966, 86 S.Ct. 1384, 384 U.S. 158, 16 L.Ed.2d 445.

Public employees stand on no stronger footing, as respects right to strike, than private employees, and, in absence of statute, do not possess right to strike.

United Federation of Postal Clerks v. Blount, D.C.D.C.1971, 325 F.Supp. 879, affirmed 92 S.Ct. 80, 404 U.S. 802, 30 L.Ed. 2d 38.

Tennessee Valley Authority employees are subject to former section 118p of this title [now this section] denying federal employment to persons asserting right to strike against government and to former section 118r of this title [now section 1918 of Title 18] making violation of former section 118p of this title a felony. *TVA v. Local Union No. 110 of Sheet Metal Workers' Intern. Ass'n of Louisville, Ky.*, D.C.Ky.1962, 233 F.Supp. 997.

6. Actions constituting strikes

Word "strike" as used in this section and section 1918 of Title 18 relating to strike against United States government or agency or District of Columbia and word "participates" as used in such sections, mean, in essence, actual refusal in concert with others to provide services to employer; as so interpreted, statutes are not void for vagueness or overbreadth nor violative of U.S.C.A. Const. Amend. 1 rights or of U.S.C.A. Const. Amend. 5 right of due process. *United Federation of Postal Clerks v. Blount*, D.C.D.C.1971, 325 F.Supp. 879, affirmed 92 S.Ct. 80, 404 U.S. 802, 30 L.Ed.2d 38.

Concerted actions of members of local union in refusing to report to work at steam plant of Tennessee Valley Authority and in maintaining picket line there constituted "strike" in violation of this section denying federal employment to persons asserting right to strike against government, of second statute making violation of the first a felony, and of general agreement of labor council not to permit its members to engage in work stoppages pending settlement of disputes with Authority. *TVA v. Local Union No. 110 of Sheet Metal Workers' Intern. Ass'n of Louisville, Ky.*, D.C.Ky.1962, 233 F.Supp. 997.

7. Consistency with national security interests

Ex.Ord.No.10450, set out as a note under this section, implementing former section 22-1 et seq. of this title [now section 7331 et seq. of this title] authorizing suspension and dismissal of government employees for security reasons, though prescribing as standard for dismissal the formula that retention in employment is "not clearly consistent with the interests of the national security," does not in fact require determination of relationship of employee's retention to national security but requires discharge of any employee of doubtful loyalty irrespective of charac-

ter of his job and relationship to national security, and treats adverse determination on loyalty as adequate to satisfy statutory requirements, and hence goes beyond intent of Congress. *Cole v. Young*, App.D.C.1956, 76 S.Ct. 861, 351 U.S. 536, 100 L.Ed. 1396.

8. Suspension of pay

Even if former section 652(a) [now section 7501] of this title was not applicable to plaintiff, ample authority for the action of the Department of Labor Loyalty Board in suspending plaintiff without pay was found in the provisions of Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out in note under this section, under which the Board acted. *Brown v. U. S.*, 1952, 122 Ct.Cl. 361.

9. Duty and function of department heads

The head of each department possesses inherent right to review any loyalty case; and, indeed, it is continuing duty of any department or administrative agency to execute its function in such fashion as may be required to effectuate its purposes and to accomplish its objectives. *Jason v. Summerfield*, 1954, 214 F.2d 273, 94 U.S.App.D.C. 197, certiorari denied 75 S.Ct. 48, 348 U.S. 840, 99 L.Ed. 662.

10. Administrative nature of loyalty program proceedings

Proceedings against an employee under the loyalty program are purely administrative in character, in no sense criminal, and do not require the constitutional and traditional safeguards of a judicial trial. *Kutcher v. Gray*, 1952, 199 F.2d 733, 91 U.S.App.D.C. 266.

11. Jurisdiction of Loyalty Review Board

Where Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a note under this section, limited Loyalty Review Board's jurisdiction to appeals from adverse rulings and to appeals referred to Board by employee or his department, Board's regulations were invalid to extent that they asserted Board's authority over appeals from favorable rulings and authority in Board to adjudicate individual cases on Board's own motion. *Peters v. Hobby*, App.D.C.1955, 75 S.Ct. 790, 349 U.S. 331, 99 L.Ed. 1129.

Under Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a note under this section, authorizing Loyalty Review Board to review cases involving persons recommended for dismissal on grounds relating to loyalty by loyalty board of any department or agen-

cy and providing that such case may be referred to Loyalty Review Board either by employing department or agency or by officer or employee concerned, Loyalty Review Board does not have power to undertake review on its own motion. *Id.*

12. Hearing

Interior Order No. 2738, dealing with dismissal of a governmental employee on loyalty or security grounds giving the employee the right "to cross-examine any witness offered in support of the charges" does not require the department involved to call witnesses to testify in support of any or all of the charges, because it was expected that charges might rest on information gathered from or by confidential informants. *Vitarelli v. Seaton*, App.D.C.1959, 79 S.Ct. 968, 359 U.S. 535, 3 L.Ed.2d 1012.

Interior Order No. 2738, requiring that hearings dealing with dismissal of a governmental employee on loyalty or security grounds shall be "orderly" and that "reasonable restrictions shall be imposed as to relevancy, competency, and materiality of matters considered", were not observed where hearing developed into a wide ranging inquisition as to employee's educational, social and political beliefs, encompassing even a question as to whether employee was "a religious man". *Id.*

Interior Order No. 2738, dealing with dismissal of a governmental employee on loyalty and security grounds giving the employee the right to cross-examine any witness offered in support of the charges was violated in proceedings brought against the government employee under Ex.Ord.No.10450, set out as a note under this section, where security officer identified by name a person who had given information apparently considered detrimental to the employee, thus negating any possible inference that that person was considered a confidential informant, but nevertheless questioned employee at some length concerning information supplied from such source without calling the informant and affording employee the right to cross-examine. *Id.*

Former United States Post Office Department [now United States Postal Service] employee, who had been discharged on account of reasonable ground for belief of disloyalty, was entitled to trial-type hearing in proceeding to terminate his annuity rights on ground of false statements and concealment of material facts relating to his affiliation with Communist Party. *Garrott v. U. S.*, 1965, 340 F.2d 615, 169 Ct.Cl. 188.

Where commandant of certain naval district and others conducted summary proceedings to investigate conduct and associations which allegedly tended to cast doubt upon loyalty of lieutenant in Naval Reserve, and lieutenant offered to resign from service, if proceedings were nevertheless continued, lieutenant would be entitled to full hearing which due process under military law would require for any disciplinary or court-martial proceeding. *McTernan v. Rodgers*, D.C. Cal.1953, 113 F.Supp. 638.

Validity of summary proceedings, wherein normal essentials of due process were lacking, by commandant of certain naval district and others to investigate conduct and associations which allegedly tended to cast doubt upon loyalty of lieutenant in Naval Reserve, would have to rest upon executive finding that such proceedings were required for national security. *Id.*

The requirements of due process clause of U.S.C.A.Const. Amend. 5 apply only to judicial proceedings and to proceedings of quasi judicial nature and do not apply to employer-employee relationship as between government and its employees and do not apply to hearing contemplated by Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a note under this section prescribing procedures for administration of employees' loyalty program in executive branch of government. *Washington v. Clark*, D.C.D.C.1949, 84 F. Supp. 964, affirmed 182 F.2d 373, 86 U.S. App.D.C. 343, affirmed 71 S.Ct. 795, 341 U.S. 923, 95 L.Ed. 1356.

13. Case or controversy

Justiciable controversy existed in action by public employee union attacking constitutionality of this section and oath prohibiting public employee from asserting right to strike even though employee could test validity of this section and oath at time any action was taken against him because of his violation of this section or oath. *National Ass'n of Letter Carriers v. Blount*, D.C.D.C.1969, 305 F.Supp. 546, appeal dismissed 91 S.Ct. 7, 400 U.S. 801, 27 L.Ed.2d 33.

14. Exhaustion of administrative remedies

In absence of allegation that superior officers put impediments in way of normal administrative appellate route, discharged air controllers, who had not shown that administrative appeal they were entitled to would have been futile or that available administrative remedies were faulty or inadequate, were denied a stay pending appeal from judgment dis-

missing their suit for alleged wrongful discharge on ground that they had not exhausted their administrative remedies. *Ogden v. Department of Transp., C.A. Mich.*1970, 430 F.2d 680.

Absent showing that threatened suspension would be on security grounds rather than for inactivity in employment application, which had also been suggested, there was no such "clearly illegal" action threatened as would justify granting judicial relief against threatened action by Civil Service Commission [now Office of Personnel Management], to post office employee who had failed to exhaust administrative remedies notwithstanding employee's contention that Commission had been ousted of jurisdiction by section 7531 et seq. of this title giving Postmaster General discretion to suspend for security reasons. *Leiner v. Rossell*, D.C. N.Y.1954, 121 F.Supp. 27.

Government employee's suit to enjoin readjudication of issue of his loyalty to government of United States was premature, under general rule as to exhaustion of administrative remedies, where only administrative action taken against him had been service of "notice of proposed removal action", and there was possibility that administrative tribunal might rule favorably on employee's contention that prior adjudication of issue, under Ex.Ord.No.10241, fixing different loyalty standard, was res judicata. *Jason v. Alger*, D.C.D.C.1952, 104 F.Supp. 653.

15. Persons entitled to maintain action

Even though this section prohibiting government employee from asserting right to strike contained no sanctions against public employee union for asserting right to strike, union has standing to bring action attacking constitutionality of this section and employment oath administered to employees. *National Ass'n of Letter Carriers v. Blount*, D.C.D.C.1969, 305 F.Supp. 546, appeal dismissed 91 S.Ct. 7, 400 U.S. 801, 27 L.Ed.2d 33.

16. Res Judicata

Standard imposed by Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a note under this section, authorizing dismissal if "reasonable grounds exist for belief that the person involved is disloyal" was not the same standard as that imposed by Ex.Ord.No. 10241 authorizing removal if "there is a reasonable doubt as to the loyalty of the person involved", and fact that Loyalty Review Board in Civil Service Commission [now Office of Personnel Management] had concluded in 1950 that reasonable grounds did not exist for believing

that employee was disloyal did not preclude reexamination in 1952 hearing on same charges under standard set up in Ex.Ord.No.10241. *Jason v. Summerfield*, 1034, 214 F.2d 273, 94 U.S.App.D.C.197, certiorari denied 75 S.Ct. 48, 348 U.S. 840, 99 L.Ed. 662.

17. Dismissal

Where it was necessary to dismiss government employee's suit to enjoin readjudication of loyalty issue because of his failure to exhaust his administrative remedies, but a serious question was raised as to whether prior adjudication of loyalty issue, under previous Ex.Ord.No.9835, setting up different loyalty standard than that presently in effect under Ex. Ord.No.10450, set out as a note under this section, should estop further adjudication of issue, dismissal would be without prejudice to plaintiff's right to file another suit, if and when adverse decision were rendered in administrative process. *Jason v. Alger*, D.C.D.C.1952, 104 F.Supp. 653.

18. Admissibility of evidence

Where Federal Bureau of Investigation, the Civil Service Commission [now Office of Personnel Management], and Department of State were authorized to interrogate federal employee who was employed on a conditional basis, subject to character and fitness investigation, questions as to whether employee was a member of Communist Party, as to whether he had ever participated in any of its activities, etc., were relevant and within scope of investigation. *U. S. v. Marzani*, D.C.D.C. 1947, 71 F.Supp. 615, affirmed 168 F.2d 133, affirmed 69 S.Ct. 299, 335 U.S. 895, 93 L.Ed. 431, adhered to on rehearing 69 S. Ct. 653, 336 U.S. 922, 93 L.Ed. 1084.

19. Declaratory judgment

Federal courts could entertain a declaratory judgment action brought by federal government employee against Administrator of the Federal Security Agency, members of the Civil Service Commission [now Office of Personnel Management], members of its Loyalty Review Board and members of regional loyalty board for purpose of determining employee's right to reinstatement in the government employ after employee had been rated ineligible without a trial on ground of superiors' belief of employee's disloyalty. *Bailey v. Richardson*, 1950, 182 F.2d 46, 86 U.S.App.D.C. 248, affirmed 71 S.Ct. 669, 341 U.S. 918, 95 L.Ed. 1352.

In action for declaratory judgment as to validity of Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a

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note under this section, prescribing procedures for administration of employees' loyalty program in executive branch of government and for injunction against enforcement of Executive Order, court would consider whether Executive Order was violative of Constitution or laws of United States, but would not review expediency, desirability, and policy of Executive Order. *Washington v. Clark*, D.C.D.C.1949, 84 F.Supp. 984, affirmed 182 F.2d 375, 86 U.S.App.D.C. 343, affirmed 71 S.Ct. 795, 341 U.S. 923, 95 L.Ed. 1356.

20. Injunction

Evidence sustained finding that defendants violated preliminary injunction against concerted efforts directed at work slow down and willfully failed to supply medical information required by preliminary injunction. *U. S. v. Robinson*, C.A. Alaska 1971, 449 F.2d 925.

Preliminary injunction restraining air traffic controllers from continuing to encourage or take part in work stoppage or slow down and requiring them to immediately notify their superior of their mental and physical condition and to furnish supporting medical data was not too vague to be criminally enforced. *Id.*

Where government had proven a prima facie case of illegal work stoppage by air traffic controllers employed by Federal Aviation Agency it was improper to preliminarily enjoin the Agency from taking any disciplinary action against the controllers based upon the work stoppage. *U. S. v. Professional Air Traffic Controllers Organization (PATCO)*, C.A.N.Y.1970, 438 F.2d 79, certiorari denied 91 S.Ct. 1373, 402 U.S. 915, 28 L.Ed.2d 661.

Preliminary injunction restraining 16 local unions representing substantial number of postal carrier employees in the District of Connecticut and their officers, agents, servants and employees from encouraging or engaging in any strike against United States Post Office Department (now United States Postal Service) or affecting orderly continuance of operations of postal service was justified, since

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strike was unlawful remedy at law was inadequate. *U. S. v. Branch 60 National Ass'n of Letter Carriers, AFL-CIO*, Stamford, Conn., D.C.Conn.1970, 312 F.Supp. 619.

Tennessee Valley Authority would suffer irreparable injury as result of picketing or other interference or obstruction with reference to construction of steam plant and was therefor entitled to preliminary injunction restraining such picketing or interference. *Tennessee Val. Authority v. Local Union No. 110 of Sheet Metal Workers' Intern. Ass'n of Louisville, Ky.*, D.C.Ky.1962, 233 F.Supp. 997.

Peaceful picketing for unlawful purpose will be enjoined. *Id.*

21. Orders and decisions appealable

Appeal would lie from order staying administrative action of Federal Aviation Administration as regards removal and suspension of air traffic controllers, who participated in work slow-down pending disposition of issues in civil actions seeking permanent injunction. *U. S. v. Moore*, C.A.Colo.1970, 427 F.2d 1020.

22. Affirmance

In action brought by federal employee in classified civil service seeking an order directing her reinstatement in government employ after her dismissal without trial because of her superiors' belief that there were reasonable grounds to believe that employee was disloyal to government of United States, judgment denying reinstatement was affirmed by equally divided court. *Bailey v. Richardson*, App.D.C.1951, 71 S.Ct. 669, 341 U.S. 918, 95 L.Ed. 1352.

23. Certiorari to Supreme Court

The United States Supreme Court would grant certiorari to consider validity of discharge of a former governmental employee under Ex.Ord.No.10450, set out as a note under this section, relating to sensitive positions. *Vitarelli v. Seaton*, D.C.1959, 79 S.Ct. 968, 359 U.S. 535, 3 L.Ed.2d 1012.

§ 7312. Employment and clearance; individuals removed for national security

Removal under section 7532 of this title does not affect the right of an individual so removed to seek or accept employment in an agency of the United States other than the agency from which removed. However, the appointment of an individual so removed may be made only after the head of the agency concerned has consulted

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with the Office of Personnel Management. The Office, on written request of the head of the agency or the individual so removed, may determine whether the individual is eligible for employment in an agency other than the agency from which removed.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 524; Pub.L. 95-454, Title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 22-1 (4th and 5th provisos)	Aug. 28, 1950, ch. 803, § 1 (4th and 5th provisos), 64 Stat. 477.

Explanatory Notes

The words "Removal under section 7532 of this title" and "so removed" are coextensive with and substituted for "termination of employment herein provided" and "whose employment has been terminated under the provisions of said sections", respectively.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1978 Amendment. Pub.L. 95-454 substituted "Office of Personnel Management"

for "Civil Service Commission" and "Office" for "Commission".

Effective Date of 1978 Amendment. Amendment by Pub.L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-454, see 1978 U.S.Code Cong. and Adm.News, p. 2723.

Library References

Officers \hookrightarrow 25, 71.
United States \hookrightarrow 36.

C.J.S. Officers and Public Employees §§ 34, 108, 111, 117, 120, 146, 148.
C.J.S. United States §§ 36, 37, 62 to 64.

Code of Federal Regulations

Department of Defense programs, see 32 CFR 156.1 et seq.
Personnel security, see 5 CFR 732.401 et seq.

§ 7313. Riots and civil disorders

(a) An individual convicted by any Federal, State, or local court of competent jurisdiction of—

- (1) inciting a riot or civil disorder;
- (2) organizing, promoting, encouraging, or participating in a riot or civil disorder;
- (3) aiding or abetting any person in committing any offense specified in clause (1) or (2); or
- (4) any offense determined by the head of the employing agency to have been committed in furtherance of, or while participating in, a riot or civil disorder;

shall, if the offense for which he is convicted is a felony, be ineligible to accept or hold any position in the Government of the United

States or in the government of the District of Columbia for the five years immediately following the date upon which his conviction becomes final. Any such individual holding a position in the Government of the United States or the government of the District of Columbia on the date his conviction becomes final shall be removed from such position.

(b) For the purposes of this section, "felony" means any offense for which imprisonment is authorized for a term exceeding one year. Added Pub.L. 90-351, Title V, § 1001(a), June 19, 1968, 82 Stat. 235.

Historical Note

Effective Date. Section 1002 of Pub.L. 90-351 provided that: "The provisions of section 1001(a) of this title [enacting this section] shall apply only with respect to acts referred to in section 7313(a)(1)-(4) of title 5, United States Code, as added by section 1001 of this title [subsec. (a)(1) to (4) of this section], which are committed after the date of enactment of this title [June 19, 1968]."

Receipt of Benefits Under Laws Providing Relief for Disaster Victims. Section 1106(e) of Pub.L. 90-448, Title XI, Aug. 1, 1968, 82 Stat. 567, provided that: "No person who has been convicted of committing a felony during and in connection with a riot or civil disorder shall be permitted, for a period of one year after the date of his conviction, to receive any benefit under any law of the United States providing relief for disaster victims."

Legislative History. For legislative history and purpose of Pub.L. 90-351, see 1968 U.S. Code Cong. and Adm. News, p. 2312.

Library References

United States Ⓒ35, 36.

C.J.S. United States §§ 35 to 37, 62 to 64.

SUBCHAPTER III—POLITICAL ACTIVITIES

Historical Note

Commission on Political Activity of Government Personnel. Pub.L. 89-617, Oct. 3, 1966, 80 Stat. 868, as amended by Pub.L. 90-55, July 20, 1967, 81 Stat. 124, established a Commission on Political Activity of Government Personnel to make a full and complete investigation and study of the Federal laws which limit or discourage the participation of Federal and State officers and employees in political activity with a view to determining the effect of such laws, the need for their revision or elimination, and an appraisal of the extent to which undesirable results might accrue from their repeal. The Commission was directed to submit a comprehensive report of its activities and the results of its studies to the President and to the Congress on or before December 31, 1967.

§ 7321. Political contributions and services

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 525.

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Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 633(2)5	Jan. 16, 1883, ch. 27, § 2(2)5, 22 Stat. 404.

Explanatory Notes

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302 of this title.

substituted for "person in the public service" for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

The words "employee in an Executive agency or in the competitive service" are

Cross References

President's power to grant exceptions from provisions of this section, see section 3302 of this title.

Library References

Elections Ⓒ317.
United States Ⓒ36, 41.

C.J.S. Elections §§ 329, 356.
C.J.S. United States §§ 36, 37, 41, 62 to 64.

Code of Federal Regulations

Applicability, etc., see 5 CFR 733.101 et seq.

Notes of Decisions

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1. Generally

The civil service laws placed no restrictions on the power of removal from appointive offices, except for refusal to contribute to political funds or neglect to render political service. Page v. Moffett C.C.N.J. 1898, 85 F. 38.

count of his dismissal unless it was in violation of this section precluding dismissals for political reasons. McDougall v. U. S., 1957, 149 F.Supp. 651, 138 Ct.Cl. 90.

2. Right of action

A dismissed civil servant of federal government has no right of action on ac-

3. Reassignment

An order of reassignment motivated by purely political reasons was not lawful because it was violative of former section 633 of this title [now this section]. Schmidt v. U. S., 961, 145 Ct.Cl. 632.

§ 7322. Political use of authority or influence; prohibition

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 525.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 633(2)3 (1st sentence)	Jan. 16, 1883, ch. 27, § 2(2)6, 22 Stat. 404.

Explanatory Notes

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302 of this title.

The words "employee in an Executive agency or in the competitive service" are substituted for "person in said service" for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Cross References

President's power to grant exceptions from provisions of this section, see section 3302 of this title.

Library References

Elections 317.

United States 45.

C.J.S. Elections §§ 329, 356.

C.J.S. United States § 42.

§ 7323. Political contributions; prohibition

An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 525.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 118c	Aug. 15, 1876, ch. 287, § 6, 19 Stat. 169.

Explanatory Notes

The words "An employee of an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate)" are substituted for "Any executive officer or employee of the United States not appointed by the President, with the advice and consent of the Senate," because of the definitions in sections 105 and 2105. The words "an employee, a Member of Congress, or an officer of a uniformed service" are substituted for "any other officer or employee of the Government". In the last sentence, the word "removed" is substituted for "at once discharged" because of the provisions of the Lloyd-LaFollette Act, 37 Stat. 555, as amended, and the Veterans' Preference Act of 1944, 58 Stat. 387, as amended, which are carried into this title.

The criminal penalty appearing in the last 25 words of section 6 of the Act of Aug. 15, 1876, is omitted as superseded by sections 602 and 607 of title 18.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Cross References

Employees to be removed from competitive service only for cause, see section 7501 of this title.

Library References

Elections 317.

United States 45.

C.J.S. Elections §§ 329, 356.

C.J.S. United States § 42.

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litical purposes. *Soldevila v. Secretary of Agriculture of U. S., C.A.Puerto Rico* 1975, 512 F.2d 427.

1. Construction with other laws

This section providing that an employee in an Executive agency may not request or receive from, or give to, an employee, a thing of value for political purposes, is not part of the Hatch Act, Act Aug. 15, 1876, c. 287, § 6, 19 Stat. 169, and ruling of Civil Service Commission [now Office of Personnel Management] that the director had not violated section 7324 of this title, which is part of the Hatch Act, by making available to his subordinate federal employees banquet tickets for a candidate of a local Puerto Rican political party did not control the decision on the charge that the director violated this section which prohibited requesting or receiving or giving to an employee a thing of value for po-

2. Exhaustion of administrative remedies

Where Civil Service Commission [now Office of Personnel Management] was not directly bound by its previous ruling that federal employee had not violated section 7324 of this title, by making available to his subordinate federal employees banquet tickets for a local Puerto Rican party candidate and the employee had not exhausted his administrative remedies when he brought suit against Secretary of Agriculture to enjoin his discharge for alleged violation of this section prohibiting a federal employee from requesting or receiving from or giving to an employee a thing of value for political purposes, preliminary injunction enjoining the discharge was improper. *Soldevila v. Secretary of Agriculture of U. S., C.A.Puerto Rico* 1975, 512 F.2d 427.

§ 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

(2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase "an active part in political management or in political campaigns" means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

(d) Subsection (a)(2) of this section does not apply to—

(1) an employee paid from the appropriation for the office of the President;

(2) the head or the assistant head of an Executive department or military department;

(3) an employee appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;

(4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or

(5) the Recorder of Deeds of the District of Columbia.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 525; Pub.L. 93-268, § 4(a), Apr. 17, 1974, 88 Stat. 87.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 1181(a) (1st 2 sentences)	Aug. 2, 1939, ch. 410, § 9(a) (1st 2 sentences), 53 Stat. 1148. Mar. 27, 1942, ch. 199, § 701, 56 Stat. 181. July 19, 1940, ch. 640, § 4 "Sec. 14 (1st 33 words)", 54 Stat. 771.
	5 U.S.C. 118k-3 (1st 33 words)	July 19, 1940, ch. 640, § 4 "Sec. 15 (less applicability to § 12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, § 4, 54 Stat. 767)", 54 Stat. 771.
	5 U.S.C. 118l (less applicability to 5 U.S.C. 118k)	Aug. 2, 1939, ch. 410, § 9(a) (3d sentence), 53 Stat. 1148. July 19, 1940, ch. 640, § 2, 54 Stat. 767. Oct. 24, 1942, ch. 620 "Sec. 21 (less applicability to § 12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, § 4, 54 Stat. 767)", 56 Stat. 986.
(b)	5 U.S.C. 1181(a) (3d sentence)	Aug. 2, 1939, ch. 410, § 9(a) (4th sentence), 53 Stat. 1148. July 19, 1940, ch. 640, § 4 "Sec. 14 (less 1st 33 words)", 54 Stat. 771.
(c)	5 U.S.C. 118k-1 (less applicability to 5 U.S.C. 118k)	
(d)	5 U.S.C. 1181(a) (4th sentence)	
	5 U.S.C. 118k-3 (less 1st 33 words)	

Explanatory Notes

In subsection (a), the words "July 19, 1940" are substituted for "at the time this section takes effect". The amendment made by the Act of Mar. 27, 1942, is omitted because it expired Mar. 31, 1947, under section 1501 of that Act, as added June 29, 1946, ch. 526, § 1, 60 Stat. 345; 50A U.S.C. 645.

In subsection (c), the reference in the Act of Oct. 24, 1942, to section 2 of the Act of Aug. 2, 1939, is omitted as that section was repealed by the Act of June 25, 1948, ch. 645, § 21, 62 Stat. 867, and is now covered by section 595 of title 18.

In subsection (d), the exception for the President and Vice-President of the United States is omitted as unnecessary, as

they are not "employees" under the definition in section 2103. In subsection (d)(2), the words "or military departments" are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive Departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this subsec-

tion, which was in effect in 1949, remained applicable to the head or assistant head of a military department by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1974 Amendment. Subsec. (d)(4). Pub.L. 93-268 substituted "the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government

and Governmental Reorganization Act" for "the Commissioners of the District of Columbia".

Commissioner of District of Columbia and Members of District of Columbia Council Exempted from Prohibitions. Section 4(b) of Pub.L. 93-268 provided that: "Notwithstanding any other provision of law, the provisions of section 7324(a)(2) of title 5, United States Code [subsec. (a)(2) of this section], shall not be applicable to the Commissioner of the District of Columbia or the members of the District of Columbia Council (including the Chairman and Vice Chairman), as established by Reorganization Plan Numbered 3 of 1967 [set out in the Appendix to this title]."

Cross References

Political activities of state and local officers and employees, see section 1501 et seq. of this title.

Library References

Elections ☞ 317.
United States ☞ 45.

C.J.S. Elections §§ 329, 356.
C.J.S. United States § 42.

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1. Constitutionality

Prohibition of this section against federal employees taking "an active part in political management or in political campaigns" was neither unconstitutionally vague nor fatally overbroad. *U. S. Civil Service Commission v. National Ass'n of Letter Carriers, AFL-CIO*, Dist.Col.1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 796.

Congress has power to enact, in plain and understandable language, this section forbidding activities such as organizing political party or club, actively participating in fund raising activities for partisan candidate or political party, becoming partisan candidate for or campaigning for elective public office, actively managing campaign of partisan candidate for public office, initiating or circulating partisan nominating petition or soliciting votes for partisan candidate for public office, or serving as delegate, alternate or proxy to political party convention; neither U.S.C.A.Const. Amend. 1 nor any other provision of Constitution invalidates law barring such partisan political conduct by federal employees. *Id.*

Congress may regulate the political conduct of government employees within reasonable limits, though the regulation trenches to some extent upon unfettered political action, the extent of regulation lying primarily with Congress, and courts will interfere only when such interference passes beyond the general existing conception of governmental power, as developed from practice, history, and changing education, social and economic conditions. *United Public Workers of America (C.I.O.) v. Mitchell*, 1947, 67 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754.

Note 1

Provision in former section 118i of this title [now this section] forbidding officers and employees in the executive branch of the federal government, with exceptions, from taking any active part in political management or in political campaigns, under penalty of immediate removal was constitutional as applied to industrial worker whose removal from office was ordered because of his activities during his free time as a ward executive committeeman and a worker at the polls. *Id.*

Former section 118i of this title [now this section] was constitutional. *Gray v. Macy*, 1 D.C. Cir. 1965, 230 F.Supp. 658, reversed on other grounds 358 F.2d 742.

2. Construction with other laws

Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District of Columbia from otherwise applicable prohibitions of this section did not fall within exemption from notice and comment proceedings under section 553 of this title, granted to rules relating to agency management or personnel, in view of fact that outside individuals were substantially affected by such regulation. *Joseph v. U. S. Civil State Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

Regulation of Civil Service Commission [now Office of Personnel Management] under former section 118m of this title [now section 7327(b) of this title] that federal employees, who resided in certain named municipalities and political subdivisions are excepted from prohibitions of former section 118i of this title [now this section] subject to conditions that employees shall not neglect official duties or engage in nonlocal partisan political activities, and that they shall not run for local office as candidates representing political parties or become involved in political management in connection with campaign of party candidate for office, and that they shall run as independent candidates did not authorize the kind of interference with elections prohibited by former section 118i of this title restricting political activity of employees of executive branch of federal government. *Democratic State Central Committee for Montgomery County, Md. v. Andolsek*, D. C.Md. 1966, 249 F.Supp. 1009.

When procedures have been complied with, discharge of officer for political activities forbidden by former section 118i of this title [now this section] was dis-

charge for such "cause as will promote efficiency of service" under former section 803 of this title [now section 7512 of this title]. *Brown v. Macy*, D.C.La. 1963, 222 F.Supp. 639, affirmed 340 F.2d 115.

3. Purpose

In enacting prohibition against federal employees taking "an active part in political management or in political campaigns" judged with reference to preexisting Civil Service Commission [now Office of Personnel Management] determinations, Congress intended to deprive Commission of rule-making power in sense of exercising subordinate legislative role in fashioning a more expansive definition of kind of conduct that would violate prohibition against taking active part in political management or political campaigns. *U. S. Civil Service Commission v. National Ass'n of Letter Carriers*, AFL-CIO, Dist.Col. 1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 796.

The Hatch Act was enacted pursuant to a twofold congressional purpose, to protect tenure of government employees by taking political activity out of the employment, promotion, and dismissal of government employees, and to take government employees out of political activity. *United Federal Workers of America (C.I.O.) v. Mitchell*, D.C.D.C. 1944, 50 F.Supp. 621, affirmed 67 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754.

4. Effective date

While the Hatch Act became effective immediately upon its approval by the President, and ignorance or misapprehension afford no legal justification, as a practical matter, however, there was no initiation of dismissal proceedings against all whom its approval caught in a state of possible technical violation. 1940, 39 Op.Atty.Gen. 462.

5. Power of Congress

Congress may limit the full range of political activities which a federal employee might, without jeopardizing his employment, otherwise engage in. *Holden v. Finch*, 1971, 446 F.2d 1311, 144 U.S.App.D.C. 310.

6. Rules and regulations

Federal regulations specifying conduct of federal employees prohibited or permitted under this section were not impermissibly vague. *U. S. Civil Service Commission v. National Ass'n of Letter Carriers*, AFL-CIO, Dist.Col. 1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 796.

Civil Service Commission [now Office of Personnel Management] was to perform its role under this section within limits of administrative restatement of Civil Service Rule I law, modified to extent necessary to reflect provisions of 1939 and 1940 amendments to former section 118i [now this section]. *Id.*

Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District of Columbia from otherwise applicable prohibitions of this section was a legislative rule, and Commission's failure to comply with notice and comment procedures of Administrative Procedure Act, sections 551 et seq. and 701 et seq. of this title, when it promulgated such regulation rendered regulation invalid. *Joseph v. U. S. Civil State Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

Police department rule restricting police officers from interfering or using influence of their office for political reasons was not unconstitutional as being impermissibly vague. *Paulos v. Breier*, D.C.Wis. 1974, 371 F.Supp. 523, affirmed 507 F.2d 1383.

Police department rule stating that members of department shall not interfere or use influence of their office for political reasons was not unconstitutional for overbreadth. *Id.*

7. Administrative rulings, opinions and interpretations

In enacting prohibition against federal employees taking "an active part in political management or political campaigns" judged with reference to preexisting Civil Service Commission [now Office of Personnel Management] determination, Congress intended administrative restatement of Civil Service Rule I law, modified to extent necessary to reflect provisions of 1939 and 1940 amendments to former section 118i [now this section] themselves, to serve as congressional definition of general proscription against partisan activities. *U. S. Civil Service Commission v. National Ass'n of Letter Carriers*, AFL-CIO, Dist.Col. 1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 796.

The submitted cases involved disputed questions of fact determinable by the Secretary of the Interior and did not in their current stage warrant an opinion by the Attorney General whether the activities of the affected employees came within the inhibition of this section. 1940, 39 Op.Atty.Gen. 462.

The practice of issuing informal interpretations of the Hatch Act has been discontinued, but the rulings previously made are not revoked. 1940, 39 Op.Atty.Gen. 446.

The heads of the departments are authorized to request opinions upon questions arising under the Hatch Act, but it is not intended to countenance a continued and unlimited submission of questions raised or doubts entertained merely by particular employees. *Id.*

8. Role of Commission or Office

In enacting this section, Congress expected Civil Service Commission [now Office of Personnel Management] to continue its accustomed role with respect to federal employees. *U. S. Civil Service Commission v. National Ass'n of Letter Carriers*, AFL-CIO, Dist.Col. 1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 796.

9. Employees allowed to participate in politics

Former section 118i of this title [now this section] was not applicable to members of the National Guard ordered into the service of the United States under the Public Resolution of August 27, 1940. 1941, 40 Op.Atty.Gen. 103.

Former section 118i of this title [now this section] did not prohibit ambassadors and ministers from taking an active part in political campaigns. 1940, 39 Op.Atty.Gen. 508.

10. Political activities prohibited

This section forbids activities such as organizing political party or club, actively participating in fund raising activities for partisan candidate or political party, becoming partisan candidate for or campaigning for elective public office, actively managing campaign of partisan candidate for public office, initiating or circulating partisan nominating petition or soliciting votes for partisan candidate for public office, or serving as delegate, alternate or proxy to political party convention. *U. S. Civil Service Commission v. National Ass'n of Letter Carriers*, AFL-CIO, Dist.Col. 1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 796.

Within meaning of Civil Service Commission [now Office of Personnel Management] regulation exempting participation in political campaigns as or on behalf of an independent candidate in a partisan election for local office in the District of Columbia from the otherwise applicable prohibitions of this section, a "partisan election" must be an election wherein at least one candidate represents

a party which fielded candidate in the last presidential election. *Joseph v. U. S. Civil Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

This section interdicts only active participation in political management and political campaigns and not expressions, public or private, as to public affairs, personalities and matters of public interest, not an objective of party action. *Peale v. U. S.*, D.C.III.1971, 325 F.Supp. 193.

Termination of federal civil service employment may be effected for partisan political activities but not for nonpartisan political activities. *Id.*

Director of United States Public Housing Administration [now Secretary of Housing and Urban Development] had no authority to prohibit use of "community room" in housing project as a polling place, and use of such room as a polling place did not violate former section 1181(a) of this title [now this section], and its selection by appropriate county and municipal authorities was not an abuse of discretion. *Jones v. Middlesex County Bd. of Elections*, D.C.N.J.1966, 250 F.Supp. 931.

That government employee mailed to newspaper, which printed letter, an isolated unsolicited letter recommending the defeat of a certain partisan candidate for state office was not, in absence of a showing that employee was actively engaging or participating in political campaign, a violation of prohibition on government employees' active participation in political management or political campaigns. *Wilson v. U. S. Civil Service Commission*, D.C.D.C.1955, 136 F.Supp. 104.

Where plaintiff was placed in war service position by conditional transfer, subject to subsequent investigation, and thereafter Civil Service Commission [now Office of Personnel Management] determined that there was a reasonable doubt as to plaintiff's loyalty and that therefore he was not qualified under controlling regulation to obtain a war service appointment because of his membership and activities in an alleged communist-dominated organization, plaintiff's removal from office was not a violation of former section 1181 of this title [now this section], providing that federal employees shall retain right to express their opinions on all political subjects to same extent as other citizens. *Friedman v. Schweilenbach*, D.C.D.C.1946, 65 F.Supp. 254, affirmed 159 F.2d 22, certiorari denied 67 S.Ct. 979, 330 U.S. 838, 91 L.Ed. 1285, rehearing denied 67 S.Ct. 1302, 331 U.S. 865, 91 L.Ed. 1870.

A letter written by a government employee gives the impression that he was actively engaged in matters pertaining to political campaigns and upon investigation it was found that this was not true; that the employee was given to finding fault and to offering unsolicited advice; that his proclivities in this respect extended to political affairs; but that the net result was only embarrassment to certain friends and acquaintances; under these circumstances the writing of the letter constituted no more than an expression of opinion, which is permitted by this section. 1945, 40 Op.Atty.Gen. 405.

The Hatch Act, forbidding political activity by federal employees, does not apply to the acceptance and holding of a local office to which an employee was elected without being a candidate, his name not appearing on the ballot but being written in by the voters. 1940, 39 Op.Atty.Gen. 423.

11. Administrative review

Under executive regulation proscribing termination of federal employees in the classified service, including probationers, based on "political discrimination except as required by law," engaging in political activity of the kind banned by this section exposes civil service employees, probationary or permanent, to lawful discharge; however, it does not mean that such employees may, for expression and association of an essentially political nature although not in the familiar context, have their employment terminated, at least without right to have matter heard and determined on appeal to the Civil Service Commission [now Office of Personnel Management]. *Holden v. Finch*, 1971, 446 F.2d 1311, 144 U.S.App.D.C. 310.

12. Federal court jurisdiction

Issues presented in action brought by District of Columbia city council members and District of Columbia residents employed by federal government, challenging procedural and substantive validity of Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District from otherwise applicable prohibitions of this section were within competence of federal court. *Joseph v. U. S. Civil Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

Neither section 1983 of Title 42, nor former sections 1181 [now this section] and 118k of this title, nor Low Rent Housing Act, former section 1401 et seq.

of Title 42, nor former section 1006 of this title affording judicial review of action of federal governmental agency resulting in legal wrong to the person, nor sections 1331 and 1332 of Title 28 conferring jurisdiction on basis of amount in controversy and federal question or diversity of citizenship gave district court subject matter jurisdiction of action by candidate at municipal election to restrain use of community room in low rent housing facility as polling place. *Jones v. Middlesex County Bd. of Elections*, D.C.N.J.1966, 258 F.Supp. 469.

13. Abstention doctrine

Where "Little Hatch Act" provision of municipal charter contained apparently broad language which had not been limited in any way by regulation, administrative interpretation or state court decision, and record disclosed no attempt to obtain such clarification, and where there were possibilities of reasonable construction which would limit broad language attacked, federal district court would abstain from acting upon complaint for declaration of unconstitutionality and for injunctive relief. *Mining v. Wheeler*, D.C.Mo.1974, 378 F.Supp. 1115.

14. Persons entitled to maintain action

District of Columbia city council members who had not faced independent opposition in prior elections, but who alleged that they would probably seek reelection, had standing to challenge Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in district from otherwise applicable prohibitions of this section, in view of fact that contingencies upon which anticipated injury depended, that council members would seek reelection and would be opposed by independent candidates who received active support from at least one federal employee, were not subject to strong counterpresumptions, and in view of fact that there was real and immediate threat of independent opposition to council members' reelection. *Joseph v. U. S. Civil Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

Individual federal civil service employees, who joined with union in action to test validity of the Hatch Act and who were either improperly prevented from engaging in political activity if the Hatch Act were unconstitutional or prohibited from such activity if the Hatch Act were valid, had sufficient interest to give them right to maintain suit to test

its constitutionality regardless of whether union could maintain action in a representative capacity. *United Federal Workers of America (C.I.O.) v. Mitchell*, D.C.D.C.1944, 56 F.Supp. 621, affirmed 67 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754.

15. Persons liable

The Civil Service Commission [now Office of Personnel Management], although not expressly charged by the Hatch Act with enforcement of its provisions, is sufficiently charged under executive orders and rules and by provisions of the Hatch Act with responsibility to dismiss violators as to warrant the naming of members of Commission as parties defendant in an action to test constitutionality of the Hatch Act and to enjoin its enforcement brought by civil service employees. *United Federal Workers of America (C.I.O.) v. Mitchell*, D.C.D.C. 1944, 56 F.Supp. 621, affirmed 67 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754.

16. Judicial notice

In action challenging validity of Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District of Columbia from otherwise applicable prohibitions of this section, district court would take judicial notice of certain verifiable, indisputable facts with respect to number of independent candidates in prior local district elections in an effort to determine if city council members had established threat of injury sufficient to confer standing to challenge regulation. *Joseph v. U. S. Civil Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

17. Injunction

Testimony of State Director of Farmers Home Administration for Puerto Rico and Virgin Islands that he and his family and particularly his daughter were psychologically troubled by his potential discharge, that he would have to resign from an elective post as member of board of directors of federal employees' credit union and that he would not be able to get other federal or state employment during his removal from office was not sufficient showing of irreparable harm to warrant a preliminary injunction enjoining the Secretary of Agriculture from dismissing the Director pending a final administrative decision on the Director's alleged violations of this section. *Soldevilla v. Secretary of Agriculture of U. S.*, C.A.Puerto Rico 1975, 512 F.2d 427.

§ 7325. Penalties

An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 526; Pub.L. 96-54, § 2(a)(44), Aug. 14, 1979, 93 Stat. 384.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 1181(b) (less last proviso, and less last sentence)	Aug. 2, 1839, ch. 410, § 9(b), 53 Stat. 1148. Aug. 25, 1950, ch. 784, § 1 "Sec. 9(b) (less last proviso, and less last sentence)", 64 Stat. 475. Oct. 5, 1962, Pub.L. 87-753, 76 Stat. 750.

Explanatory Notes

The word "removed" is substituted for "removed immediately" because of the provisions of the Veterans' Preference Act of 1944, 58 Stat. 387, as amended, which is carried into this title. The words "or office" are omitted as included in "position". The words "by any Act of Congress" are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1979 Amendment. Pub.L. 96-54 substituted "Merit Systems Protection Board" for "Civil Service Commission" and "Board" for "Commission".

Effective Date of 1979 Amendment. Amendment by Pub.L. 96-54 effective July 12, 1979, see section 2(b) of Pub.L. 96-54, set out as a note under section 305 of this title.

Legislative History. For legislative history and purpose of Pub.L. 96-54, see 1979 U.S. Code Cong. and Adm. News, p. —.

Cross References

Report to President on individuals on whom Office of Personnel Management has imposed penalty under this section, see section 1308 of this title.

Library References

Elections ◊323.
Officers ◊30.

C.J.S. Elections § 355.
C.J.S. Officers and Public Employees §§ 46, 48.

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1. Constitutionality

Provision in former section 1181 of this title [now this section] which forbade officers and employees in the executive

branch of the federal government, with exceptions, from taking any active part in political management or in political campaigns, under penalty of immediate removal was constitutional as applied to industrial worker whose removal from office was ordered because of his activities during his free time as a ward executive committeeman and a worker at the polls. *United Public Workers of America (C.I.O.) v. Mitchell*, 1947, 67 S.Ct. 558, 330 U.S. 75, 91 L.Ed. 754.

2. Duty of employees

Generally, at least, it is the duty of persons who conceivably may come within the terms of inhibitions in statutes such as the Hatch Act to shape their conduct so as to avoid raising questions of the applicability to them of the statutory penalties. 1940, 39 Op. Atty. Gen. 446.

3. Positions from which employees may be removed

Former section 1181(b) of this title [now this section] required the removal of an employee from the civil service position or office which he was holding at the time his violation of former section 1181(a) of this title [now section 7324 of this title] was established despite the fact that this position might be different one from that held at the time the violation occurred and it was immaterial whether the second civil service position had been obtained by transfer, promotion or reappointment. 1947, 40 Op. Atty. Gen. 545.

4. Subsequent federal employment

An employee is not forever debarred from securing employment in the federal government and he will be prevented only from thereafter obtaining the position or office from which he was removed. 1947, 40 Op. Atty. Gen. 545.

5. Time of removal

Postponement of the date of removal of an employee merely for the purpose of allowing leave would not conform with the mandate of former section 1181 of this title [now this section] that an employee violating its provisions shall be immediately removed. 1940, 39 Op. Atty. Gen. 506.

6. Hearing and notice

In proceeding for removal from office for political activity, customs inspector who made no attempt to secure attendance of persons whose affidavits had been supplied to him was not entitled to have such persons produced at hearing in

order to give him opportunity for cross-examination. *Brown v. Macy*, C.A.La. 1965, 340 F.2d 115.

Where Civil Service Commission [now Office of Personnel Management] commenced discharge proceedings against veterans' preference eligible United States Post Office [now United States Postal Service] employee based on alleged political activity in violation of former section 1181 of this title [now section 7324 of this title] Commission was required to give to him kind of notice and hearing he would have been accorded under Veterans' Preference Act, former section 851 et seq. of this title, in other cases involving serious disciplinary action, and veteran could not have been restricted to procedures traditionally applied by Commission to Hatch Act cases. *Flanagan v. Young*, 1955, 228 F.2d 466, 97 U.S.App.D.C. 119.

The Attorney General concurred in the conclusion of the Solicitor, Department of the Interior, that an employee charged with violation of former section 1181 of this title [now section 7324 of this title] should have been given notice and an opportunity to be heard. 1940, 39 Op. Atty. Gen. 462.

7. Federal court jurisdiction

Where Civil Service Commission [now Office of Personnel Management] issued final order finding federal employee guilty of violation of Hatch Act and ordering his suspension, employee had no further effective remedy, and district court had jurisdiction to entertain action for declaratory relief. *Wilson v. U. S. Civil Service Commission*, D.C.D.C. 1955, 138 F.Supp. 104.

8. Indispensable parties

Individual members of Civil Service Commission [now Office of Personnel Management] were indispensable parties to proceeding on petition for review of Commission's order suspending deputy collector for an alleged violation of Hatch Act. *Martucci v. Mayer*, C.A.Pa. 1954, 210 F.2d 259.

9. Weight and sufficiency of evidence

Substantial evidence did not exist to support findings of Civil Service Commission [now Office of Personnel Management] which discharged postal clerk for alleged violation of former section 1181 of this title [now section 7324 of this title]. *Gray v. Macy*, C.A.Or. 1966, 358 F.2d 742.

Note 10

10. Scope of judicial review

On review of decision of Civil Service Commission [now Office of Personnel Management] discharging a postal clerk for alleged violations of former section 118i of this title [now section 7324 of this

title], court cannot try de novo the merits of controversy and substitute its judgment for that of the Commission. *Gray v. Macy*, D.C.Or.1965, 230 F.Supp. 658, reversed on other grounds 358 F.2d 742.

§ 7326. Nonpartisan political activity permitted

Section 7324(a)(2) of this title does not prohibit political activity in connection with—

(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 526.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 118n (less applicability to 5 U.S.C. 118k (a))	July 19, 1940, ch. 640, § 4 "Sec. 18 (less applicability to § 12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, § 4, 54 Stat. 767)", 54 Stat. 772.

Explanatory Notes

The words "or political party of a territory or possession of the United States" are added on authority of former section 118k-2, which is carried into section 1501.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Library References

Elections \Rightarrow 317.
United States \Rightarrow 45.

C.J.S. Elections §§ 329, 356.
C.J.S. United States § 42.

§ 7327. Political activity permitted; employees residing in certain municipalities

(a) Section 7324(a)(2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

(b) The Office of Personnel Management may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 526; Pub.L. 96-54, § 2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 118i(a) (less 1st 4 sentences)	Aug. 8, 1946, ch. 904, 60 Stat. 937.
(b)	5 U.S.C. 118m	July 19, 1940, ch. 640, § 4 "Sec. 16", 54 Stat. 771.

Explanatory Notes

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Effective Date of 1979 Amendment. Amendment by Pub.L. 96-54 effective July 12, 1979, see section 2(b) of Pub.L. 96-54, set out as a note under section 305 of this title.

1979 Amendment. Subsec. (b). Pub.L. 96-54 substituted "Office of Personnel Management" for "Civil Service Commission", and "Office" for "Commission" wherever appearing therein.

Legislative History. For legislative history and purpose of Pub.L. 96-54, see 1979 U.S. Code Cong. and Adm. News, p. ---.

Library References

Elections \Rightarrow 317.
United States \Rightarrow 36.

C.J.S. Elections §§ 329, 356.
C.J.S. United States §§ 36, 37, 62 to 64.

Notes of Decisions

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the prohibition against political activity by civil service employees participation of federal employees residing in municipalities or other political subdivisions adjacent to District of Columbia insofar as local campaigns and elections are concerned. *United Federal Workers of America (C.I.O.) v. Mitchell*, D.C.D.C.1944, 56 F.Supp. 621, affirmed 67 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754.

1. Constitutionality

This section is not invalid as unreasonably discriminatory in exempting from

2. Rules and regulations

Regulation of Civil Service Commission [now Office of Personnel Management]

5 § 7327

EMPLOYEES

Part 3

under former section 118m of this title [now subsec. (b) of this section] that federal employees, who resided in certain named municipalities and political subdivisions were excepted from prohibitions of former section 118i [now section 7324] of this title subject to conditions that employees would not neglect official duties or engage in nonlocal partisan political activities, and that they would not run for local office as candidates representing political parties or become involved in political management in connection with campaign of party candidate for office, and that they would run as independent candidates was not unreasonable, arbitrary, or capricious. *Democratic State Central Committee for Montgomery County, Md. v. Andolsek, D.C. Md.1966, 249 F.Supp. 1009.*

3. Persons employed by government of United States

For purposes of provision of this section authorizing Civil Service Commission [now Office of Personnel Management] to exempt from prohibitions of section 7324 of this title elections in municipalities in which the majority of voters are employed by government of United States, employees of District of Columbia should be considered "employed by the Government of the United States." *Joseph v. U. S. Civil Service Commission, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.*

4. Participation in campaigns of political parties

Former section 118m of this title [now subsec. (b) of this section] which provided that whenever Civil Service Commission [now Office of Personnel Management] determined that in immediate vicinity of national capital in Maryland and Virginia or in municipalities, majority of whose voters were employed by federal government, it was in domestic interest of federal employees to take active part in political management or in political campaigns involving municipality or political subdivision, Commission was authorized to promulgate regulations permitting them to do so was not intended to permit federal employees in Maryland and Virginia counties adjacent to District of Columbia to participate in campaigns of Democratic and Republican candidates or candidates of any other political party. *Democratic State Central Committee for Montgomery County, Md. v. Andolsek, D.C.Md.1966, 249 F.Supp. 1009.*

5. Persons entitled to maintain action

District of Columbia resident who was interested in obtaining employment with

federal government, and who, as a member of Democratic Party, sought to actively support Democratic candidates in future District of Columbia elections, did not establish real and immediate threat of injury sufficient to confer standing in action challenging validity of Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District from otherwise applicable prohibitions of section 7324 of this title. *Joseph v. U. S. Civil Service Commission, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.*

District of Columbia residents who were employed by federal government and who sought to participate in campaigns of Democratic candidates for District of Columbia city council had standing to bring action challenging validity of Civil Service Commission's [Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District from otherwise applicable prohibitions of section 7324 of this title, in view of fact that such regulation embodied both a decision to exempt participation in campaigns of independent candidates and a decision not to exempt participation in partisan campaigns. *Id.*

6. Weight and sufficiency of evidence

Evidence in action challenging validity of Civil Service Commission [now Office of Personnel Management] regulation exempting participation in political campaigns as or on behalf of independent candidates in partisan election for local office in District of Columbia from otherwise applicable prohibitions of section 7324 of this title was insufficient to sustain finding that majority of voters in District of Columbia were United States government employees so as to authorize Commission to exempt District of Columbia elections from prohibitions of section 7324 of this title. *Joseph v. U. S. Civil Service Commission, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.*

7. Declaratory judgment

Central committee of political party for county and for federal employees residing in county could maintain action for declaratory judgment that Civil Service Commission [now Office of Personnel Management] regulation granting to federal employees residing in county only limited exemption from prohibitions against political activities by federal employees contained in former section 118i of this title [now section 7324 of this title]

Ch. 73 FOREIGN GIFTS AND DECORATIONS 5 § 7342

tie], if, but only if, regulation contained and imposed on federal employees arbitrary or capricious discrimination not justified by purposes of the Hatch Act. *Democratic State Central Committee for Montgomery County, Md. v. Andolsek, D.C.Md.1966, 249 F.Supp. 1009.*

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

Historical Note

1967 Amendment. Pub.L. 90-83, § 1(45)(A), Sept. 11, 1967, 81 Stat. 208, substituted "Foreign Gifts and Decorations" for "Foreign Decorations" in the subchapter heading.

§ 7341. Repealed. Pub.L. 90-83, § 1(45)(B), Sept. 11, 1967, 81 Stat. 208

Historical Note

Section, Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 526, related to receipt and display of foreign decorations, and is now covered by section 7342 of this title.

§ 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 and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

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

(D) a member of a uniformed service;

(E) the President and the Vice President;

(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the

meaning of section 152 of the Internal Revenue Code of 1954) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

(2) "foreign government" means—

(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

(C) any agent or representative of any such unit or such organization, while acting as such;

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

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

(5) "minimal value" means a retail value in the United States at the time of acceptance of \$100 or less, except that—

(A) on January 1, 1981, and at 3 year intervals thereafter, "minimal value" shall be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(B) regulations of an employing agency may define "minimal value" for its employees to be less than the value established under this paragraph; and

(6) "employing agency" means—

(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e)(1), and (g)(2)(B) shall be carried out by the Clerk of the House;

(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsections (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate;

(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and

(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

(b) An employee may not—

(1) request or otherwise encourage the tender of a gift or decoration; or

(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

(c)(1) The Congress consents to—

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

(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that—

(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall—

(A) deposit the gift for disposal with his or her employing agency; or

(B) subject to the approval of the employing agency, deposit the gift with that agency for official use.

Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2).

(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in

paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.

(d) The 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 employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency for official use, for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).

(e)(1) Except as provided in paragraph (2) gifts and decorations that have been deposited with an employing agency for disposal shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.

(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration may be returned by the Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe, (A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (iii) the District of Columbia, or (B) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, except that such gift or decoration may be

sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.

(f)(1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.

(2) Such listings shall include for each tangible gift reported—

- (A) the name and position of the employee;
- (B) a brief description of the gift and the circumstances justifying acceptance;
- (C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;
- (D) the date of acceptance of the gift;
- (E) the estimated value in the United States of the gift at the time of acceptance; and
- (F) disposition or current location of the gift.

(3) Such listings shall include for each gift of travel or travel expenses—

- (A) the name and position of the employee;
- (B) a brief description of the gift and the circumstances justifying acceptance; and
- (C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

(4) In transmitting such listings for the Central Intelligence Agency, the Director of Central Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

(g)(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

(2) Each employing agency shall—

- (A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;
- (B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and

(C) take any other actions necessary to carry out the purpose of this section.

(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus \$5,000.

(i) The President shall direct all Chiefs of a United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

Added Pub.L. 90-83, § 1(45)(C), Sept. 11, 1967, 81 Stat. 208, and amended Pub.L. 95-105, Title V, § 515(a)(1), Aug. 17, 1977, 91 Stat. 862; Pub.L. 95-426, Title VII, § 712(a)-(c), Oct. 7, 1978, 92 Stat. 994.

Historical and Revision Notes

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
7342(a)	22:2621	Oct. 15, 1966, Pub.L. 89-673, § 2, 80 Stat. 952.
7342(b)	22:2622	Oct. 15, 1966, Pub.L. 89-673, § 3, 80 Stat. 952.
7342(c)	22:2623	Oct. 15, 1966, Pub.L. 89-673, § 4, 80 Stat. 952.
7342(d)	22:2624	Oct. 15, 1966, Pub.L. 89-673, § 5, 80 Stat. 952.
7342(e)	22:2626	Oct. 15, 1966, Pub.L. 89-673, § 7, 80 Stat. 952.

Explanatory Notes

The definitions of "employee" and "uniformed services" in 5 U.S.C. 2105 and 2101 are broad enough to cover the persons included in 22 U.S.C. 2621(1) with the exception of (1) individuals 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, (2) the President, and (3) Members of Congress, who, accord-

ingly, are covered in paragraphs (B), (D), and (E). As the Canal Zone Government is an independent agency of the United States, see section 31 of title 2, Canal Zone Code, an employee thereof is an "employee" as defined in 5 U.S.C. 2105.

In subsection (b), the words "An employee may not" are substituted for "No person shall" to conform to the definition

applicable and style of title 5, United States Code.

In subsection (c), the words "under regulations prescribed under this section" are substituted for "in accordance with the rules and regulations issued pursuant to this Act".

In subsection (e), the words "The President may prescribe regulations to carry out the purpose of this section" are substituted for "Rules and regulations to carry out the purposes of this Act may be prescribed by or under the authority of the President". Under 3 U.S.C. 301, the President may delegate the authority vested in him by this subsection.

References in Text. Section 152 of the Internal Revenue Code of 1954, referred to in subsec. (a)(1)(G), is classified to section 152 of Title 26, Internal Revenue Code.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (e)(1), is Act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of that Act relating to disposal of government property are classified to chapter 10 (section 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables volume.

Section 501 of the Internal Revenue Code of 1954, referred to in subsec. (e)(2), is classified to section 501 of Title 26, Internal Revenue Code.

Section 108A of the Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (k), is classified to section 2458a of Title 22, Foreign Relations and Intercourse.

1978 Amendment. Subsec. (a)(6)(A). Pub.L. 95-426, § 712(a)(1), substituted "(e)(1)" for "(e)".

Subsec. (a)(6)(B). Pub.L. 95-426, § 712(a)(2), added "except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsection (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate".

Subsec. (c)(2). Pub.L. 95-426, § 712(b)(1), substituted "subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2)" for "subsection (e)".

Subsec. (d). Pub.L. 95-426, § 712(b)(2), substituted "official use, for forwarding", for "official use, or forwarding", and

"subsection (e)(1), or for disposal in accordance with subsection (e)(2)" for "subsection (e)".

Subsec. (e). Pub.L. 95-426, § 712(c), designated existing provisions as par. (1), and in par. (1) as so designated, substituted "Except as provided in paragraph (2), gifts" for "Gifts", "(A)" and "(B)" for "(1)" and "(2)", respectively, and added par. (2).

1977 Amendment. Subsec. (a). Pub.L. 95-105 in par. (1) added provisions expanding definition of "employee" to include an officer or employee of the United States Postal Service or Postal Rate Commission, certain experts and consultants, the Vice President, and any Delegate to Congress, in par. (2) incorporated existing provisions into subpars. (A) and (C) and added subpar. (B), in par. (3) substituted reference to tangible or intangible present for reference to present, in par. (4) added reference to award, and added pars. (5) and (6).

Subsec. (b). Pub.L. 95-105 designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub.L. 95-105 incorporated existing provisions of pars. (1) and (2) into par. (1), and in par. (1) as so incorporated, added provisions giving congressional consent to acceptance of a gift in the nature of an educational scholarship, medical treatment, or travel or travel expenses and added pars. (2) and (3).

Subsec. (d). Pub.L. 95-105 struck out provisions requiring the Secretary of State to concur with the approval of the employing agency and substituted provisions requiring the employee to deposit property within 60 days of acceptance with the employing agency for official use or forwarding to the Administrator of General Services for disposal for provisions requiring the employee to deposit the decoration for use and disposal as the property of the United States under regulations prescribed under this section.

Subsec. (e). Pub.L. 95-105 substituted provisions relating to the disposal of decorations for provisions authorizing the President to prescribe regulations to carry out the purposes of this section.

Subsecs. (f) to (k). Pub.L. 95-105 added subsecs. (f) to (k).

Effective Date of 1977 Amendment. Section 515(a)(2) of Pub.L. 95-105 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall take effect on January 1, 1978."

Leasing of Space and Facilities for Storing and Safeguarding Property. Section 712(d) of Pub.L. 85-428 provided that: "In the event that the space and facilities available to the Secretary of the Senate for carrying out his responsibilities in storing and safeguarding property in his custody under section 7342 of title 5, United States Code [this section], are insufficient for such purpose, he may, with the approval of the Committee on Rules and Administration of the Senate, lease such space and facilities as may be necessary for such purpose. Rental payments under any such lease and expenses incurred in connection therewith shall be paid from the contingent fund of the Senate upon vouchers approved by the Secretary of the Senate."

Wearing of Certain Decorations. Section 33A of Act Aug. 10, 1956, c. 1041, as added by Pub.L. 85-861, Sept. 2, 1958, § 33(e), 72 Stat. 1568, provided: "A member or former member of an armed force of the United States holding any office of profit or trust under the United States may wear any decoration, order, medal, or emblem accepted (1) under the Act of July 20, 1942, chapter 508 (58 Stat. 662), or (2) before August 1, 1947, from the government of a belligerent or neutral nation or an American Republic."

Legislative History. For legislative history and purpose of Pub.L. 90-83, see 1967 U.S.Code Cong. and Adm.News, p. 1538. See, also, Pub.L. 95-105, 1977 U.S. Code Cong. and Adm.News, p. 1625; Pub.L. 95-426, 1978 U.S.Code Cong. and Adm. News, p. 2424.

EXECUTIVE ORDER NO. 11320

Dec. 12, 1966, 31 F.R. 15789

DELEGATION OF AUTHORITY

By virtue of the authority vested in me by Section 7 of the Foreign Gifts and Decorations Act of 1966 (Public Law 89-673; 80 Stat. 952) [former section 2626 of Title 22, Foreign Relations and Inter-course] and Section 301 of Title 3 of the United States Code [section 301 of Title 3, The President] and as President of the United States, it is ordered as follows:

The Secretary of State, and, when designated by the Secretary of State for such purpose, the Under Secretary of

State, are hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority conferred upon the President by Section 7 of the Foreign Gifts and Decorations Act of 1966 to prescribe rules and regulations to carry out the purposes of that Act. Such rules and regulations shall be published in the Federal Register.

LYNDON B. JOHNSON

EXECUTIVE ORDER NO. 11446

Jan. 16, 1969, 34 F.R. 803

ACCEPTANCE OF SERVICE MEDALS AND RIBBONS FROM MULTILATERAL ORGANIZATIONS OTHER THAN UNITED NATIONS

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, I hereby authorize the Secretary of Defense, with respect to members of the Army, Navy, Air Force, and Marine Corps, and the Secretary of Transportation, with respect to members of the Coast Guard when it is not operating as a service in the Navy, to prescribe regulations for the acceptance of medals and ribbons which are offered by multilateral organizations, other than the United Nations, to members of the

Armed Forces of the United States in recognition of service conducted under the auspices of those organizations. A determination that service for a multilateral organization in a particular geographical area or for a particular purpose constitutes a justifiable basis for authorizing acceptance of the medal or ribbon offered to eligible members of the Armed Forces of the United States shall be made with the concurrence of the Secretary of State.

LYNDON B. JOHNSON

Library References

United States  50.

C.J.S. United States  51.

West's Federal Forms

Fine, see   7535.

Jurisdiction and venue in district courts, matters pertaining to, see   1000 et seq.

Code of Federal Regulations

Standards and applicability, see 22 CFR 3.1 et seq., 41 CFR 101-49.000.

SUBCHAPTER V—MISCONDUCT

  7351. Gifts to superiors

An employee may not—

- (1) solicit a contribution from another employee for a gift to an official superior;
- (2) make a donation as a gift to an official superior; or
- (3) accept a gift from an employee receiving less pay than himself.

An employee who violates this section shall be removed from the service.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 527.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 113	R.S. � 1784.

Explanatory Notes

The application of the section is confined to employees, since the President and Members of Congress, though officers, could not have been intended to be "summarily discharged", and members of uniformed services are not covered by this statute. In the last sentence, the word "removed" is substituted for "summarily discharged" because of the provisions of the Lloyd-LaFollette Act, 37

Stat. 555, as amended, and the Veterans' Preference Act of 1944, 58 Stat. 387, as amended, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Cross References

Removals from competitive civil service only for cause, see section 7501 of this title.

Library References

United States  36.

C.J.S. United States    36, 37, 62 to 64.

  7352. Excessive and habitual use of intoxicants

An individual who habitually uses intoxicating beverages to excess may not be employed in the competitive service.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 527.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes
	5 U.S.C. 640	Jan. 16, 1883, ch. 27, § 8, 22

Explanatory Notes

The word "employed" is substituted for "appointed to, or retained in" because it includes both. Standard changes are made to the definitions applicable with the definitions applicable style of this title as outlined in the report.

Library References

United States 36.

C.J.S. United States §§ 36, 37.

RPWG
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Code of Ethics

For Members of Boards
and
Commissions

State of Alaska
1991



Prepared by:
The Department of Law and The Office of Management and Budget

printed by C.D.

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This pamphlet is designed to introduce State board and commission members to AS 39.52, the *Alaska Executive Branch Ethics Act*. This guide is not, however, a substitute for reading the law and its regulations. State board and commission members who have further questions should contact their board chair or staff for further information.

The Code of Ethics became effective on January 1, 1987. The law, AS 39.52, applies to all "public officers," that is, all current and former executive branch public employees and *members of statutorily created boards and commissions*.

As you read this pamphlet, please keep the following definitions in mind:

Benefit - anything that furthers a person's financial interest or from which a person hopes to gain in any way.

Financial Benefit - any property, ownership, management, professional, or private interest from which a board or commission member or the board or commission member's immediate family expects or receives a financial benefit.

Personal Interest - the interest or involvement of a board or commission member (or a family or household member) in any organization or political party from which a person or organization receives a benefit.

Immediate Family - spouse, blood relation up to and including the second degree of kindred (for example, parents, grandparents, children, and grandchildren), and a regular household member.

Designated Supervisor - the chair or acting chair of the board or commission for all board or commission members and for executive directors; for staff members, the executive director is the designated supervisor.

Agency - department, public corporations, the University of Alaska, and statutorily created boards and commissions.

Administrative Unit - a division or other official subcategory of an agency.

SCOPE OF CODE (AS 39.52.110)

The Code of Ethics considers a public office to be a public trust. Independent pursuits are not discouraged so long as those pursuits are arranged so that board or commission members do not improperly benefit financially or personally from their actions as board or commission members. The Code of Ethics accepts that minor and inconsequential conflicts of interest are unavoidable.

However, those conflicts of interest which are substantial and material are prohibited.

In reading about the Code of Ethics and considering the examples given, this standard for judgment should be kept in mind: *minor and inconsequential* versus *substantial and material*.

MISUSE OF OFFICIAL POSITION (AS 39.52.120)

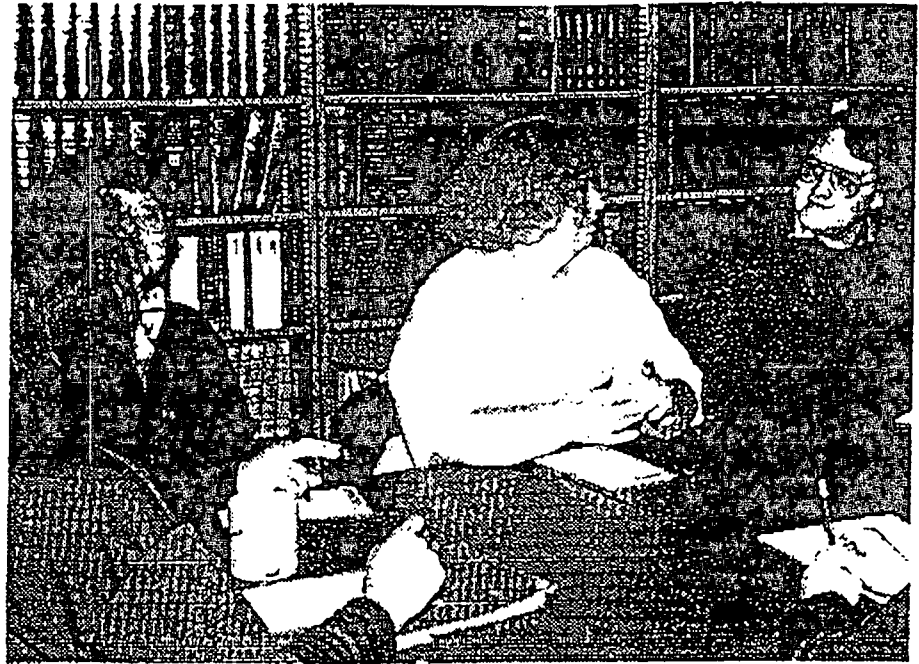
Members of boards or commissions (hereafter referred to as "board members") may not use their positions for personal gain or to give unwarranted benefit or treatment to any person. Specifically, board members may not use their official positions to secure employment or contracts, accept compensation from anyone other than the State for performance of official duties, or take or withhold official action on a matter in which they have a personal or financial interest. Board members are also prohibited from using State time, equipment, property, or facilities for their own personal or financial benefit. A board member may not coerce subordinates for his/her personal or financial benefit.



The Commissioner's briefing to the Board made it clear that there would be an expansion of business activity in the Valley in the near future. Terry is on the Board and knew he shouldn't take advantage of the information, but he encourages his best friend Harry to move fast.



Busy Board member Bertrand asks Board employee Bob to type an article for him that he hopes to sell to an Alaskan magazine. Bob types the article on State time.



IMPROPER GIFTS (AS 39.52.130)

Board members may not solicit or receive gifts which benefit the board member's personal or financial interest if it can be reasonably inferred that the gift is intended to influence the board member's action or judgment. "Gifts" include money, items of value, services, loans, travel, entertainment, hospitality, and employment.

Even if a gift is acceptable, it may have to be reported. When any gift with a value in excess of \$50 is received by a board member whose action can affect the giver, the board member must report the gift to the board chair within 30 days of receipt. *Forms are available from board or commission staff for this purpose.*

This restriction on gifts does not apply to lawful campaign contributions.



The commission is reviewing Roy's proposal for an expansion of his business. He invites all the Board members out to dinner at an expensive restaurant. He says it will be OK, since he isn't excluding any of the members.



Sam figures it will be OK to treat all the Board members to drinks, because he has no business that is up before the Board.

IMPROPER USE OR DISCLOSURE OF INFORMATION (AS 39.52.140)

No former or current member of a board may use or disclose any information gained from tenure on the board when that use or disclosure could result in a financial or personal benefit to the board member (or a family or household member), unless that information has already been disseminated to the public.

No former or current board member may use or disclose information confidential by law that is gained during tenure on the board.



Sitting on the Board as she does, Sheila feels she has learned a great deal about how to have a successful business venture. So she sets one up and makes a mint.



Ginny is on the department's advisory board. She is in the department's office when a call comes through from the Wall Street consultant retained by the department. It is clear from the way the phone conversation goes that the stock of the SYN company is sure to increase. Ginny leaves to call her stockbroker to buy 1000 shares.



IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS (AS 39.52.150)

No board member whose action or inaction can affect the award or administration of a State grant, contract, lease, or loan may apply for, be a party to, receive, or have any interests in that State grant, contract, lease, or loan. This prohibition also applies to the board member's immediate family or household members.

However, a board member (or family or household member) may apply for or be a party to a *competitively solicited* State grant, contract or lease, so long as the board member does not serve the same administrative unit awarding or administering the grant, contract, or lease and so long as the board member is not in a position to take official action in the award or administration of the State grant, contract, or lease.

Also, a board member (or family or household member) may apply for and receive a State loan that is generally available to the public and has fixed eligibility standards, so long as the board member does not take (or withhold) official action affecting the award or administration of the loan.

Board members must report to the board chair any personal or financial interest (or that of family or household members) in a State grant, contract, lease, or loan that is awarded or administered by the agency which the board member serves. *Forms are available from board or commission staff for this purpose.*

-  John sits on a board that determines who gets state grants. John hasn't seen his daughter for nearly ten years, so he figures that it doesn't matter when her grant application comes up before the board.
-  The Board wants to contract out for an analysis of the Board's decisions over the last ten years. Kim figures no one could do it better. Kim has been on the Board for ten years.

IMPROPER REPRESENTATION (AS 39.52.160)

No board member may represent, advise, or assist a person or business in any matter being handled by the board member's board or commission if that representation, advice, or assistance is for pay or if it benefits the personal or financial interest of the board member.



However, a nonsalaried board or commission member may represent, advise, or assist in matters in which the member has a personal or financial interest that is regulated by the member's own board or commission, so long as the member acts in accordance with AS 39.52.220 and discloses the involvement in writing and on the public record, and refrains from all participation and voting on the matter.



Chris has worked long and hard to form a certain nonprofit organization in her town. She is on a board which is considering a grant to that organization. She feels it will be OK to offer advice about the grant since she wasn't actually a member of the nonprofit organization.



Gordon owns a liquor store and serves as a liquor industry representative on the Alcoholic Beverage Control Board. The Board is considering a new license in his store's neighborhood. He declares a potential conflict of interest to his Board chair.



The Nursing Board has on its agenda the question of continuing education for relicensing of nurses. Della is a registered nurse on the Board. She doesn't need to declare a conflict to her chairperson.

RESTRICTION ON EMPLOYMENT AFTER LEAVING STATE SERVICE (AS 39.52.180)

For two years after leaving a board, a former board member may not work on any matter considered by the former board in which the member had personally and substantially participated while on the board. This prohibition applies to cases, proceedings, applications, and contracts, but not to work on legislative measures or administrative regulations.

With the approval of the Attorney General, the board chair may waive this prohibition if a determination is made that the public interest is not jeopardized.

Former board members may be paid by a State agency to work on any matter.



The Board has arranged for an extensive study of the effects of the Department's programs. Andy, a board member, did most of the liaison work with the contractor selected by the Board, including some negotiations about the scope of the study. Andy quits the Board and goes to work for the contractor, working on the study of the effects of the Department's programs.



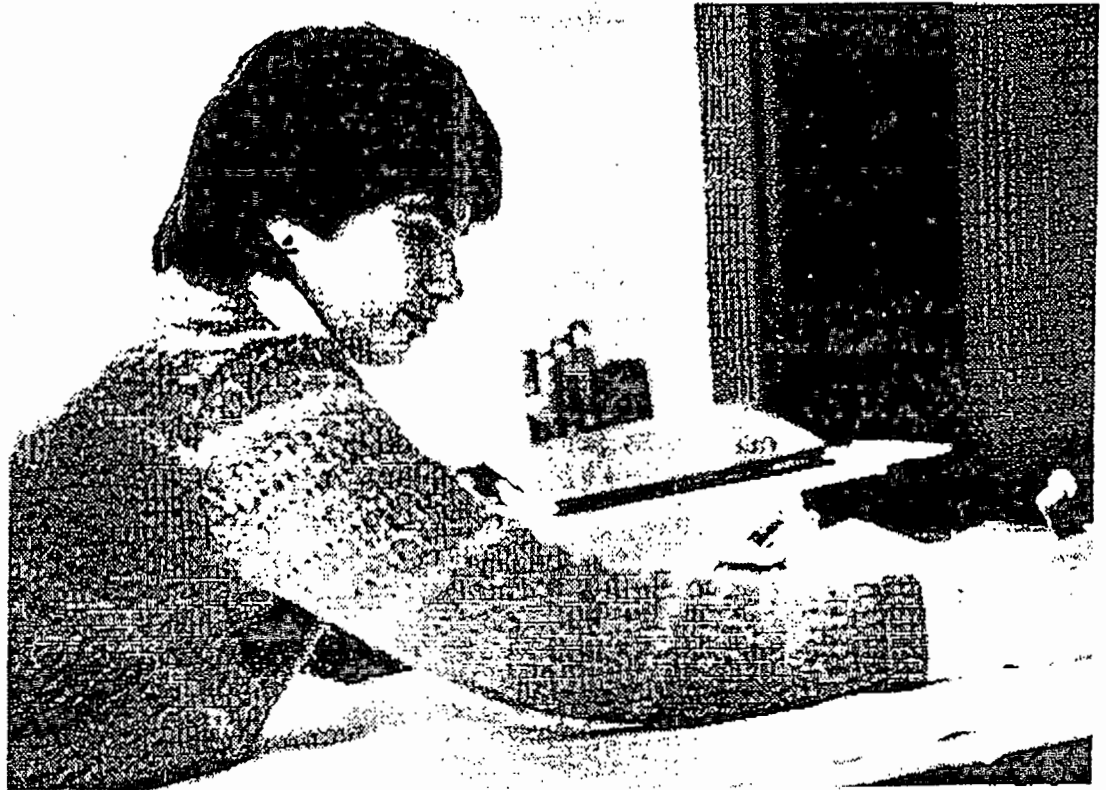
Andy takes the job, but specifies that he will have to work on another project.

AIDING A VIOLATION PROHIBITED (AS 39.52.190)

Aiding another public officer to violate this chapter is prohibited.

AGENCY POLICIES (AS 39.52.920)

Subject to the Attorney General's review, a board may adopt additional written policies further limiting personal or financial interests of board members.



Ethics Disclosure Form Notification of Potential Violation	
To: Designated Supervisor Subject: Notification of Potential Ethical Violation (AS 39.52.210)	
In accordance with AS 39.52.210, I am hereby notifying you of a situation which may result in a violation of the Code of Ethics. I am requesting your determination regarding a possible violation of:	
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	AS 39.52.120, Misuse of Official Position AS 39.52.130, Improper Gifts AS 39.52.140, Improper Use or Disclosure of Information AS 39.52.150, Improper Influence in State Grants, Contracts, Leases, or Loans AS 39.52.160, Improper Representation AS 39.52.170, Outside Employment Restricted AS 39.52.180, Restrictions on Employment after Leaving State Service AS 39.52.190, Aiding a Violation Prohibited
The situation is as follows (please use a separate sheet for additional space): _____ _____ _____ _____	
_____ _____ _____	(Signature) _____ (Printed Name) _____ (Job Title) _____
_____ _____ _____	(Date) _____ (City) _____ (County) _____
<small>NOTE: A public employee who is involved in a matter that may result in a violation of AS 39.52.110 - 39.52.190, shall refrain from taking any official action relating to the matter until a determination is made under this section and immediately disclose the matter in writing to the designated supervisor.</small>	
<small>62-129 (1/87)</small>	

DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS OR COMMISSIONS (AS 39.52.220)

A board member whose interests or activities could result in a violation of the Code of Ethics (AS 39.52.110-190) must disclose the matter on the public record and in writing to the board chair who determines whether a violation exists. *Forms are available from the board or state agency staff for this purpose. (See example above.)* If a board member objects to the chair's ruling or if the chair discloses his/her own potential conflict, the board members at the meeting (excluding the involved member) must vote on the matter. If the board chair or the board determines a violation would exist, the member must refrain from deliberating, voting, or participating in the matter.

When determining whether a board member is involved in a matter that may result in a violation of the Code of Ethics, either the board chair or the board or commission itself may request guidance from the Attorney General.

ATTORNEY GENERAL'S OFFICE (AS 39.52.230)

Board chairs or the board itself may request a written advisory opinion from the Attorney General on the interpretation of the Code of Ethics. These written advisory opinions are confidential. Versions without identifying information are available to the public.

A former board member may request a written opinion from the Attorney General on the applicability of the Code of Ethics.

REPORTS BY THIRD PARTIES (AS 39.52.230)

A third party may report a suspected violation of the Code of Ethics by a board member in writing and under oath to the chair of a board or commission. The chair will give a copy to the board member and will review the report to determine whether a violation exists. If the chair determines a violation may exist, the board member will be asked to refrain from deliberating, voting, or participating in the matter.

COMPLAINTS, HEARINGS, AND ENFORCEMENT

COMPLAINTS (AS 39.52.310-330)

Complaints about the conduct of a current or former board member can be filed with the Attorney General by any person. Complaints must be written and signed under oath. The Attorney General may also initiate a complaint from boards' requests for advisory opinions. A copy of the complaint will be sent to the board member.

All complaints are reviewed by the Attorney General. If the Attorney General determines that the complaint does not warrant investigation, the complainant and the board member will be notified of the dismissal.

The Attorney General may refer a complaint to the board member's chair for resolution.

After investigation, the Attorney General may dismiss a complaint for lack of probable cause to believe a violation occurred. The complainant and board member will be promptly notified of this decision.

The Attorney General may file an accusation alleging a violation of the Code of Ethics.

CONFIDENTIALITY (AS 39.52.340)

Complaints and investigations prior to formal hearings are confidential. Violation of confidentiality is a Class A misdemeanor.

HEARINGS (AS 39.52.350-360)

An accusation by the Attorney General of an alleged violation may initiate a hearing. The time, place, and other matters are determined by a hearing officer appointed by the Personnel Board. The parties to the hearing are the Attorney General, acting as prosecutor, and the accused public officer, who can be represented by an attorney. Within 30 days of the conclusion of the hearing, the hearing officer files a report with the Personnel Board.

PERSONNEL BOARD ACTION (AS 39.52.370)

The hearing officer's report will be reviewed by the Personnel Board. The Personnel Board is responsible for determining whether a violation occurred and for imposing penalties. An appeal may be filed by the board member in the Superior Court.

PENALTIES (AS 39.52.410)

When the Personnel Board determines a board member has violated the Code of Ethics, the member must refrain from voting, deliberating, or participating in the matter. The Personnel Board may order restitution and may recommend that the board member be removed from the board or commission. If a recommendation of removal is made, the appointing authority will immediately remove the member.

If a former board member is guilty of violating the Code of Ethics, the Personnel Board will issue a public statement about the case and will request the Attorney General to pursue any additional legal remedies.

State grants, contracts, and leases awarded in violation of the Code of Ethics are voidable.

Loans given in violation of the Code of Ethics may be made immediately payable.

Fees, gifts, or compensation received in violation of the Code of Ethics may be recovered by the Attorney General.

The Personnel Board may impose a fine of up to \$5,000 for violation of the Code of Ethics, and a board member may be required to pay twice the financial benefit received in violation of the Code of Ethics.

Criminal penalties are in addition to the civil penalties listed above.



For further information or questions regarding the Code of Ethics,
please contact:

The Department of Law
P.O. Box K
Juneau, Alaska 99811
465-3600

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UNITED STATES CODE ANNOTATED

Title 5

Government Organization and Employees
§ 8501 to End

Title 6

Surety Bonds
[Repealed]

1992

Cumulative Annual Pocket Part

Replacing 1991 pocket part in back of 1967 bound volume

Includes the Laws of the
102nd CONGRESS, FIRST SESSION (1991)

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APPENDIX 2

FEDERAL ADVISORY COMMITTEE ACT

Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended Pub.L. 94-409, § 5(c), Sept. 13, 1976, 90 Stat. 1247; 1977 Reorg. Plan No. 1, § 5F, 42 F.R. 56101, 91 Stat. 1634; Pub.L. 96-523, § 2, Dec. 12, 1980, 94 Stat. 3040; Pub.L. 97-375, Title II, § 201(c), Dec. 21, 1982, 96 Stat. 1822.

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| <p>Sec.</p> <ol style="list-style-type: none"> 1. Short title. 2. Findings and purpose. 3. Definitions. 4. Applicability; restrictions. 5. Responsibilities of Congressional committees; review; guidelines. 6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion. 7. Responsibilities of the Director, Office of Management and Budget; Committee Management Secretariat; establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations. | <p>Sec.</p> <ol style="list-style-type: none"> 8. Responsibilities of agency heads; Advisory Committee Management Officer; designation. 9. Establishment and purpose of advisory committees; publication in Federal Register; charter; filing, contents, copy. 10. Advisory committee procedures; meetings; notice; publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance. 11. Availability of transcripts; "agency proceeding". 12. Fiscal and administrative provisions; record-keeping; audit; agency support services. 13. Responsibilities of Library of Congress; reports and background papers; depository. 14. Termination of advisory committees; renewal; continuation. 15. Effective date. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

LAW REVIEW COMMENTARIES

Advisers and secrets: The role of agency confidentiality in the Federal Advisory Committee Act. James T. O'Reilly, 13 N.Ky.L.Rev. 27 (1986).

§ 1. Short title

This Act may be cited as the "Federal Advisory Committee Act".

CROSS REFERENCES

Pacific Salmon Commission, this Act not applicable to consultations by Commissioners and Panel members, see section 3632(h) of Title 16, Conservation.

LAW REVIEW COMMENTARIES

Federal facilities and environmental compliance: Toward a solution. Stan Millan, 36 Loy. L.Rev. 319 (1990).

NOTES OF DECISIONS

1. Disclosure of membership

This Act requires that the names of members of the Humanities Panel of the National Endowment for the Humanities be made available to the public

by subgroup, but does not require that such disclosure occur until after the particular subgroup's work has been completed. 1980 (Counsel-Inf. Op.) 4B Op.O.L.C. 743.

§ 2. Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

(1) the need for many existing advisory committees has not been adequately reviewed;

FEDERAL ADVISORY COMMITTEE ACT

§ 3

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 11686

Ex.Ord. No. 11686, Oct. 7, 1972, 37 F.R. 21421, set out as a note under this section, which related to committee management, was superseded.

by Ex.Ord. No. 11769, Feb. 21, 1974, 39 F.R. 7125, set out as a note under this section.

EXECUTIVE ORDER NO. 11769

Ex.Ord. No. 11769, Feb. 21, 1974, 39 F.R. 7125, formerly set out as a note under this section, which related to committee management, was re-

voked by Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out as a note under this section.

EXECUTIVE ORDER NO. 12024

Dec. 1, 1977, 42 F.R. 61445

TRANSFER OF CERTAIN ADVISORY COMMITTEE FUNCTIONS

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I) [this Appendix], Section 301 of Title 3 of the United States Code [section 301 of Title 3, The President], Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581e) [section 581e of Title 31, Money and Finance], and Section 7 of Reorganization Plan No. 1 of 1977 (42 F.R. 56101 (October 21, 1977)) [set out in Appendix II of this title], and as President of the United States of America, in accord with the transfer of advisory committee functions from the Office of Management and Budget to the General Services Administration provided by Reorganization Plan No. 1 of 1977 [set out in Appendix II of this title], it is hereby ordered as follows:

vested in the President by the Federal Advisory Committee Act, as amended, except that, the annual report to the Congress required by Section 6(c) of that Act [section 6(c) of this Appendix] shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

Sec. 3. The Director of the Office of Management and Budget shall take all actions necessary or appropriate to effectuate the transfer of functions provided in this Order, including the transfer of funds, personnel and positions, assets, liabilities, contracts, property, records, and other items related to the functions transferred.

Sec. 4. Executive Order No. 11769 of February 21, 1974 is hereby revoked.

Sec. 5. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred or reassigned as provided in this Order from the Office of Management and Budget to the Administrator of General Services, shall remain in effect, as if issued by the Administrator until amended, modified, or revoked.

Sec. 6. This Order shall be effective November 20, 1977.

JIMMY CARTER

Section 1. The transfer, provided by Section 5F of Reorganization Plan No. 1 of 1977 (42 F.R. 56101) [set out in Appendix II of this title], of certain functions under the Federal Advisory Committee Act, as amended (5 U.S.C. App. I) [this Appendix], from the Office of Management and Budget and its Director to the Administrator of General Services is hereby effective.

Sec. 2. There is hereby delegated to the Administrator of General Services all the functions

§ 3. Definitions

For the purpose of this Act—

(1) The term "Administrator" means the Administrator of General Services.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

- (A) established by statute or reorganization plan, or
 (B) established or utilized by the President, or
 (C) established or utilized by one or more agencies,
 in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.
- (3) The term "agency" has the same meaning as in section 551(1) of Title 5.
- (4) The term "Presidential advisory committee" means an advisory committee which advises the President.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

HISTORICAL AND STATUTORY NOTES

Commission on Government Procurement

The Commission on Government Procurement, referred to in par. (2)(ii), terminated Apr. 30, 1973, pursuant to Pub.L. 91-129, set out as a note under section 251 of Title 41, Public Contracts.

Transfer of Functions

"Administrator" means Administrator of General Services" was substituted for "Director" means Director of the Office of Management and Budget" in par. (1), pursuant to Reorg. Plan No.

1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

NOTES OF DECISIONS

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Purpose 1

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1. Purpose

Purpose of Federal Advisory Committee Act is to control advisory committee process and to open to public scrutiny manner in which government agencies obtain advice from private individuals and groups. Washington Legal Foundation v. American Bar Ass'n Standing Committee on Federal Judiciary, D.C.D.C.1986, 648 F.Supp. 1353.

This Appendix was intended to apply to committees created by agencies and to those not originally created by agencies but subsequently used by them as advisory committees. Center for Auto Safety v. Tiemann, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

Purpose of this Appendix is to eliminate useless advisory committees, strengthen independence of remaining advisory committees, and prevent advisory groups from becoming self-serving. Consumers Union of U.S., Inc. v. Department of Health, Ed. and Welfare, D.C.D.C.1976, 409 F.Supp. 473, affirmed 551 F.2d 466, 179 U.S.App.D.C. 280.

This Appendix was not intended to apply to all amorphous, ad hoc group meetings; only groups having some sort of established structure and defined purpose constitute "advisory committees" within meaning of this Appendix. Nader v. Baroody, D.C.D.C.1975, 396 F.Supp. 1231.

In enacting this Appendix, Congress was concerned with formally organized advisory committees which President or an executive department or official directed to make recommendations on

identified governmental policy for which specific advice was sought. Id.

2. Advisory committee

Federal Advisory Committee Act did not apply to Justice Department's solicitation of views of ABA's Standing Committee on the Federal Judiciary on prospective judicial nominees; committee was not "advisory committee" within meaning of Act, as it was not "utilized" within meaning of statute by President or Department of Justice in connection with those evaluations. Public Citizen v. U.S. Dept. of Justice, D.C. 1989, 109 S.Ct. 2558, 491 U.S. 440, 103 L.Ed.2d 377.

Group of experts assembled by private scientific organization pursuant to its contract with Food and Drug Administration (FDA) to provide counsel on food safety and quality issues was not an "advisory committee" subject to requirements of Federal Advisory Committee Act; panel was established and utilized by organization, not by FDA, and organization was private contractor that did not have quasi-public status. Food Chemical News v. Young, 1990, 900 F.2d 328, 283 U.S.App.D.C. 344, certiorari denied 111 S.Ct. 132, 112 L.Ed.2d 99.

Determination that the American Association of State Highway and Transportation Officials is an advisory committee within the meaning of Federal Advisory Committee Act, this Appendix, when it provides input to the Federal Highway Administration with respect to proposals to require that state highway construction plans provide for minimum safety standards did not impermissibly impair the organization's freedoms of speech and association under U.S.C.A. Const. Amend. 1. Center for Auto Safety v. Cox, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

Panel of scientist-executives convened by the Secretary of the Department of Energy to study

safety of a government-owned nuclear reactor in operation in state of Washington in light of nuclear disaster at a similar power station in the Soviet Union was not an "advisory committee" within meaning of the Federal Advisory Committee Act, and thus, panel's labors would be permitted to go forward as contemplated without attendance of nonprofit environmental protection organization, where panel members had not been asked, to comment upon nuclear power generally or manner of its regulation, but merely to examine whether government ought to allow a single reactor, to continue in operation, and panel members would work independently and report alone. Natural Resources Defense Council, Inc. v. Herrington, D.C.D.C.1986, 637 F.Supp. 116.

The Commission on the Bicentennial of United States Constitution, created by Congress in 1983 to facilitate the celebration of the 200th anniversary of the Constitution, is not an "advisory committee" within the meaning of the Federal Advisory Committee Act, which requires that advisory committees hold open meetings and give reasonable advance notice of meetings, where the Committee did not render advice to the federal government, but made recommendations to state, local and private entities, and was empowered to undertake itself the federal projects which it was to plan. Public Citizen v. Commission on the Bicentennial of U.S. Constitution, D.C.D.C.1985, 622 F.Supp. 753.

National Industries for the Severely Handicapped did not constitute an "advisory committee" as contemplated by the Federal Advisory Committee Act. [Federal Advisory Committee Act, § 1 et seq., 5 U.S.C.A.App. II] since its advisory capacity to the Committee for Purchase From the Blind and Other Severely Handicapped was secondary to its operational activities. HLI Lordship Industries, Inc. v. Committee for Purchase From the Blind & Other Severely Handicapped, D.C.Va.1985, 615 F.Supp. 970.

Task forces cochaired by members of Executive Committee of Private Sector Survey established by the President to give advice on cost-effective management of federal programs were not subject to this Appendix, as they merely provided information and recommendations for consideration to the Committee, notwithstanding that they were intimately involved in gathering of information about federal programs and formulation of possible recommendations for consideration of the Committee. National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control, D.C.D.C.1983, 557 F.Supp. 524, affirmed 711 F.2d 1071, 229 U.S.App.D.C. 143.

Although Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards is an "advisory committee" subject to provisions of this appendix, the Commission's Atomic Safety and Licensing Board is not an "advisory committee." Hunt v. Nuclear Regulatory Commission, D.C.Okla.1979, 468 F.Supp. 817, affirmed 611 F.2d 332, certiorari denied 100 S.Ct. 1084, 445 U.S. 906, 63 L.Ed.2d 322.

Organization consisting of representatives of state highway and transportation departments and officials of United States Department of Transportation was "utilized" by Federal Highway Administration when adopting regulations relating to

certification acceptance of state safety standards pursuant to the Federal Highway Act, section 101 et seq. of Title 23, so that discussions between the Federal Highway Administration and the organization were covered by this Appendix. Center for Auto Safety v. Tiemann, D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

Fact that Food and Drug Administration may have lacked statutory authority to require cosmetics industry to test ingredients in products would not preclude Administration from appointing appropriate advisory committee on such subject, which committee would be subject to this Appendix. Consumers Union of U.S., Inc. v. Department of Health, Ed. and Welfare, D.C.D.C.1976, 409 F.Supp. 473, affirmed 551 F.2d 466, 179 U.S.App.D.C. 280.

Where organization representing cosmetics industry presented industry-sponsored proposal to Food and Drug Administration, seeking its advice and comments regarding voluntary cosmetics testing program, and Administration was unable either to develop or require cosmetics testing program, such presentation by organization did not give rise to "advisory" relationship within meaning of this Appendix. Id.

"Established," within provision of this section defining advisory committee as one established by statute, does not include committees which merely can be said to owe their existence to legislation. Lombardo v. Handler, D.C.D.C.1975, 397 F.Supp. 792, affirmed 546 F.2d 1043, 178 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2639, 431 U.S. 932, 531 L.Ed.2d 248.

Bi-weekly White House meetings with selected groups, including major business organizations and private sector groups, do not create "advisory committees" within meaning of this Appendix, such meetings are unstructured, informal and not conducted for purpose of obtaining advice on specific subjects indicated in advance. Nader v. Baroody, D.C.D.C.1975, 396 F.Supp. 1231.

The Native Hawaiians Study Commission was created to advise the Congress and not the President or federal agencies, and unless so utilized by the President or an agency, is not subject to the Federal Advisory Committee Act. 1982 (Counsel-Inf.Op.) 6 O.L.C. 39.

3. Standing to sue

Neither private citizen nor United States Senator, either as consumers or by virtue of Senator's position as such, had standing to complain that National Petroleum Council, and its subgroups were unlawfully functioning as advisory committees because they were not fairly balanced in membership and were improperly influenced by petroleum industry special interests, contrary to requirements of this appendix and Federal Energy Administration Act, section 761 et seq. of Title 15. Metcalf v. National Petroleum Council, 1977, 553 F.2d 176, 180 U.S.App.D.C. 31.

Consumer representative, who asked to attend certain bi-weekly meetings with selected groups held at White House and who was denied admission, had standing to seek declaration that such meetings created "advisory committees" within meaning of this Appendix. Nader v. Baroody, D.C.D.C.1975, 396 F.Supp. 1231.

4. Agency

National Academy of Sciences is not an "agency" within this appendix, requiring certain publicity of committee meetings, and, its committee on motor vehicle emissions is not an "advisory committee" either as a committee established by statute or one established or utilized by the Environmental Protection Agency. *Lombardo v. Handler*, D.C.D.C.1975, 397 F.Supp. 792, affirmed 546 F.2d 1043, 178 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2639, 431 U.S. 932, 53 L.Ed.2d 248.

5. Exemptions

In order to be exempt from requirements of the Federal Advisory Committee Act, this Appendix, as a state or local committee, a group must show that it is a state or local committee and that it was

§ 4. Applicability; restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

- (1) the Central Intelligence Agency; or
- (2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

§ 5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

- (1) contain a clearly defined purpose for the advisory committee;
- (2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;
- (3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;
- (4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing

established to advise or make recommendations to state or local agencies. *Center for Auto Safety v. Cox*, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

Exemption from requirements of this Appendix where committee is composed wholly of full-time officers or employees of the federal government did not apply to committee of state and federal employees. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

The Congress did not intend the Federal Advisory Committee Act to apply to a body created jointly by the United States and another nation, such as the U.S.-Japan Consultative Group on Economic Relations. 1979 (Counsel-Inf. Op.) 3 Op.O.L.C. 321.

committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

CODE OF FEDERAL REGULATIONS

Committee management regulations—
Consumer Products Safety Commission, see 16 CFR 1018.1.
Department of Agriculture, see 7 CFR 25.1.
Department of Education, see 34 CFR 11.1.
Department of Health and Human Services, see 45 CFR 11.1.

Federal Emergency Management Agency, see 44 CFR 12.1.
Marine Mammal Commission, see 50 CFR 510.1.
Nuclear Regulatory Commission, see 10 CFR 7.1.

NOTES OF DECISIONS

Balanced point of view. 3.
Orders. 2.
Standing to sue. 1.
Task forces. 4.

1. Standing to sue

Nonprofit public interest law center, which claimed that violation of Federal Advisory Committee Act section requiring membership of advisory committees to be fairly balanced in terms of points of view represented, by the American Bar Association Standing Committee on Federal Judiciary, contributed to exclusion of center from judicial review process, pleaded sufficient injury to confer standing to bring suit seeking to enforce balanced membership requirement under Act, where center claimed that Committee consulted on regular basis with liberal public interest groups to exclusion of conservative public interest organizations and that center had been "directly affected" by lack of balance on Committee. *Washington Legal Foundation v. American Bar Ass'n Standing Committee on Federal Judiciary*, D.D.C.1986, 648 F.Supp. 1353.

In action for declaratory and injunctive relief alleging that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fairly balanced in membership and were improperly influenced by certain petroleum industry special interests contrary to requirements of this section and Federal Energy Administration Act provision, section 776 of Title 15, plaintiffs' allegations of injury to themselves as consumers: anticipated higher costs for petroleum products; potential environmental damage and threats to health and safety; and anticipated denial of benefits from development of alternative sources of energy, did not confer standing to sue upon plaintiffs, particularly in light of fact that there was no nexus between plaintiffs' alleged injuries and defendants' challenged action. *Metcalf v. National Petroleum Council*, D.C.D.C.1976, 407 F.Supp. 257, affirmed 553 F.2d 176.

In action by United States Senator alleging that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fully balanced in mem-

bership and were improperly influenced by certain petroleum industry special interests, Senator did not have standing to sue on theory that defendants' actions had affected effectiveness of his votes for this Appendix and Federal Energy Administration Act, section 761 et seq. of Title 15, and had hindered him in carrying out his legislative duties through his inability to get unbiased advice and accurate information from Department of Interior and Federal Energy Administration because of Council's input into that process, particularly in view of fact that Senator showed no nexus between his alleged injuries and defendants' challenged action. *Id.*

2. Orders

Where dispute as to whether particular organization was covered by the Federal Advisory Committee Act, this Appendix, arose out of the consultation by a federal agency with the organization over certain proposed regulations, and where there was no allegation or proof that all contacts between the agency and the organization constituted a utilization of the organization as advisory committee, order that any future meeting between the representatives of the federal government and the organization be subject to the Federal Advisory Committee Act was overbroad; the order should apply only to consultation for advice or recommendations on proposed regulations. *Center for Auto Safety v. Cox*, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

3. Balanced point of view

Executive Committee of the President's Private Sector Survey on Cost Control did not violate balanced viewpoint requirement of this Appendix on basis that virtually every member of the executive committee was an executive of a major corporation and that no public-interest representatives or beneficiaries of federal feeding programs had been appointed where Survey was designed to apply private sector expertise to attain cost-effective management in the federal government, since Survey's members represented fair balance of viewpoints given the functions to be performed. *National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control*, 1983, 711 F.2d 1071, 229 U.S.App. D.C. 143.

National Advisory Committee on Microbiological Criteria for Foods met balanced membership requirements of Federal Advisory Committee Act; though public interest groups complained of absence of consumer representation, Committee was charged with highly technical mandate requiring extensive scientific background and expertise in processing and distribution practices. *Public Citizen v. National Advisory Committee on Microbiological Criteria for Foods*, D.D.C. 1988, 708 F.Supp. 359.

The Executive Committee of the Private Sector Survey created by the President to give detailed advice on cost-effective management of the federal government and its agencies did not violate the balanced viewpoint requirement of this Appendix because most committee members were executives of major corporations, with two being academics and one from the labor community, and this Appendix did not require representation of public interest advocates or beneficiaries of federal food assistance programs. *National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control*, D.C.D.C. 1983, 557 F.Supp. 524, affirmed 711 F.2d 1071, 229 U.S.App.D.C. 143.

Failure of the defendant commission to appoint more than one individual in outspoken opposition to ratification of the Equal Rights Amendment

§ 6. Responsibilities of the President; report to Congress; exclusion

(a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions; a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

(As amended Pub.L. 97-375, Title II, § 201(c), Dec. 21, 1982, 96 Stat. 1822.)

HISTORICAL AND STATUTORY NOTES

1982 Amendment

Subsec. (c). Pub.L. 97-375, § 201(c), substituted provision that the President shall, not later than Dec. 31 of each year, make an annual report to Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year, for provision the President, not later than March 31 of each calendar year after 1972, make an annual

(ERA) to the United States Constitution when setting up the state committee to coordinate lobbying activities for the amendment in state legislature was not such as to establish a violation of this Appendix in that this Appendix did not, by its terms or otherwise, require balancing of points of view on the Equal Rights Amendment issue in the state coordinating committee. *Hall v. Siegel*, D.C.Ill. 1977, 467 F.Supp. 750.

All interests need not be represented or represented equally to meet applicable balance of membership requirements, but required standard must be judged on case-by-case determination, depending on authority creating particular committee. 1981, 60 Comp.Gen. 386.

4. Task forces

Task forces established to assist Executive Committee of the President's Private Sector Survey on Cost Control in the study of domestic feeding programs for low-income persons were not subject to this Appendix where it appeared that task force reports and recommendations would be exhaustively reviewed and revised by Executive Committee. *National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control*, 1983, 711 F.2d 1071, 229 U.S.App.D.C. 143.

NOTES OF DECISIONS

Requests for documents 1

1. Requests for documents

Federal Advisory Committee Act does not impose upon President or upon the Office of Admin-

istration special responsibility to guide document requests. *Federal Advisory Committee Act*, §§ 6, 6(b), c), 10, 10(b); 5 U.S.C.A. App. 2.—*National Sec. Archive v. Archivist of the U.S.*, 1990, 909 F.2d 541, 285 U.S.App.D.C. 302.

§ 7. Responsibilities of the Administrator of General Services; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

(a) The Administrator shall establish and maintain within the General Services Administration a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Administrator shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether it should be abolished.

The Administrator may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Administrator's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Administrator shall carry out a similar review annually. Agency heads shall cooperate with the Administrator in making the reviews required by this subsection.

(c) The Administrator shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Administrator shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Administrator, after study and consultation with the Director of the Office of Personnel Management, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service; and

(C) such members—

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of Title 5, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such Title 5),

may be provided services pursuant to section 3102 of such Title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee, from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Administrator shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 38067, 92 Stat. 3783; Pub.L. 96-523, § 2, Dec. 12, 1980, 94 Stat. 3040.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 501 of the Rehabilitation Act of 1973, referred to in subsec. (d)(1)(C)(i), is classified to section 791 of Title 29, Labor, rather than to section 794 of Title 29 as shown in text.

1980 Amendment

Subsec. (d)(1). Pub.L. 96-523 added subpar. (C).

Effective Date of 1980 Amendment

Amendment by Pub.L. 96-523 effective sixty days after Dec. 12, 1980, see section 3 of Pub.L. 96-523, set out as a note under section 3102 of this title.

Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in text, "General Services Administration" for "Office of Management and Budget" in subsec. (a), and "Administrator's" for "Director's" in subsec. (b), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to subsec. (a) of this section for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

trator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" in subsec. (d) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of this title, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex.Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; set out under section 1101 of this title.

All functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat were transferred to the Administrator of General Services by Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, effective on or before Apr. 1, 1978, at such time as specified by the President.

Legislative History

For legislative history and purpose of Pub.L. 96-523, see 1980 U.S. Code Cong. and Adm. News, p. 6530.

§ 8. Responsibilities of agency heads; Advisory Committee Management Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

HISTORICAL AND STATUTORY NOTES

Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in subsec. (a), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

ment and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

§ 9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy

(a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Administrator, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

HISTORICAL AND STATUTORY NOTES

Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in subsecs. (a) and (c), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

NOTES OF DECISIONS

Compliance, necessity of 2

Members of committee 3
Purpose 1

1. Purpose

Purpose of this Appendix is to control the advisory committee process and to open to public scrutiny the manner in which government agencies obtain advice from private individuals. *Food Chemical News, Inc. v. Davis*, D.C.D.C.1974, 378 F.Supp. 1048.

2. Compliance, necessity of

Where a federal agency utilizes an advisory committee for the purpose of obtaining advice, the agency must charter and establish the committee in compliance with all the terms of this Appendix; and failure to comply with such requirements cannot be employed as a subterfuge for avoiding the public access requirements of this Appendix.

§ 10. Advisory committee procedures; meetings; notice; publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

(As amended Pub.L. 94-409, § 5(c), Sept. 13, 1976, 90 Stat. 1247; 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

Food Chemical News, Inc. v. Davis, D.C.D.C.1974, 378 F.Supp. 1048.

If Energy Policy Task Force's Plan drafting role gives it more than solely advisory functions, its charter should so state, citing authority given for those functions. 1981, 60 Comp.Gen. 386.

3. Members of committee

Presence of retired Supreme Court justice and active circuit judge on Presidential Commission to investigate organized crime did not violate constitutional separation-of-powers doctrine; service of judges was voluntary, judicial membership on advisory commission did not prevent it from carrying out its duties, and participation by judges did not disrupt operation of courts. Matter of President's Com'n on Organized Crime Subpoena of Scarfo, C.A.3 (N.J.) 1986, 783 F.2d 370.

HISTORICAL AND STATUTORY NOTES

1976 Amendment

Pub.L. 94-409 added "portion of an" following "to any" and substituted provisions relating to determinations for closing to the public such portion of the meeting in accordance with section 552b(c) of Title 5, for provisions relating to determinations of matters listed in section 552(b) of Title 5.

Effective Date of 1976 Amendment

Amendment by Pub.L. 94-409 effective 180 days after Sept. 13, 1976, see section 6 of Pub.L. 94-409, set out as a note under section 552b of this title.

Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "Director",

meaning Director of the Office of Management and Budget, in subsec. (a)(2) and (3), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

Legislative History

For legislative history and purpose of Pub.L. 94-409, see 1976 U.S. Code Cong. and Adm. News, p. 2183.

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1. Construction with other laws

Freedom of Information Act provisions, section 552 of this title, dealing with intra-agency and interagency memoranda are applicable, under this section to advisory committee meetings. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273.

Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in Freedom of Information Act, section 552 of this title, did not apply so as to permit exclusion of public from all meetings of advisory committees serving cost of living council. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

2. Purpose

Two separate "informal" meetings with consumer and distilled spirits industry representatives relative to drafting proposed regulations of the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department on ingredient labeling of distilled spirits were meetings of "advisory committees" utilized by the Bureau Director to obtain advice within the meaning of this Appendix, and said meetings were therefore open to the public. *Food Chemical News, Inc. v. Davis*, D.C.D.C.1974, 378 F.Supp. 1048.

Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in section 552 of this title, was not intended to include all deliberative conversations

of committee meetings. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

3. Meetings within section

Where meeting between Food and Drug Administration and organization representing cosmetics industry was for purpose of presenting organization's voluntary ingredient testing program, and no matters of Administration policy or regulation were at issue, parties were not bound by provisions of this Appendix, and thus neither public access to such meetings, nor chartering of such organization, would be required. *Consumers Union of U.S., Inc. v. Department of Health, Ed. and Welfare*, D.C.D.C.1976, 409 F.Supp. 473, affirmed 551 F.2d 466, 179 U.S.App.D.C. 280.

At a minimum a relatively detailed analysis of bases for closing various portions of meetings of advisory committees serving cost of living council must be provided. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

Where Defense Advisory Committee on Women in the Services was group of outsiders called on because of their expertise to offer views and comments unavailable within agency, meeting of such committee did not involve "inter-agency" nor "intra-agency" affairs and meeting was required to be open. *Gates v. Schlesinger*, D.C.D.C.1973, 366 F.Supp. 797.

3a. Discretion of agency

Under this section, advisory committees both meet and render advice to governmental agencies involved at the pleasure of those agencies and if it pleases agency in question to refrain from convening committee or soliciting its advice, agency is entirely at liberty to do so. *Dabney v. Reagan*, D.C.N.Y.1982, 559 F.Supp. 861.

3b. Convening of meetings

Fact that solar energy and energy conservation bank's advisory committees charters provided that they would ordinarily convene in full session four times a year did not abrogate express subsec. (f) of this section that advisory committees "shall not hold any meeting except at the call of, or with the advance approval of," the designated federal employee. *Dabney v. Reagan*, D.C.N.Y.1982, 559 F.Supp. 861.

4. Public participation

While plaintiffs were entitled to have meeting of Defense Advisory Committee on Women in the Services conducted so as to be open to public, there was no right of public participation in advisory committee. *Gates v. Schlesinger*, D.C.D.C.1973, 366 F.Supp. 797.

5. Exchange of information

Executive committee's review of staff recommendations concerning cost control under food stamp program were deliberative and not a mere sham and did not violate this section where task force recommendations were distributed to members of executive committee for study in advance of public hearing and at the hearing comments were specifically brought to attention of full membership even though belatedly filed and in other instances the committee rejected recommendations contained in the staff reports. *National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control*, D.C.D.C.1983, 566 F.Supp. 1515.

For purposes of this Appendix, exchange of information does not make advisory committee "part of" its government agency. *Gates v. Schlesinger* D.C.D.C.1973, 366 F.Supp. 797.

6. Burden of proof

This section does not contain same express provision as Freedom of Information Act, section 552 of this title, which places burden of proof on agency to sustain its action, but underlying policy considerations are identical and burden of proof should be comparable. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

7. Injunction

Where pleadings were limited to actions of Travel Advisory Board in holding closed meeting and did not refer to any other advisory committees in the Department of Commerce, and where all evidence was directed towards the TAB, injunction which purported to require timely advance public notice of each meeting of the TAB or any other advisory committee in the Department was overbroad. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273.

Injury to nonprofit environmental protection organization if panel of scientist-executives convened by the Secretary of the Department of Energy to study safety of government-owned nuclear reactor in Washington were determined to in fact be subject to requirements of the Federal Advisory Committee Act was neither substantial nor irreparable, whereas injury to the Secretary and the remainder of the country caused by delay would be substantial and irreparable, and thus, organization was not entitled to preliminary injunction enjoining activities of panel until organization's representative should be allowed to attend, where any recommendations by panel would soon be available by request under the Freedom of Information Act. *Natural Resources Defense Council, Inc. v. Herrington*, D.D.C.1986, 637 F.Supp. 116.

Exemption relating to interagency or intra-agency memorandum or letters did not apply so as to permit meeting of Defense Advisory Committee on Women in the Services to be closed, and court

would issue preliminary injunction requiring such meeting to be open to the public. *Gates v. Schlesinger*, D.C.D.C.1973, 366 F.Supp. 797.

8. Public access

Federal Advisory Committee Act section requiring advisory committees to make its records available for public inspection subject to Freedom of Information Act (FOIA) incorporated not only FOIA's nine exemptions but also its mandatory procedural mechanism of written request followed by administrative review; therefore, newsletter publisher which sought access to documents relating to meetings of Advisory Committee on the Food and Drug Administration established no violation of the law when committee refused to disclose documents absent FOIA request. *Food Chemical News v. Advisory Committee on Food and Drug Admin.*, D.D.C.1991, 760 F.Supp. 220.

Public interest research institute's misdirected application to Office of Administration for Tower Commission report, which investigated the sale of arms to Iran and transfer of resulting proceeds to the Contras in Nicaragua, was not sufficient under the Freedom of Information Act or the Federal Advisory Committee Act, since the request should have been made to the Commission itself while it existed, since Office had no authority or responsibility over the Commission's records; institute was unable to compel disclosure of those documents. *National Sec. Archive v. Executive Office of The President*, D.D.C.1988, 688 F.Supp. 29, affirmed 909 F.2d 541, 285 U.S.App.D.C. 302.

The press has a statutory right under this Appendix as well as a privilege under U.S.C.A. Const. Amend. 1 to report on the manner in which government affairs are conducted. *Food Chemical News, Inc. v. Davis*, D.C.D.C.1974, 378 F.Supp. 1048.

The privacy exemption of the open meeting requirement in section 552 of Title 5, Government Organization and employees, made applicable to advisory committees may permit closing of some portions of meetings of subgroups of the Humanities Panel at which individual grant applications are discussed. 1980 (Counsel-Inf.Op.) 48: Op. O.L.C. 743.

Legislation that would grant the President's Commission on the Accident at Three Mile Island the power to issue subpoenas is sufficient also to allow the closing of its meetings under certain circumstances under the exemption contained in section 552(b)(7)(D) of this title relating to the "agency's issuance of a subpoena. 1979 (Counsel-Inf. Op.) 3 Op.O.L.C. 208.

9. Interagency or intra-agency memoranda

Evidence that there had been more than 20 meetings of the Travel Advisory Board and that on only three occasions had portions of the meeting been closed to the public demonstrated that the Board was not abusing exemption provided to it under subsec. (d) of this section from requirement of holding open meetings when interagency and intra-agency memoranda were being discussed. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273.

Provisions of this section, dealing with open meetings do not apply to any advisory committee meeting which the head of an agency determines

is concerned with interagency or intra-agency memoranda. *Id.*

Even after interagency or intra-agency memorandum has been disclosed to member of an advisory committee, the memorandum may still be considered an inter-agency or intra-agency memorandum so that fact that such disclosure is made to a member of an advisory committee does not preclude advisory committee from holding a closed meeting in accordance with the exemption provided for in subsec. (d) of this section and section 552 of this title. *Id.*

10. Regulations

Where regulations which were challenged had been revised through procedure in which the revised regulations were published in draft form and public comment was invited and where the new regulations were temporary, court would not overturn original regulations despite failure of Federal Highway Administration to comply with requirements of this Appendix in adopting the initial regulations. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

11. Standing to sue

Persons active in opposing enactment of Equal Rights Amendment to United States Constitution were without standing to bring suit against National Commission on the Observance of International Women's Year, 1975, to enjoin it from supporting enactment of the Equal Rights Amendment, engaging in lobbying activities, and other pursuits. *Mulqueeny v. National Commission on the Observance of Intern. Women's Year*, 1975, C.A.III.1977, 549 F.2d 1115.

Corporation in business of manufacturing and supplying military decorations and insignia to government had standing to assert violations of the Federal Advisory Committee Act in challeng-

ing action of Committee for Purchase From the Blind and Other Severely Handicapped to take particular medals and medal sets out of competitive bidding and place them on list as commodities suitable for procurement by government for qualified nonprofit agencies for the blind or other severely handicapped since corporation had injury in fact based on Committee's decision, injury could be remedied if court invalidated decision, and corporation's interest fell within zone of interest of the Act. *HLI Lordship Industries, Inc. v. Committee for Purchase from the Blind & Other Severely Handicapped*, D.C.Va.1985, 615 F.Supp. 970.

Individual recipients of federal food assistance benefits and an antihunger coalition were granted standing to challenge membership on the President's Executive Committee of the Private Sector Survey as lacking the balanced representation required by this Appendix as well as to question Committee's compliance with procedural requirements of this Appendix. *National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control*, D.C.D.C.1983, 557 F.Supp. 524, affirmed 711 F.2d 1071, 229 U.S.App.D.C. 143.

Nonprofit corporation whose activities centered broadly upon transportation safety issues and whose functions included monitoring activities of Federal Highway Administration had standing to challenge alleged failure of the Federal Highway Administration to comply with rule-making provisions of sections 551 et seq. and 701 et seq. of this title when providing for alternative procedure for approving state highway safety plans and failure of the Federal Highway Administration to open meetings with a particular organization to the public pursuant to this Appendix. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

§ 11. Availability of transcripts; "agency proceeding"

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of title 5, United States Code.

HISTORICAL AND STATUTORY NOTES

References in Text
Effective date of this Act, referred to in subsec. (a), as meaning effective upon expiration of ninety days following enactment of Pub.L. 92-463 on Oct. 6, 1972, see section 15 of Pub.L. 92-463.

NOTES OF DECISIONS:

1. Standing to sue

Any person whose request for information under this appendix had been denied has standing to

sue for the information. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

§ 12. Fiscal and administrative provisions; recordkeeping; audit; agency support services

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency

as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

§ 13. Responsibilities of Library of Congress; reports and background papers; depository

Subject to section 552 of title 5, United States Code, the Administrator shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

HISTORICAL AND STATUTORY NOTES

Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "director", meaning Director of the Office of Management and Budget, in text, pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and

Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

§ 14. Termination of advisory committees; renewal; continuation

(a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

HISTORICAL AND STATUTORY NOTES

References in Text

Effective date of this Act, referred to in subsection (a)(1), as meaning, effective upon expiration of

ninety days following enactment of Pub.L. 92-463 on Oct. 6, 1972, see section 15 of Pub.L. 92-463.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 11827

Ex.Ord. No. 11827, Jan. 4, 1975, 40 F.R. 1217, as amended, formerly set out as a note under this section, which provided for the continuance of

EXECUTIVE ORDER NO. 11948

Ex.Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, as amended by Ex.Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839; Ex.Ord. No. 12029, Dec. 14, 1977, 42 F.R. 63631, formerly set out as a note under this section, which provided for the

EXECUTIVE ORDER NO. 12007

Aug. 22, 1977, 42 F.R. 42839

TERMINATION OF CERTAIN PRESIDENTIAL ADVISORY COMMITTEES

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate certain advisory committees in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C.App. I), it is hereby ordered as follows:

Section 1. (a) The Citizens' Advisory Council on the Status of Women is terminated.

(b) Executive Order No. 11126 of November 1, 1963, as amended by Executive Order No. 11221 of May 6, 1965 [set out as a note under Section 2000e of Title 42, The Public Health and Welfare], is further amended as follows:

(1) Subsection (5) of Section 102 is revoked.

(2) Section 103, in order to delete a reference to the Council, is amended to read as follows:

"Annually the Committee shall transmit a report to the President concerning the status of women."

(3) Part II is revoked.

(4) The second sentence of Section 301, in order to delete references to the Council, is amended to read as follows:

"To the extent practical and to the extent permitted by law (1) all Executive agencies shall cooperate with the Committee and furnish it such information and assistance as may be necessary for the performance of its functions, and (2) the Secretary of Labor shall furnish staff, office space, office facilities and supplies, and other necessary assistance, facilities, and services for the Committee."

Sec. 2. (a) The Citizens' Advisory Committee on Environmental Quality is terminated.

(b) Part II of Executive Order No. 11472 of May 29, 1969, as amended by paragraphs (7) and (8) of section 4 of Executive Order No. 11514 of March 5, 1970 [set out as a note under section 4321 of Title 42, The Public Health and Welfare], is revoked.

Sec. 3. (a) The Advisory Council for Minority Enterprise is terminated.

(b) Section 2 of Executive Order No. 111625 of October 13, 1971 [set out as a note under section 631 of Title 15, Commerce and Trade], is revoked.

Sec. 4. (a) The Consumer Advisory Council is terminated.

(b) Executive Order No. 11583 of February 24, 1971 [set out as a note under section 887d of Title 20, Education], is amended as follows:

(1) The second sentence of subsection (b)(1) of section 2 is amended by deleting "(including the Consumer Advisory Council established in section 5 of this order)".

(2) Section 5 is revoked.

Sec. 5. (a) The President's Advisory Board on International Investment is terminated.

(b) Executive Order No. 11962 of January 19, 1977 [set out as a note under section 3107 of Title 22, Foreign Relations and Intercourse], is revoked.

Sec. 6. Subsections (a), (g), (i), and (j) of Section 1 of Executive Order No. 11948 of December 20, 1976 [set out as a note under this section], which extended the above advisory committees until December 31, 1978, is superseded.

JIMMY CARTER

EXECUTIVE ORDER NO. 12029

Dec. 14, 1977, 42 F.R. 63631

TERMINATION OF A PRESIDENTIAL ADVISORY COMMITTEE

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate an advisory committee in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

Section 1. (a) The Quetico-Superior Committee is terminated.

(b) Executive Order No. 11342, as amended, is revoked.

Sec. 2. Subsection (c) of Section 1 of Executive Order No. 11948 of December 20, 1976, which extended the above advisory committee until December 31, 1978, is superseded.

JIMMY CARTER

EXECUTIVE ORDER NO. 12110

Ex.Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, formerly set out as a note under this section, which provided for the continuance of certain

federal advisory committees, was superseded by Ex.Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under this section.

EXECUTIVE ORDER NO. 12258

Ex.Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, as amended by Ex.Ord. No. 12271, Jan. 13, 1981, 46 F.R. 4677; Ex.Ord. No. 12299, Mar. 17, 1981, 46 F.R. 17751; Ex.Ord. No. 12305, May 5, 1981, 46 F.R. 25421; Ex.Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, which provided for the continuance of certain federal advisory commit-

tees, was superseded by Ex.Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, set out as a note below. [Executive Order No. 12299, which had been set out in the credit to this Executive Order, was revoked by Ex.Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.]

EXECUTIVE ORDER NO. 12305

May 5, 1981, 46 F.R. 25421

TERMINATION OF CERTAIN FEDERAL ADVISORY COMMITTEES

By the authority vested in me as President by the Constitution of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), the following Executive Orders, establishing advisory committees, are hereby revoked and the committees terminated:

(a) Executive Order No. 12059 of May 11, 1978, as amended, [set out as a note under section 44 of Title 28, Judiciary and Judicial Procedure], establishing the United States Circuit Judge Nominating Commission;

(b) Executive Order No. 11992 of May 24, 1977 [set out as a note preceding chapter I of Title 28], establishing the Committee on Selection of Federal Judicial Officers;

(c) Executive Order No. 12084 of September 27, 1978, as amended by Executive Order 12097 of November 8, 1978, [set out as a note under section 133 of Title 28], establishing the Judicial Nominating Commission for the District of Puerto Rico; and

(d) Executive Order No. 12064 of June 5, 1978, [set out as a note under section 7443 of Title 26, Internal Revenue Code], establishing the United States Tax Court Nominating Commission.

Subsections (g), (i), (j) and (k) of Section 1-101 of Executive Order No. 12258, [set out as a note under this section], extending these committees, are also revoked.

RONALD REAGAN

EXECUTIVE ORDER NO. 12379

Aug. 17, 1982, 47 F.R. 30699

TERMINATION OF BOARDS, COMMITTEES, AND COMMISSIONS

By the authority vested in me as President by the Constitution and statutes of the United States of America, and to terminate the establishing authorities for committees that are inactive or no longer necessary, it is hereby ordered as follows:

Section 1. Executive Order No. 12071, as amended [set out as a note under section 1001 of Title 29, Labor], establishing the President's Commission on Pension Policy is revoked.

Sec. 2. Executive Order No. 12042 [not classified to the code], creating a Board of Inquiry to Report on Labor Disputes Affecting the Bituminous Coal Industry in the United States, is revoked.

Sec. 3. Executive Order No. 12085 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the Norfolk and Western Railway Company and Certain of Its Employees, is revoked.

Sec. 4. Executive Order No. 12132 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the National Railway Labor Conference and Certain of Its Employees, is revoked.

Sec. 5. Executive Order No. 12095 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between Wien Air Alaska, Inc., and Certain Individuals, is revoked.

Sec. 6. Executive Order No. 12159 [not classified to the code], creating an Emergency Board to Investigate Disputes Between the Chicago, Rock Island, Pacific Railroad and Peoria Terminal Company and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, and the United Transportation Union, is revoked.

Sec. 7. Executive Order No. 12182 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the Long Island Rail Road and Certain of Its Employees, is revoked.

Sec. 8. Executive Order No. 12207 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees, is revoked.

Sec. 9. Executive Order No. 12262 [set out as a note under section 1001 of Title 29, Labor], establishing an Interagency Employee Benefit Council, is revoked.

Sec. 10. Executive Order No. 12275 [set out as a note under section 951 of Title 20, Education], establishing the Design Liaison Council, is revoked.

Sec. 11. Executive Order No. 11829, as amended [set out as a note under section 640d of Title 25, Indians], establishing the Hopi-Navajo Land Settlement Interagency Committee, is revoked.

Sec. 12. Executive Order No. 11022, as amended [set out as a note under section 3001 of Title 42, The Public Health and Welfare], establishing the President's Council on Aging, is revoked.

Sec. 13. Executive Order No. 12192 [set out as a note under section 2021 of Title 42], establishing the State Planning (Planning) Council on Radioactive Waste Management, is revoked.

Sec. 14. Executive Order No. 12075, as amended [set out as a note under section 1450 of Title 42], establishing the Interagency Coordinating Council, is revoked.

Sec. 15. Executive Order No. 11782 [set out as a note under section 2281 of Title 12, Banks and Banking], establishing the Federal Financing Bank Advisory Council, is revoked.

Sec. 16. Executive Order No. 12089, as amended [set out as a note under section 2401 of Title 15, Commerce and Trade], establishing the National Productivity Council, is revoked.

Sec. 17. Executive Order No. 11330, as amended [set out as a note preceding section 2711 of Title 42, The Public Health and Welfare], establishing the President's Council on Youth Opportunity, is revoked.

Sec. 18. Executive Order No. 11256 [not classified to the code], establishing the President's Committee on Food and Fiber and establishing the National Advisory Commission on Food and Fiber, is revoked.

Sec. 19. Executive Order No. 11654 [set out as a note under section 278f of Title 15, Commerce and Trade], continuing the Federal Fire Council, is revoked.

Sec. 20. Executive Order No. 12083, as amended [set out as a note under section 7101 of Title 42, The Public Health and Welfare], establishing the Energy Coordinating Committee, is revoked.

Sec. 21. Executive Order No. 12285, as amended and ratified [set out as a note under section 1701 of Title 50, War and National Defense], establishing the President's Commission on Hostage Compensation, is revoked.

Sec. 22. Executive Order No. 12202, as amended [set out as a note under section 5848 of Title 42, The Public Health and Welfare], establishing the Nuclear Safety Oversight Committee, is revoked.

Sec. 23. Executive Order No. 12194 [set out as a note under section 4321 of Title 42], establishing the Radiation Policy Council, is revoked.

Sec. 24. The veterans' Federal Coordinating Committee (Weekly Compilation of Presidential Documents, volume 14, number 41, page 1743) [not classified to the code] is terminated.

Sec. 25. The President's Council on Energy Efficiency (Weekly Compilation of Presidential Documents, volume 16, numbers 18 and 30, pages 790 and 1404) [not classified to the code] is terminated.

RONALD REAGAN

EXECUTIVE ORDER NO. 12399

Ex.Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, which related to the continuance of certain federal advisory committees, was superseded by Ex.Ord.

No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under this section.

EXECUTIVE ORDER NO. 12489

Ex.Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, which related to the continuance of certain federal advisory committees was superseded by

Ex.Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under this section.

EXECUTIVE ORDER NO. 12534

Ex.Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, which related to the continuance of certain federal advisory committees, was superseded by

Ex.Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under this section.

EXECUTIVE ORDER NO. 12610

Ex.Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, which provided for the continuance of

certain Federal advisory committees, was superseded by Ex.Ord. No. 12692, Sept. 29, 1989, 54

F.R. 40627, formerly set out as a note under this section.

EXECUTIVE ORDER NO. 12692

Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, as amended by Ex. Ord. No. 12704, Feb. 26, 1990, 55 F.R. 6969, which provided for the continuance of certain federal advisory committees,

was superseded by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835; set out as a note under this section.

EXECUTIVE ORDER NO. 12774

Sept. 27, 1991, 56 F.R. 49835

CONTINUANCE OF CERTAIN FEDERAL ADVISORY COMMITTEES

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C.App. [this Appendix]), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 1993.

(a) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior) [set out as a note under section 110 of Title 3, The President].

(b) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12196, as amended (Department of Labor) [set out as a note under section 7902 of this title].

(c) President's Commission on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management).

(d) President's Committee on the Arts and the Humanities; Executive Order No. 12367, as amended (National Endowment for the Arts).

(e) President's Committee on the International Labor Organization; Executive Order No. 12216 (Department of Labor) [set out as a note under section 271 of Title 22, Foreign Relations and Intercourse].

(f) President's Committee on Mental Retardation; Executive Order No. 11776 (Department of Health and Human Services) [set out as a note preceding section 6000 of Title 42, The Public Health and Welfare].

(g) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation) [set out as a note under section 1881 of Title 42].

(h) President's Council on Physical Fitness and Sports; Executive Order No. 12345, as amended (Department of Health and Human Services) [set out as a note under section 300a-5 of Title 42].

(i) President's Export Council; Executive Order No. 12131, as amended (Department of Commerce) [set out as a note under section 2401 of the Appendix to Title 30, War and National Defense].

(j) President's National Security Telecommunications Advisory Committee; Executive Order No. 12382, as amended (Department of Defense).

Sec. 2. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in Section 1 of this order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 3. The following Executive orders or sections thereof, which established committees that have been terminated or whose work has been completed, are revoked:

(a) Section 3-401 of Executive Order No. 12661, as amended by Executive Order No. 12716 [set out as a note under section 2901 of Title 19, Customs Duties], establishing the National Commission on Superconductivity;

(b) Executive Order No. 12686, as amended by Executive Order No. 12705, establishing the President's Commission on Aviation, Security and Terrorism; and

(c) Executive Order No. 12658, as amended by Executive Order No. 12665 [formerly set out as a note under section 2210 of Title 42], establishing the President's Commission on Catastrophic Nuclear Accidents.

Sec. 4. Executive Order No. 12692 [formerly set out as a note under this section] is superseded.

Sec. 5. This order shall be effective September 30, 1991.

GEORGE BUSH

NOTES OF DECISIONS

and prospective effect through sections 5, 6 and 7 providing procedures which contemplate studied decision on whether particular advisory committee is necessary. *Carpenter v. Morton*, D.C.Nev. 1976, 424 F.Supp. 603.

2. Remedies available

Congress in enacting this Appendix was concerned about proliferation of advisory committees which had outlived their usefulness; to remedy situation, Congress chose to terminate all advisory

- Exemptions 5
- Powers and duties 3
- Presumptions 4
- Prospective effect 1
- Remedies available 2

1. Prospective effect

This Appendix Committee Act was intended to have both immediate effect through this section providing for termination of advisory committees

committees. *Carpenter v. Morton*, D.C.Nev. 1976, 424 F.Supp. 603.

3. Powers and duties

Congress contemplated that this Appendix would affect existing substantive law and that if it was later decided advisory committees were necessary, Congress would enact legislation to recharter them; Secretary of Interior had no obligation or authority to recharter advisory boards of which plaintiffs were members. *Carpenter v. Morton*, D.C.Nev. 1976, 424 F.Supp. 603.

4. Presumptions

The rebuttable presumption that, unless a statute creating an advisory committee deals expressly with its termination, the committee terminates 2 years after enactment of the Federal Advisory Committee Act or after the creation of the committee, whichever comes later, may be rebutted by a showing that the Congress, in creating a committee, assigned to it a specific ongoing function

§ 15. Effective date

Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following October 6, 1972.

that is integral to a particular statutory scheme. 1979 (Counsel-Inf.Op.) 3 Op.O.L.C. 170.

5. Exemptions

Although a professional legal association's standing committee on the federal judiciary was an "advisory committee," subject to the open meeting and records provisions of the Federal Advisory Committee Act, application of the act to committee would violate separation of powers doctrine and constitutional provisions requiring that the President alone shall nominate candidates for federal judgeships, as it would potentially inhibit the president's freedom to investigate, to be informed, to evaluate and to consult during the process of nominating federal judges, particularly as the purposes of the Act were served through the public confirmation process, and any need for applying the Act to the committee was outweighed by the president's interest in preserving confidentiality and freedom of consultation in selecting judicial nominees. *Washington Legal Foundation v. U.S. Dept. of Justice*, D.D.C. 1988, 691 F.Supp. 483.

§ 15. Effective date

Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following October 6, 1972.

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§ 15. Effective date

UNITED STATES
CODE
ANNOTATED

Title 5

Government
Organization
and Employees
§§ 7101 to 8500

SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

§ 7211. Employees' right to petition Congress

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

Added Pub.L. 95-454, Title VII, § 703(a)(3), Oct. 13, 1978, 92 Stat. 1217.

Historical Note

Effective Date. Section effective 90 days after Oct. 13, 1978, see section 907 of history and purpose of Pub.L. 95-454, see Pub.L. 95-454, set out as a note under section 1101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-454, see 1978 U.S.Code Cong. and Adm.News, p. 2723.

Library References

United States 40.

C.J.S. United States §§ 38 to 40.

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I. REGULATION OF CONDUCT

Sec.

7301. Presidential regulations.

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

7311. Loyalty and striking.

7312. Employment and clearance; individuals removed for national security.

7313. Riots and civil disorders.

SUBCHAPTER III—POLITICAL ACTIVITIES

7321. Political contributions and services.

7322. Political use of authority or influence; prohibition.

7323. Political contributions; prohibition.

7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.

7325. Penalties.

7326. Nonpartisan political activity permitted.

7327. Political activity permitted; employees residing in certain municipalities.

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

[7341. Repealed.]

7342. Receipt and disposition of foreign gifts and decorations.

SUBCHAPTER V—MISCONDUCT

7351. Gifts to superiors.

7352. Excessive and habitual use of intoxicants.

Historical Note

1968 Amendment. Pub.L. 90-351, Title V, § 1001(b), June 19, 1968, 82 Stat. 235, substituted "Employment Limitations" for "Loyalty Security, and Striking" as the subchapter II heading and added item 7313.

1967 Amendment. Pub.L. 90-83, § 1(46), Sept. 11, 1967, 81 Stat. 209, inserted "Gifts and" preceding "Decorations" in the heading for subchapter IV, deleted item 7341, and added item 7342.

SUBCHAPTER I—REGULATION OF CONDUCT

§ 7301. Presidential regulations

The President may prescribe regulations for the conduct of employees in the executive branch.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 524.

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Historical and Revision Notes

Derivation: United States Code Revised Statutes and Statutes at Large
 5 U.S.C. 631 (last 16 words) R.S. § 1753 (last 16 words).

Explanatory Notes

The words "employees in the executive branch" are substituted for "persons who may receive appointments in the civil service".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Delegation of Functions. For the delegation to the Office of Personnel Management of authority of the President to establish regulations for the conduct of persons in the civil service under former section 631 of this title, see section 601 of Ex.Ord.No.11222, May 8, 1965, 30 F.R. 6469, set out as a note under section 201 of Title 18, Crimes and Criminal Procedure.

For the delegation to the Office of Personnel Management of various functions vested in the President, see Ex.Ord.No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

Emergency Preparedness Functions. For assignment of certain emergency preparedness functions to the Office of Personnel Management, see Parts 1, 28, and 30 of Ex.Ord.No.11490, Oct. 28, 1969, 34 F.R. 17587, set out as a note under section 2292 of Title 50, Appendix, War and National Defense.

Code of Ethics for Government Service. House Concurrent Resolution No. 175, July 11, 1958, 72 Stat. B12 provided that:

"Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

"CODE OF ETHICS FOR GOVERNMENT SERVICE

"Any person in Government service should:

"1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government Department.

"2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

"3. Give a full day's labor for a full day's pay: giving to the performance of his duties his earnest effort and best thought.

"4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

"5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not: and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

"6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

"7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

"8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

"9. Expose corruption wherever discovered.

"10. Uphold these principles, ever conscious that public office is a public trust."

EXECUTIVE ORDER NO. 9845

Ex.Ord.No.9845, Apr. 28, 1947, 12 F.R. 2799, formerly set out as a note under this section, which permitted Bureau of Reclamation employees to accept appointments as constables or deputy sheriffs under state or territorial laws, was revoked by Ex.Ord.No.11408, Apr. 25, 1968, 33 F.R. 6459.

EXECUTIVE ORDER NO. 11491

Ex.Ord.No.11491, Oct. 29, 1969, 34 F.R. 17605, as amended, is now set out as a note under section 7101 of this title.

Library References

United States Code.

C.J.S. United States § 41.

Code of Federal Regulations

Determinations, etc., of suitability, see 5 CFR 731.201 et seq.

Employment of relatives, see 5 CFR 310.101 et seq.

Federal labor relations organization, programs, etc., see 5 CFR chap. XIV.

Nondisciplinary separations, etc., see 5 CFR 715.201 et seq.

Political activities, see 5 CFR 733.101 et seq.

Notes of Decisions

Power of federal government 1

State regulation or control 2

2. State regulation or control

1. Power of federal government

The federal government has power to control objectionable official conduct by its employees and officers. *State of Ohio v. U. S. Civil Service Commission, D.C. Ohio 1946, 65 F.Supp. 770.*

Congress must clearly manifest an intention to regulate for itself activities of its employees, which are apart from their governmental duties, before the police power of the state is powerless. *Railway Mail Ass'n v. Corsi, N.Y.1945, 65 S.Ct. 1483, 326 U.S. 88, 89 L.Ed. 2072.*

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

Historical Note

1968 Amendment. Pub.L. 90-351, Title for "Loyalty, Security, and Striking" in V, § 1001(c), June 19, 1968, 82 Stat. 235, the heading substituted "Employment Limitations"

§ 7311. Loyalty and striking

An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

(1) advocates the overthrow of our constitutional form of government;

(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts

the right to strike against the Government of the United States or the government of the District of Columbia.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 524.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 118p [Uncodified]	Aug. 9, 1955, ch. 690, § 1, 69 Stat. 624. June 29, 1956, ch. 479, § 3, (as applicable to the Act of Aug. 9, 1955, ch. 690, § 1, 69 Stat. 624), 70 Stat. 453.

Explanatory Notes

The word "position" is coextensive with and is substituted for "office or employment".

In paragraphs (1) and (2), the words "in the United States" in former section 118p(1), (2) are omitted as unnecessary in view of the reference to "our constitutional form of government".

In paragraphs (3) and (4), the reference to the "government of the District of Columbia" is added on authority of

the Act of June 29, 1956, in order to make these paragraphs meaningful with respect to individuals employed by the government of the District of Columbia. The words "From and after July 1, 1956", appearing in the Act of June 29, 1956, are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EXECUTIVE ORDER NO. 10450

Apr. 27, 1953, 18 F.R. 2489, as amended by Ex.Ord.No.10491, Oct. 15, 1953, 18 F.R. 6583; Ex.Ord.No.10531, May 27, 1954, 19 F.R. 3069; Ex.Ord.No.10548, Aug. 3, 1954, 19 F.R. 4871; Ex.Ord.No.10550, Aug. 6, 1954, 19 F.R. 4981; Ex.Ord.No.11605, July 2, 1971, 36 F.R. 12831, Ex.Ord.No.11785, June 4, 1974, 39 F.R. 20053; Ex.Ord.No.12107, Dec. 28, 1978, 44 F.R. 1055.

SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYEES

Whereas the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

Whereas the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:

Now, Therefore, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) [now sections 3301 and 7301 of this title]; the

Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632 et seq.) [now section 1101 et seq. of this title]; section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j) [now sections 3333 and 7311 of this title]; and the act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22-1 et seq.) [now section 7501 et seq. of this title], and as President of the United States, and deeming such action necessary in the best interests of the national security it is hereby ordered as follows:

Section 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951 the provisions of that act shall apply to all other departments and agencies of the Government.

Sec. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly con-

sistent with the interests of the national security.

Sec. 3. (a) The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law-enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: Provided, that upon request of the head of the department or agency concerned, the Office of Personnel Management may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: Provided, that a person occupying a sensitive position at the time it is designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: And provided further, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field pre-appointment investigation has not been completed if the head of the department or agency concerned finds

that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

Sec. 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.

Sec. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

Sec. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interest of the national security and, following such investigation and review as he deems necessary the head of the department or agency concerned shall terminate the employment of such suspended officer in the interests of the national security, or employee whenever he shall determine such termination necessary or advisable in accordance with the said act of August 26, 1950.

Sec. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the

same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent, with the interests of the national security, which finding shall be made a part of the records of such department or agency: Provided, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Office of Personnel Management that such person is eligible for such employment.

Sec. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security:

(i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(ii) Any deliberate misrepresentations, falsifications or omissions of material facts.

(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction or sexual perversion.

(iv) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts threat or preparation therefor, or conspiring with, or aiding or abetting another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy,

traitor, seditionist, anarchist, or revolutionist, or with any espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

(5) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

(6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Office of Personnel Management, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Office. The Office shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the com-

petitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the investigative facilities of the Office of Personnel Management and other departments and agencies may use such facilities under agreement with the Office.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (8) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

Sec. 9. (a) There shall be established and maintained in the Office of Personnel Management a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Office under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 28, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Office of Personnel Management information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto ex-

cept with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 28, 1950, as may be required for the efficient conduct of Government business.

Sec. 10. Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

Sec. 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Office of Personnel Management on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: Provided, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of Investigation or the Office of Personnel Management on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

Sec. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked.

Sec. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

Sec. 14. (a) The Office of Personnel Management with the continuing advice and collaboration of representatives of

such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of or directly or indirectly weaken, the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Office of Personnel Management shall report to the National Security Council, at least semiannually, on the results of such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.

EXECUTIVE ORDER NO. 11605

Ex.Ord.No.11605, July 2, 1971, 36 F.R. 12831, which amended Ex.Ord.No.10450, Apr. 27, 1953, 18 F.R. 2489, set out above, which related to security requirements

EXECUTIVE ORDER NO. 11785

June 4, 1974, 39 F.R. 20053

SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYEES

By virtue of the authority vested in me by the Constitution and statutes of the United States, including 5 U.S.C. 1101 et seq., 3301, 3571, 7301, 7313, 7501(c), 7512, 7532, and 7533 [sections 1101 et seq., 3301, 3571, 7301, 7313, 7501(c), 7512, 7532, and 7533 of this title]; and as President of the United States, and finding such action necessary in the best interests of national security, it is hereby ordered as follows:

Section 1. Section 12 of Executive Order No. 10450 of April 27, 1953, as amended [set out as a note above], is revised to read in its entirety as follows:

"Sec. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked."

Sec. 2. Neither the Attorney General, nor the Subversive Activities Control

(b) All departments and agencies of the Government are directed to cooperate with the Office of Personnel Management to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

(c) To assist the Office of Personnel Management in discharging its responsibilities under this order, the head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this order, advise the Office as to the action taken with respect to such officer or employee. The information furnished by the heads of departments and agencies pursuant to this section shall be included in the reports which the Office of Personnel Management is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.

Sec. 15. This order shall become effective thirty days after the date hereof.

for government employees, was revoked by Ex.Ord.No.11785, June 4, 1974, 39 F.R. 20053, set out below.

Board, nor any other agency shall designate organizations pursuant to section 12 of Executive Order No. 10450, as amended, nor circulate nor publish a list of organizations previously so designated. The list of organizations previously designated is hereby abolished and shall not be used for any purpose.

Sec. 3. Subparagraph (5) of paragraph (a) of section 8 of Executive Order No. 10450, as amended, is revised to read as follows:

"Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advo-

cates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United

States or any State or subdivision thereof by unlawful means."

Sec. 4. Executive Order No. 11605 of July 2, 1971, is revoked.

RICHARD NIXON

Cross References

Affidavit that acceptance of office will not violate this section, see section 3333 of this title.

Disloyalty and asserting the right to strike against the government, public officers and employees, see section 1918 of Title 18, Crimes and Criminal Procedure.

Library References

Officers ⇨25.
United States ⇨36.

C.J.S. Officers § 34.
C.J.S. United States §§ 36, 37, 62 to 64.

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2. Constitutionality

Dismissal of government employees on loyalty grounds is not unconstitutional per se. Vitarelli v. Seaton, 1958, 253 F.2d 338, 102 U.S.App.D.C. 316, reversed on other grounds 79 S.Ct. 968, 350 U.S. 535, 3 L.Ed.2d 1012.

Former section 118j of this title [now covered in sections 3333 and 7311 of this title and section 1918 of Title 18] which made it unlawful for a government employee to have membership in an organization advocating overthrow of government of United States was valid, since Congress may prescribe qualifications of government employees and attach conditions to their employment. Joint Anti-Fascist Refugee Committee v. Clark, 1949, 177 F.2d 79, 85 U.S.App.D.C. 255, reversed on other grounds 71 S.Ct. 624, 341 U.S. 123, 95 L.Ed. 817.

Former section 118j of this title [now covered in sections 3333 and 7311 of this title and section 1918 of Title 18] or loyalty program did not deprive organization designated as subversive or its members of any property rights, freedom of speech and assembly or freedom of thought and belief, since anyone was free to join organization and give it his support and encouragement in accordance with constitutional rights to do such things, but no one has a constitutional right to be a government employee. Id.

1. Common law

At common law, no employee, whether public or private, had constitutional right to strike in concert with his fellow workers. United Federation of Postal Clerks v. Blount, D.C.D.C.1971, 325 F.Supp. 879, affirmed 92 S.Ct. 80, 404 U.S. 802, 30 L. Ed.2d 38.

Congress has obligation to ensure that machinery of federal government continues to function at all times without interference, and prohibition of strikes by its employees is reasonable implementation of such obligation. United Federation of Postal Clerks v. Blount, D.C.D.C. 1971, 325 F.Supp. 879, affirmed 92 S.Ct. 80, 404 U.S. 802, 30 L.Ed.2d 38.

It is not irrational or arbitrary, from standpoint of equal protection, for federal government to condition employment by it or by District of Columbia on promise not to withhold labor collectively, and to prohibit strikes by those in such public employment, whether such employees be regarded as in essential or nonessential work and whether or not some positions in private industry are arguably more affected with public interest than are some positions in government service. *Id.*

This section which prohibited government employees from asserting right to strike and administration of oath in which employee states that he will not assert the right to strike, violated U.S.C. A.Const. Amend. 1. *National Ass'n of Letter Carriers v. Blount*, D.C.D.C.1060, 305 F.Supp. 546, appeal dismissed 91 S.Ct. 7, 400 U.S. 801, 27 L.Ed.2d 33.

This section prohibiting an individual from accepting or holding a position in the government of the United States or the government of the District of Columbia if he advocates the overthrow of the government or is a member of an organization which he knows to be engaged in such advocacy, together with employee's oath incorporating this section, is unconstitutional as abridging a person's right to freedom of association. *Stewart v. Washington*, D.C.D.C.1969, 301 F.Supp. 610.

This section as applied requiring college instructor on faculty of Federal City College of District of Columbia to take an oath that he is not and will not knowingly become a member of organization that advocates overthrow of our constitutional form of government is unconstitutional because of overbreadth in that it covers passive and inert members of organization as well as leaders and active members and covers members indifferent or even opposed to that objective of organization as well as those specifically intending its furtherance. *Haskett v. Washington*, D.C.D.C.1968, 204 F.Supp. 912.

3. Rules and regulations

President's failure to express disapproval of regulation which purported to authorize Loyalty Review Board to do things that Board was not authorized to do under Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a note under this section, could not be deemed to constitute President's acquiescence in such regulation and, thus, an implied extension by President of Board's power under the Executive Or-

der. *Peters v. Hobby*, App.D.C.1955, 75 S.Ct. 790, 349 U.S. 331, 99 L.Ed. 1129.

Right to strike is more vulnerable to regulation than right to organize and select representatives for lawful purposes of collective bargaining. *United Federation of Postal Clerks v. Blount*, D.C.D.C.1971, 325 F.Supp. 879, affirmed 92 S.Ct. 80, 404 U.S. 802, 30 L.Ed.2d 38.

4. Administrative rulings, opinions and interpretations

Loyalty Review Board memorandum that if any federal employee is found to be a member of an organization seeking to alter the United States form of government by unconstitutional means his removal is mandatory was inconsistent with the scheme of the loyalty program which made disloyalty to the government the bar to employment, rather than membership in a designated organization, and, hence, the memorandum was void. *Kutcher v. Gray*, 1952, 199 F.2d 783, 91 U.S.App.D.C. 266.

Where postal employees were suspended by Postmaster General after finding by departmental loyalty board of reasonable grounds for belief of disloyalty, and finding of reasonable grounds was reversed by Loyalty Review Board of Civil Service Commission [now Office of Personnel Management], Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as note under this section making test for removal a reasonable doubt as to loyalty, Commission memorandum directing each department to adjudicate in accordance with latter test all loyalty cases in which unfavorable determinations made by any board had been reversed on appeal, did not require that employees petition for review of their suspension by departmental board before bringing suit for loss of salary during period of suspension. *Barnes v. U. S.*, Ct.Cl.1952, 108 F.Supp. 382.

5. Persons prohibited from striking

By virtue of their governmental employment, right of federal employees working aboard government vessels to join unions and to select bargaining representatives, unlike that of private seamen, exists only by express leave of President, and they are forbidden, under pain of discharge, fine and imprisonment, from exercising or asserting right to strike. *Amell v. U. S.*, Ct.Cl.1966, 86 S.Ct. 1384, 384 U.S. 158, 16 L.Ed.2d 445.

Public employees stand on no stronger footing, as respects right to strike, than private employees, and, in absence of statute, do not possess right to strike.

United Federation of Postal Clerks v. Blount, D.C.D.C.1971, 325 F.Supp. 879, affirmed 92 S.Ct. 80, 404 U.S. 802, 30 L.Ed. 2d 38.

Tennessee Valley Authority employees are subject to former section 118p of this title [now this section] denying federal employment to persons asserting right to strike against government and to former section 118r of this title [now section 1918 of Title 18] making violation of former section 118p of this title a felony. *TVA v. Local Union No. 110 of Sheet Metal Workers' Intern. Ass'n of Louisville, Ky.*, D.C.Ky.1962, 233 F.Supp. 997.

6. Actions constituting strikes

Word "strike" as used in this section and section 1918 of Title 18 relating to strike against United States government or agency or District of Columbia and word "participates" as used in such sections, mean, in essence, actual refusal in concert with others to provide services to employer; as so interpreted, statutes are not void for vagueness or overbreadth nor violative of U.S.C.A.Const. Amend. 1 rights or of U.S.C.A.Const. Amend. 5 right of due process. *United Federation of Postal Clerks v. Blount*, D.C.D.C.1971, 325 F.Supp. 879, affirmed 92 S.Ct. 80, 404 U.S. 802, 30 L.Ed.2d 38.

Concerted actions of members of local union in refusing to report to work at steam plant of Tennessee Valley Authority and in maintaining picket line there constituted "strike" in violation of this section denying federal employment to persons asserting right to strike against government, of second statute making violation of the first a felony, and of general agreement of labor council not to permit its members to engage in work stoppages pending settlement of disputes with Authority. *TVA v. Local Union No. 110 of Sheet Metal Workers' Intern. Ass'n of Louisville, Ky.*, D.C.Ky.1962, 233 F.Supp. 997.

7. Consistency with national security interests

Ex.Ord.No.10450, set out as a note under this section, implementing former section 22-1 et seq. of this title [now section 7531 et seq. of this title] authorizing suspension and dismissal of government employees for security reasons, though prescribing as standard for dismissal the formula that retention in employment is "not clearly consistent with the interests of the national security," does not in fact require determination of relationship of employee's retention to national security but requires discharge of any employee of doubtful loyalty irrespective of charac-

ter of his job and relationship to national security, and treats adverse determination on loyalty as adequate to satisfy statutory requirements, and hence goes beyond intent of Congress. *Cole v. Young*, App.D.C.1956, 76 S.Ct. 861, 351 U.S. 536, 100 L.Ed. 1396.

8. Suspension of pay

Even if former section 652(a) [now section 7501] of this title was not applicable to plaintiff, ample authority for the action of the Department of Labor Loyalty Board in suspending plaintiff without pay was found in the provisions of Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out in note under this section, under which the Board acted. *Brown v. U. S.*, 1952, 122 Ct.Cl. 361.

9. Duty and function of department heads

The head of each department possesses inherent right to review any loyalty case; and, indeed, it is continuing duty of any department or administrative agency to execute its function in such fashion as may be required to effectuate its purposes and to accomplish its objectives. *Jason v. Summerfield*, 1954, 214 F.2d 273, 94 U.S.App.D.C. 197, certiorari denied 75 S.Ct. 48, 348 U.S. 840, 99 L.Ed. 662.

10. Administrative nature of loyalty program proceedings

Proceedings against an employee under the loyalty program are purely administrative in character, in no sense criminal, and do not require the constitutional and traditional safeguards of a judicial trial. *Kutcher v. Gray*, 1952, 199 F.2d 783, 91 U.S.App.D.C. 266.

11. Jurisdiction of Loyalty Review Board

Where Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a note under this section, limited Loyalty Review Board's jurisdiction to appeals from adverse rulings and to appeals referred to Board by employee or his department, Board's regulations were invalid to extent that they asserted Board's authority over appeals from favorable rulings and authority in Board to adjudicate individual cases on Board's own motion. *Peters v. Hobby*, App.D.C.1955, 75 S.Ct. 790, 349 U.S. 331, 99 L.Ed. 1129.

Under Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a note under this section, authorizing Loyalty Review Board to review cases involving persons recommended for dismissal on grounds relating to loyalty by loyalty board of any department or agen-

cy and providing that such case may be referred to Loyalty Review Board either by employing department or agency or by officer or employee concerned, Loyalty Review Board does not have power to undertake review on its own motion. *Id.*

12. Hearing

Interior Order No. 2738, dealing with dismissal of a governmental employee on loyalty or security grounds giving the employee the right "to cross-examine any witness offered in support of the charges" does not require the department involved to call witnesses to testify in support of any or all of the charges, because it was expected that charges might rest on information gathered from or by confidential informants. *Vitarelli v. Seaton*, App.D.C.1959, 79 S.Ct. 968, 359 U.S. 535, 3 L.Ed.2d 1012.

Interior Order No. 2738, requiring that hearings dealing with dismissal of a governmental employee on loyalty or security grounds shall be "orderly" and that "reasonable restrictions shall be imposed as to relevancy, competency, and materiality of matters considered", were not observed where hearing developed into a wide ranging inquisition as to employee's educational, social and political beliefs, encompassing even a question as to whether employee was "a religious man". *Id.*

Interior Order No. 2738, dealing with dismissal of a governmental employee on loyalty and security grounds giving the employee the right to cross-examine any witness offered in support of the charges was violated in proceedings brought against the government employee under Ex.Ord.No.10450, set out as a note under this section, where security officer identified by name a person who had given information apparently considered detrimental to the employee, thus negating any possible inference that that person was considered a confidential informant, but nevertheless questioned employee at some length concerning information supplied from such source without calling the informant and affording employee the right to cross-examine. *Id.*

Former United States Post Office Department [now United States Postal Service] employee, who had been discharged on account of reasonable ground for belief of disloyalty, was entitled to trial-type hearing in proceeding to terminate his annuity rights on ground of false statements and concealment of material facts relating to his affiliation with Communist Party. *Garrott v. U. S.*, 1965, 340 F.2d 615, 169 Ct.Cl. 186.

Where commandant of certain naval district and others conducted summary proceedings to investigate conduct and associations which allegedly tended to cast doubt upon loyalty of Lieutenant in Naval Reserve, and Lieutenant offered to resign from service, if proceedings were nevertheless continued, Lieutenant would be entitled to full hearing which due process under military law would require for any disciplinary or court-martial proceeding. *McTernan v. Rodgers*, D.C. Cal.1953, 113 F.Supp. 638.

Validity of summary proceedings, wherein normal essentials of due process were lacking, by commandant of certain naval district and others to investigate conduct and associations which allegedly tended to cast doubt upon loyalty of Lieutenant in Naval Reserve, would have to rest upon executive finding that such proceedings were required for national security. *Id.*

The requirements of due process clause of U.S.C.A.Const. Amend. 5 apply only to judicial proceedings and to proceedings of quasi judicial nature and do not apply to employer-employee relationship as between government and its employees and do not apply to hearing contemplated by Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a note under this section prescribing procedures for administration of employees' loyalty program in executive branch of government. *Washington v. Clark*, D.C.D.C.1949, 84 F. Supp. 964, affirmed 182 F.2d 375, 86 U.S. App.D.C. 343, affirmed 71 S.Ct. 795, 341 U.S. 923, 95 L.Ed. 1350.

13. Case or controversy

Justiciable controversy existed in action by public employee union attacking constitutionality of this section and oath prohibiting public employee from asserting right to strike even though employee could test validity of this section and oath at time any action was taken against him because of his violation of this section or oath. *National Ass'n of Letter Carriers v. Blount*, D.C.D.C.1969, 305 F.Supp. 546, appeal dismissed 91 S.Ct. 7, 400 U.S. 801, 27 L.Ed.2d 33.

14. Exhaustion of administrative remedies

In absence of allegation that superior officers put impediments in way of normal administrative appellate route, discharged air controllers, who had not shown that administrative appeal they were entitled to would have been futile or that available administrative remedies were faulty or inadequate, were denied a stay pending appeal from judgment dis-

missing their suit for alleged wrongful discharge on ground that they had not exhausted their administrative remedies. *Ogden v. Department of Transp.*, C.A. Mich.1970, 430 F.2d 660.

Absent showing that threatened suspension would be on security grounds rather than for inaccuracy in employment application, which had also been suggested, there was no such "clearly illegal" action threatened as would justify granting judicial relief against threatened action by Civil Service Commission [now Office of Personnel Management], to post office employee who had failed to exhaust administrative remedies notwithstanding employee's contention that Commission had been ousted of jurisdiction by section 7531 et seq. of this title giving Postmaster General discretion to suspend for security reasons. *Leiner v. Rossell*, D.C. N.Y.1954, 121 F.Supp. 27.

Government employee's suit to enjoin readjudication of issue of his loyalty to government of United States was premature, under general rule as to exhaustion of administrative remedies, where only administrative action taken against him had been service of "notice of proposed removal action", and there was possibility that administrative tribunal might rule favorably on employee's contention that prior adjudication of issue, under Ex.Ord.No.10241, fixing different loyalty standard, was res judicata. *Jason v. Alger*, D.C.D.C.1952, 104 F.Supp. 653.

15. Persons entitled to maintain action

Even though this section prohibiting government employee from asserting right to strike contained no sanctions against public employee union for asserting right to strike, union has standing to bring action attacking constitutionality of this section and employment oath administered to employees. *National Ass'n of Letter Carriers v. Blount*, D.C.D.C.1969, 305 F.Supp. 546, appeal dismissed 91 S.Ct. 7, 400 U.S. 801, 27 L.Ed.2d 33.

16. Res judicata

Standard imposed by Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a note under this section, authorizing dismissal if "reasonable grounds exist for belief that the person involved is disloyal" was not the same standard as that imposed by Ex.Ord.No. 10241 authorizing removal if "there is a reasonable doubt as to the loyalty of the person involved", and fact that Loyalty Review Board in Civil Service Commission [now Office of Personnel Management] had concluded in 1950 that reasonable grounds did not exist for believing

that employee was disloyal did not preclude reexamination in 1952 hearing on same charges under standard set up in Ex.Ord.No.10241. *Jason v. Summerfield*, 1934, 214 F.2d 273, 94 U.S.App.D.C.197, certiorari denied 75 S.Ct. 48, 348 U.S. 840, 99 L.Ed. 662.

17. Dismissal

Where it was necessary to dismiss government employee's suit to enjoin readjudication of loyalty issue because of his failure to exhaust his administrative remedies, but a serious question was raised as to whether prior adjudication of loyalty issue, under previous Ex.Ord.No.9835, setting up different loyalty standard than that presently in effect under Ex. Ord.No.10450, set out as a note under this section, should estop further adjudication of issue, dismissal would be without prejudice to plaintiff's right to file another suit, if and when adverse decision were rendered in administrative process. *Jason v. Alger*, D.C.D.C.1952, 104 F.Supp. 653.

18. Admissibility of evidence

Where Federal Bureau of Investigation, the Civil Service Commission [now Office of Personnel Management], and Department of State were authorized to interrogate federal employee who was employed on a conditional basis, subject to character and fitness investigation, questions as to whether employee was a member of Communist Party, as to whether he had ever participated in any of its activities, etc., were relevant and within scope of investigation. *U. S. v. Marzani*, D.C.D.C. 1947, 71 F.Supp. 615, affirmed 168 F.2d 133, affirmed 69 S.Ct. 299, 335 U.S. 895, 93 L.Ed. 431, adhered to on rehearing 69 S. Ct. 653, 336 U.S. 922, 93 L.Ed. 1084.

19. Declaratory judgment

Federal courts could entertain a declaratory judgment action brought by federal government employee against Administrator of the Federal Security Agency, members of the Civil Service Commission [now Officer of Personnel Management], members of its Loyalty Review Board and members of regional loyalty board for purpose of determining employee's right to reinstatement in the government employ after employee had been rated ineligible without a trial on ground of superiors' belief of employee's disloyalty. *Bailey v. Richardson*, 1950, 182 F.2d 46, 86 U.S.App.D.C. 248, affirmed 71 S.Ct. 609, 341 U.S. 918, 95 L.Ed. 1352.

In action for declaratory judgment as to validity of Ex.Ord.No.9835, which was revoked by Ex.Ord.No.10450, set out as a

5 § 7311

Note 19

note under this section, prescribing procedures for administration of employees' loyalty program in executive branch of government and for injunction against enforcement of Executive Order, court would consider whether Executive Order was violative of Constitution or laws of United States, but would not review expediency, desirability, and policy of Executive Order. *Washington v. Clark*, D.C.D.C.1949, 84 F.Supp. 964, affirmed 182 F.2d 375, 86 U.S.App.D.C. 343, affirmed 71 S.Ct. 795, 341 U.S. 923, 95 L.Ed. 1356.

20. Injunction

Evidence sustained finding that defendants violated preliminary injunction against concerted efforts directed at work slow down and willfully failed to supply medical information required by preliminary injunction. *U. S. v. Robinson*, C.A. Alaska 1971, 449 F.2d 925.

Preliminary injunction restraining air traffic controllers from continuing to encourage or take part in work stoppage or slow down and requiring them to immediately notify their superior of their mental and physical condition and to furnish supporting medical data was not too vague to be criminally enforced. *Id.*

Where government had proven a prima facie case of illegal work stoppage by air traffic controllers employed by Federal Aviation Agency it was improper to preliminarily enjoin the Agency from taking any disciplinary action against the controllers based upon the work stoppage. *U. S. v. Professional Air Traffic Controllers Organization (PATCO)*, C.A.N.Y.1970, 438 F.2d 79, certiorari denied 91 S.Ct. 1373, 402 U.S. 915, 28 L.Ed.2d 661.

Preliminary injunction restraining 16 local unions representing substantial number of postal carrier employees in the District of Connecticut and their officers, agents, servants and employees from encouraging or engaging in any strike against United States Post Office Department [now United States Postal Service] or affecting orderly continuance of operations of postal service was justified, since

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strike was unlawful remedy at law was inadequate. *U. S. v. Branch 60 National Ass'n of Letter Carriers, AFL-CIO*, Stamford, Conn., D.C.Conn.1970, 312 F.Supp. 619.

Tennessee Valley Authority would suffer irreparable injury as result of picketing or other interference or obstruction with reference to construction of steam plant and was therefore entitled to preliminary injunction restraining such picketing or interference. *Tennessee Val. Authority v. Local Union No. 110 of Sheet Metal Workers' Intern. Ass'n of Louisville, Ky.*, D.C.Ky.1962, 233 F.Supp. 997.

Peaceful picketing for unlawful purpose will be enjoined. *Id.*

21. Orders and decisions appealable

Appeal would lie from order staying administrative action of Federal Aviation Administration as regards removal and suspension of air traffic controllers, who participated in work slow-down pending disposition of issues in civil actions seeking permanent injunction. *U. S. v. Moore*, C.A.Colo.1970, 427 F.2d 1020.

22. Affirmance

In action brought by federal employee in classified civil service seeking an order directing her reinstatement in government employ after her dismissal without trial because of her superiors' belief that there were reasonable grounds to believe that employee was disloyal to government of United States, judgment denying reinstatement was affirmed by equally divided court. *Bailey v. Richardson*, App.D.C.1951, 71 S.Ct. 669, 341 U.S. 918, 95 L.Ed. 1352.

23. Certiorari to Supreme Court

The United States Supreme Court would grant certiorari to consider validity of discharge of a former governmental employee under Ex.Ord.No.10450, set out as a note under this section, relating to sensitive positions. *Vitarelli v. Seaton*, D.C.1959, 79 S.Ct. 968, 359 U.S. 535, 3 L.Ed.2d 1012.

§ 7312. Employment and clearance; individuals removed for national security

Removal under section 7532 of this title does not affect the right of an individual so removed to seek or accept employment in an agency of the United States other than the agency from which removed. However, the appointment of an individual so removed may be made only after the head of the agency concerned has consulted

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5 § 7313

with the Office of Personnel Management. The Office, on written request of the head of the agency or the individual so removed, may determine whether the individual is eligible for employment in an agency other than the agency from which removed.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 524; Pub.L. 95-454, Title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 22-1 (4th and 5th provisions)	Aug. 28, 1950, ch. 803, § 1 (4th and 5th provisions), 64 Stat. 477.

Explanatory Notes

The words "Removal under section 7532 of this title" and "so removed" are coextensive with and substituted for "termination of employment herein provided" and "whose employment has been terminated under the provisions of said sections", respectively.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1978 Amendment. Pub.L. 95-454 substituted "Office of Personnel Management"

for "Civil Service Commission" and "Office" for "Commission".

Effective Date of 1978 Amendment. Amendment by Pub.L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-454, see 1978 U.S.Code Cong. and Adm.News, p. 2723.

Library References

Officers 25, 71.
United States 36.

C.J.S. Officers and Public Employees §§ 34, 108, 111, 117, 120, 146, 148.
C.J.S. United States §§ 36, 37, 62 to 64.

Code of Federal Regulations

Department of Defense programs, see 32 CFR 156.1 et seq.
Personnel security, see 5 CFR 732.401 et seq.

§ 7313. Riots and civil disorders

(a) An individual convicted by any Federal, State, or local court of competent jurisdiction of—

- (1) inciting a riot or civil disorder;
- (2) organizing, promoting, encouraging, or participating in a riot or civil disorder;
- (3) aiding or abetting any person in committing any offense specified in clause (1) or (2); or
- (4) any offense determined by the head of the employing agency to have been committed in furtherance of, or while participating in, a riot or civil disorder;

shall, if the offense for which he is convicted is a felony, be ineligible to accept or hold any position in the Government of the United

States or in the government of the District of Columbia for the five years immediately following the date upon which his conviction becomes final. Any such individual holding a position in the Government of the United States or the government of the District of Columbia on the date his conviction becomes final shall be removed from such position.

(b) For the purposes of this section, "felony" means any offense for which imprisonment is authorized for a term exceeding one year. Added Pub.L. 90-351, Title V, § 1001(a), June 19, 1968, 82 Stat. 235.

Historical Note

Effective Date. Section 1002 of Pub.L. 90-351 provided that: "The provisions of section 1001(a) of this title [enacting this section] shall apply only with respect to acts referred to in section 7313(a)(1)-(4) of title 5, United States Code, as added by section 1001 of this title [subsec. (a) (1) to (4) of this section], which are committed after the date of enactment of this title [June 19, 1968]."

Receipt of Benefits Under Laws Providing Relief for Disaster Victims. Section 1108(e) of Pub.L. 90-448, Title XI, Aug. 1, 1968, 82 Stat. 567, provided that: "No person who has been convicted of committing a felony during and in connection with a riot or civil disorder shall be permitted, for a period of one year after the date of his conviction, to receive any benefit under any law of the United States providing relief for disaster victims."

Legislative History. For legislative history and purpose of Pub.L. 90-351, see 1968 U.S. Code Cong. and Adm. News, p. 2312.

Library References

United States § 35, 36.

C.J.S. United States §§ 35 to 37, 62 to 64.

SUBCHAPTER III—POLITICAL ACTIVITIES

Historical Note

Commission on Political Activity of Government Personnel. Pub.L. 89-617, Oct. 3, 1966, 80 Stat. 868, as amended by Pub.L. 90-55, July 20, 1967, 81 Stat. 124, established a Commission on Political Activity of Government Personnel to make a full and complete investigation and study of the Federal laws which limit or discourage the participation of Federal and State officers and employees in political activity with a view to determining the effect of such laws, the need for their revision or elimination, and an appraisal of the extent to which undesirable results might accrue from their repeal. The Commission was directed to submit a comprehensive report of its activities and the results of its studies to the President and to the Congress on or before December 31, 1967.

§ 7321. Political contributions and services

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so.

Pub.L. 90-554, Sept. 6, 1966, 80 Stat. 525.

Historical and Revision Notes

Derivation: United States Code Revised Statutes and Statutes at Large
5 U.S.C. 633(2)5 Jan. 16, 1883, ch. 27, § 2(2)5, 22 Stat. 404.

Explanatory Notes

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302 of this title.

substituted for "person in the public service" for clarity.

The words "employee in an Executive agency or in the competitive service" are substituted for "person in the public service" for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Cross References

President's power to grant exceptions from provisions of this section, see section 3302 of this title.

Library References

Elections § 317.
United States § 36, 41.

C.J.S. Elections §§ 329, 350.
C.J.S. United States §§ 36, 37, 41, 62 to 64.

Code of Federal Regulations

Applicability, etc., see 5 CFR 733.101 et seq.

Notes of Decisions

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1. Generally

The civil service laws placed no restrictions on the power of removal from appointive offices, except for refusal to contribute to political funds or neglect to render political service. Page v. Moffett C.C.N.J. 1898, 85 F. 38.

count of his dismissal unless it was in violation of this section precluding dismissals for political reasons. McDougall v. U. S., 1957, 149 F.Supp. 651, 138 Ct.Cl. 90.

2. Right of action

A dismissed civil servant of federal government has no right of action on ac-

3. Reassignment

An order of reassignment motivated by purely political reasons was not lawful because it was violative of former section 633 of this title [now this section]. Schmidt v. U. S., 961, 145 Ct.Cl. 632.

§ 7322. Political use of authority or influence; prohibition

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 525.

Historical and Revision Notes

Derivation: United States Code Revised Statutes and Statutes at Large
5 U.S.C. 633(2)3 (1st sentence) Jan. 16, 1883, ch. 27, § 2(2)6, 22 Stat. 404.

Explanatory Notes

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302 of this title.

The words "employee in an Executive agency or in the competitive service" are substituted for "person in said service" for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Cross References

President's power to grant exceptions from provisions of this section, see section 3302 of this title.

Library References

Elections ☞ 317.
United States ☞ 45.

C.J.S. Elections §§ 329, 356.
C.J.S. United States § 42.

§ 7323. Political contributions; prohibition

An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 525.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 118a	Aug. 15, 1876, ch. 287, § 6, 19 Stat. 169.

Explanatory Notes

The words "An employee of an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate)" are substituted for "Any executive officer or employee of the United States not appointed by the President, with the advice and consent of the Senate," because of the definitions in sections 105 and 2105. The words "an employee, a Member of Congress, or an officer of a uniformed service" are substituted for "any other officer or employee of the Government". In the last sentence, the word "removed" is substituted for "at once discharged" because of

the provisions of the Lloyd-LaFollette Act, 37 Stat. 555, as amended, and the Veterans' Preference Act of 1944, 58 Stat. 387, as amended, which are carried into this title.

The criminal penalty appearing in the last 25 words of section 6 of the Act of Aug. 15, 1876, is omitted as superseded by sections 602 and 607 of title 18.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Cross References

Employees to be removed from competitive service only for cause, see section 7501 of this title.

Library References

Elections ☞ 317.
United States ☞ 45.

C.J.S. Elections §§ 329, 356.
C.J.S. United States § 42.

Notes of Decisions

Construction with other laws 1	litical purposes. <i>Soldevila v. Secretary of Agriculture of U. S., C.A.Puerto Rico</i> 1975, 512 F.2d 427.
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1. Construction with other laws

This section providing that an employee in an Executive agency may not request or receive from, or give to, an employee, a thing of value for political purposes, is not part of the Hatch Act, Act Aug. 15, 1876, c. 287, § 6, 19 Stat. 169, and ruling of Civil Service Commission (now Office of Personnel Management) that the director had not violated section 7324 of this title, which is part of the Hatch Act, by making available to his subordinate federal employees banquet tickets for a candidate of a local Puerto Rican political party did not control the decision on the charge that the director violated this section which prohibited requesting or receiving or giving to an employee a thing of value for po-

2. Exhaustion of administrative remedies

Where Civil Service Commission (now Office of Personnel Management) was not directly bound by its previous ruling that federal employee had not violated section 7324 of this title, by making available to his subordinate federal employees banquet tickets for a local Puerto Rican party candidate and the employee had not exhausted his administrative remedies when he brought suit against Secretary of Agriculture to enjoin his discharge for alleged violation of this section prohibiting a federal employee from requesting or receiving from or giving to an employee a thing of value for political purposes, preliminary injunction enjoining the discharge was improper. *Soldevila v. Secretary of Agriculture of U. S., C.A.Puerto Rico* 1975, 512 F.2d 427.

§ 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

- (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or
- (2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase "an active part in political management or in political campaigns" means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

(d) Subsection (a)(2) of this section does not apply to—

- (1) an employee paid from the appropriation for the office of the President;

(2) the head or the assistant head of an Executive department or military department;

(3) an employee appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;

(4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or

(5) the Recorder of Deeds of the District of Columbia.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 525; Pub.L. 93-268, § 4(a), Apr. 17, 1974, 88 Stat. 87.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 1181(a) (1st 2 sentences)	Aug. 2, 1939, ch. 410, § 9(a) (1st 2 sentences), 53 Stat. 1148. Mar. 27, 1942, ch. 199, § 701, 56 Stat. 181.
	5 U.S.C. 118k-3 (1st 33 words)	July 19, 1940, ch. 640, § 4 "Sec. 14 (1st 33 words)", 54 Stat. 771.
	5 U.S.C. 118l (less applicability to 5 U.S.C. 118k)	July 19, 1940, ch. 640, § 4 "Sec. 15 (less applicability to § 12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, § 4, 54 Stat. 767)", 54 Stat. 771.
(b)	5 U.S.C. 1181(a) (3d sentence)	Aug. 2, 1939, ch. 410, § 9(a) (3d sentence), 53 Stat. 1148. July 19, 1940, ch. 640, § 2, 54 Stat. 767.
(c)	5 U.S.C. 118k-1 (less applicability to 5 U.S.C. 118k)	Oct. 24, 1942, ch. 620 "Sec. 21 (less applicability to § 12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, § 4, 54 Stat. 767)", 56 Stat. 986.
(d)	5 U.S.C. 1181(a) (4th sentence)	Aug. 2, 1939, ch. 410, § 9(a) (4th sentence), 53 Stat. 1148.
	5 U.S.C. 118k-3 (less 1st 33 words)	July 19, 1940, ch. 640, § 4 "Sec. 14 (less 1st 33 words)", 54 Stat. 771.

Explanatory Notes

In subsection (a), the words "July 19, 1940" are substituted for "at the time this section takes effect". The amendment made by the Act of Mar. 27, 1942, is omitted because it expired Mar. 31, 1947, under section 1501 of that Act, as added June 29, 1946, ch. 526, § 1, 60 Stat. 345; 50A U.S.C. 645.

In subsection (c), the reference in the Act of Oct. 24, 1942, to section 2 of the Act of Aug. 2, 1939, is omitted as that section was repealed by the Act of June 25, 1948, ch. 645, § 21, 62 Stat. 867, and is now covered by section 595 of title 18.

In subsection (d), the exception for the President and Vice-President of the United States is omitted as unnecessary, as

they are not "employees" under the definition in section 2105. In subsection (d)(2), the words "or military departments" are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive Departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this subsection

tion, which was in effect in 1949, remained applicable to the head or assistant head of a military department by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1974 Amendment. Subsec. (d)(4). Pub.L. 93-268 substituted "the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government

and Governmental Reorganization Act" for "the Commissioners of the District of Columbia".

Commissioner of District of Columbia and Members of District of Columbia Council Exempted from Prohibitions. Section 4(b) of Pub.L. 93-268 provided that: "Notwithstanding any other provision of law, the provisions of section 7324(a)(2) of title 5, United States Code [subsec. (a)(2) of this section], shall not be applicable to the Commissioner of the District of Columbia or the members of the District of Columbia Council (including the Chairman and Vice Chairman), as established by Reorganization Plan Numbered 3 of 1967 [set out in the Appendix to this title]."

Cross References

Political activities of state and local officers and employees, see section 1501 et seq. of this title.

Library References

Elections ⇨ 317.
United States ⇨ 45.

C.J.S. Elections §§ 329, 356.
C.J.S. United States § 42.

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Congress has power to enact, in plain and understandable language, this section forbidding activities such as organizing political party or club, actively participating in fund raising activities for partisan candidate or political party, becoming partisan candidate for or campaigning for elective public office, actively managing campaign of partisan candidate for public office, initiating or circulating partisan nominating petition or soliciting votes for partisan candidate for public office, or serving as delegate, alternate or proxy to political party convention; neither U.S.C.A. Const. Amend. 1 nor any other provision of Constitution invalidates law barring such partisan political conduct by federal employees. 1d.

Congress may regulate the political conduct of government employees within reasonable limits, though the regulation trenches to some extent upon unfettered political action, the extent of regulation lying primarily with Congress, and courts will interfere only when such interference passes beyond the general existing conception of governmental power, as developed from practice, history, and changing education, social and economic conditions. United Public Workers of America (C.I.O.) v. Mitchell, 1947, 67 S.Ct. 558, 330 U.S. 75, 91 L.Ed. 754.

1. Constitutionality

Prohibition of this section against federal employees taking "an active part in political management or in political campaigns" was neither unconstitutionally vague nor fatally overbroad. U. S. Civil Service Commission v. National Ass'n of Letter Carriers, AFI-CIO, Dist.Col.1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 766.

Provision in former section 1181 of this title [now this section] forbidding officers and employees in the executive branch of the federal government, with exceptions, from taking any active part in political management or in political campaigns, under penalty of immediate removal was constitutional as applied to industrial worker whose removal from office was ordered because of his activities during his free time as a ward executive committeeman and a worker at the polls. *Id.*

Former section 1181 of this title [now this section] was constitutional. *Gray v. Macy*, D.C.Or.1965, 230 F.Supp. 658, reversed on other grounds 358 F.2d 742.

2. Construction with other laws

Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District of Columbia from otherwise applicable prohibitions of this section did not fall within exemption from notice and comment proceedings under section 553 of this title, granted to rules relating to agency management or personnel, in view of fact that outside individuals were substantially affected by such regulation. *Joseph v. U. S. Civil State Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

Regulation of Civil Service Commission [now Office of Personnel Management] under former section 1181m of this title [now section 7327(b) of this title] that federal employees, who resided in certain named municipalities and political subdivisions are excepted from prohibitions of former section 1181 of this title [now this section] subject to conditions that employees shall not neglect official duties or engage in nonlocal partisan political activities, and that they shall not run for local office as candidates representing political parties or become involved in political management in connection with campaign of party candidate for office, and that they shall run as independent candidates did not authorize the kind of interference with elections prohibited by former section 1181 of this title restricting political activity of employees of executive branch of federal government. *Democratic State Central Committee for Montgomery County, Md. v. Andolsek*, D.C.Md.1966, 249 F.Supp. 1009.

When procedures have been complied with, discharge of officer for political activities forbidden by former section 1181 of this title [now this section] was dis-

charge for such "cause as will promote efficiency of service" under former section 803 of this title [now section 7512 of this title]. *Brown v. Macy*, D.C.La.1963, 222 F.Supp. 630, affirmed 340 F.2d 115.

3. Purpose

In enacting prohibition against federal employees taking "an active part in political management or in political campaigns" judged with reference to preexisting Civil Service Commission [now Office of Personnel Management] determinations, Congress intended to deprive Commission of rule-making power in sense of exercising subordinate legislative role in fashioning a more expansive definition of kind of conduct that would violate prohibition against taking active part in political management or political campaigns. *U. S. Civil Service Commission v. National Ass'n of Letter Carriers, AFL-CIO*, Dist.Col.1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 796.

The Hatch Act was enacted pursuant to a twofold congressional purpose, to protect tenure of government employees by taking political activity out of the employment, promotion, and dismissal of government employees, and to take government employees out of political activity. *United Federal Workers of America (C.I.O.) v. Mitchell*, D.C.D.C.1944, 56 F.Supp. 621, affirmed 87 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754.

4. Effective date

While the Hatch Act became effective immediately upon its approval by the President, and ignorance or misapprehension afford no legal justification, as a practical matter, however, there was no initiation of dismissal proceedings against all whom its approval caught in a state of possible technical violation. 1940, 39 Op.Atty.Gen. 462.

5. Power of Congress

Congress may limit the full range of political activities which a federal employee might, without jeopardizing his employment, otherwise engage in. *Holden v. Finch*, 1971, 446 F.2d 1311, 144 U.S.App.D.C. 310.

6. Rules and regulations

Federal regulations specifying conduct of federal employees prohibited or permitted under this section were not impermissibly vague. *U. S. Civil Service Commission v. National Ass'n of Letter Carriers, AFL-CIO*, Dist.Col.1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 796.

Civil Service Commission [now Office of Personnel Management] was to perform its role under this section within limits of administrative restatement of Civil Service Rule I law, modified to extent necessary to reflect provisions of 1939 and 1940 amendments to former section 1181 [now this section]. *Id.*

Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District of Columbia from otherwise applicable prohibitions of this section was a legislative rule, and Commission's failure to comply with notice and comment procedures of Administrative Procedure Act, sections 551 et seq. and 701 et seq. of this title, when it promulgated such regulation rendered regulation invalid. *Joseph v. U. S. Civil State Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

Police department rule restricting police officers from interfering or using influence of their office for political reasons was not unconstitutional as being impermissibly vague. *Paulos v. Breier*, D.C.Wis.1974, 371 F.Supp. 523, affirmed 507 F.2d 1383.

Police department rule stating that members of department shall not interfere or use influence of their office for political reasons was not unconstitutional for overbreadth. *Id.*

7. Administrative rulings, opinions and interpretations

In enacting prohibition against federal employees taking "an active part in political management or political campaigns" judged with reference to preexisting Civil Service Commission [now Office of Personnel Management] determination, Congress intended administrative restatement of Civil Service Rule I law, modified to extent necessary to reflect provisions of 1939 and 1940 amendments to former section 1181 [now this section] themselves, to serve as congressional definition of general proscription against partisan activities. *U. S. Civil Service Commission v. National Ass'n of Letter Carriers, AFL-CIO*, Dist.Col.1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 796.

The submitted cases involved disputed questions of fact determinable by the Secretary of the Interior and did not in their current stage warrant an opinion by the Attorney General whether the activities of the affected employees came within the inhibition of this section. 1940, 39 Op.Atty.Gen. 462.

The practice of issuing informal interpretations of the Hatch Act has been discontinued, but the rulings previously made are not revoked. 1940, 39 Op.Atty.Gen. 446.

The heads of the departments are authorized to request opinions upon questions arising under the Hatch Act, but it is not intended to countenance a continued and unlimited submission of questions raised or doubts entertained merely by particular employees. *Id.*

8. Role of Commission or Office

In enacting this section, Congress expected Civil Service Commission [now Office of Personnel Management] to continue its accustomed role with respect to federal employees. *U. S. Civil Service Commission v. National Ass'n of Letter Carriers, AFL-CIO*, Dist.Col.1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 796.

9. Employees allowed to participate in politics

Former section 1181 of this title [now this section] was not applicable to members of the National Guard ordered into the service of the United States under the Public Resolution of August 27, 1940. 1941, 40 Op.Atty.Gen. 103.

Former section 1181 of this title [now this section] did not prohibit ambassadors and ministers from taking an active part in political campaigns. 1940, 39 Op.Atty.Gen. 508.

10. Political activities prohibited

This section forbids activities such as organizing political party or club, actively participating in fund raising activities for partisan candidate or political party, becoming partisan candidate for or campaigning for elective public office, actively managing campaign of partisan candidate for public office, initiating or circulating partisan nominating petition or soliciting votes for partisan candidate for public office, or serving as delegate, alternate or proxy to political party convention. *U. S. Civil Service Commission v. National Ass'n of Letter Carriers, AFL-CIO*, Dist.Col.1973, 93 S.Ct. 2880, 413 U.S. 548, 37 L.Ed.2d 796.

Within meaning of Civil Service Commission [now Office of Personnel Management] regulation exempting participation in political campaigns as or on behalf of an independent candidate in a partisan election for local office in the District of Columbia from the otherwise applicable prohibitions of this section, a "partisan election" must be an election wherein at least one candidate represents

a party which fielded candidate in the last presidential election. *Joseph v. U. S. Civil Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

This section interdicts only active participation in political management and political campaigns and not expressions, public or private, as to public affairs, personalities and matters of public interest, not an objective of party action. *Peale v. U. S.*, D.C.Ill.1971, 325 F.Supp. 193.

Termination of federal civil service employment may be effected for partisan political activities but not for nonpartisan political activities. *Id.*

Director of United States Public Housing Administration [now Secretary of Housing and Urban Development] had no authority to prohibit use of "community room" in housing project as a polling place, and use of such room as a polling place did not violate former section 1181(a) of this title [now this section], and its selection by appropriate county and municipal authorities was not an abuse of discretion. *Jones v. Middlesex County Bd. of Elections*, D.C.N.J.1968, 250 F.Supp. 931.

That government employee mailed to newspaper, which printed letter, an isolated unsolicited letter recommending the defeat of a certain partisan candidate for state office was not, in absence of a showing that employee was actively engaging or participating in political campaign, a violation of prohibition on government employees' active participation in political management or political campaigns. *Wilson v. U. S. Civil Service Commission*, D.C.D.C.1955, 136 F.Supp. 104.

Where plaintiff was placed in war service position by conditional transfer, subject to subsequent investigation, and thereafter Civil Service Commission [now Office of Personnel Management] determined that there was a reasonable doubt as to plaintiff's loyalty and that therefore he was not qualified under controlling regulation to obtain a war service appointment because of his membership and activities in an alleged communist-dominated organization, plaintiff's removal from office was not a violation of former section 1181 of this title [now this section], providing that federal employees shall retain right to express their opinions on all political subjects to same extent as other citizens. *Friedman v. Schwellenbach*, D.C.D.C.1946, 65 F.Supp. 254, affirmed 159 F.2d 22, certiorari denied 67 S.Ct. 979, 330 U.S. 838, 91 L.Ed. 1285, rehearing denied 67 S.Ct. 1302, 331 U.S. 885, 91 L.Ed. 1870.

A letter written by a government employee gives the impression that he was actively engaged in matters pertaining to political campaigns and upon investigation it was found that this was not true; that the employee was given to finding fault and to offering unsolicited advice; that his proclivities in this respect extended to political affairs; but that the net result was only embarrassment to certain friends and acquaintances; under these circumstances the writing of the letter constituted no more than an expression of opinion, which is permitted by this section. 1945, 40 Op.Atty.Gen. 405.

The Hatch Act, forbidding political activity by federal employees, does not apply to the acceptance and holding of a local office to which an employee was elected without being a candidate, his name not appearing on the ballot but being written in by the voters. 1940, 39 Op.Atty.Gen. 423.

11. Administrative review

Under executive regulation proscribing termination of federal employees in the classified service, including probationers, based on "political discrimination except as required by law," engaging in political activity of the kind banned by this section exposes civil service employees, probationary or permanent, to lawful discharge; however, it does not mean that such employees may, for expression and association of an essentially political nature although not in the familiar context, have their employment terminated, at least without right to have matter heard and determined on appeal to the Civil Service Commission [now Office of Personnel Management]. *Holden v. Finch*, 1971, 446 F.2d 1311, 144 U.S.App.D.C. 310.

12. Federal court jurisdiction

Issues presented in action brought by District of Columbia city council members and District of Columbia residents employed by federal government, challenging procedural and substantive validity of Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District from otherwise applicable prohibitions of this section were within competence of federal court. *Joseph v. U. S. Civil Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

Neither section 1983 of Title 42, nor former sections 1181 [now this section] and 118k of this title, nor Low Rent Housing Act, former section 1401 et seq.

of Title 42, nor former section 1009 of this title affording judicial review of action of federal governmental agency resulting in legal wrong to the person, nor sections 1331 and 1332 of Title 28 conferring jurisdiction on basis of amount in controversy and federal question or diversity of citizenship gave district court subject matter jurisdiction of action by candidate at municipal election to restrain use of community room in low rent housing facility as polling place. *Jones v. Middlesex County Bd. of Elections*, D.C.N.J.1968, 258 F.Supp. 469.

13. Abstention doctrine

Where "Little Hatch Act" provision of municipal charter contained apparently broad language which had not been limited in any way by regulation, administrative interpretation or state court decision, and record disclosed no attempt to obtain such clarification, and where there were possibilities of reasonable construction which would limit broad language attacked, federal district court would abstain from acting upon complaint for declaration of unconstitutionality and for injunctive relief. *Mining v. Wheeler*, D.C.Mo.1974, 378 F.Supp. 1115.

14. Persons entitled to maintain action

District of Columbia city council members who had not faced independent opposition in prior elections, but who alleged that they would probably seek reelection, had standing to challenge Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in district from otherwise applicable prohibitions of this section, in view of fact that contingencies upon which anticipated injury depended, that council members would seek reelection and would be opposed by independent candidates who received active support from at least one federal employee, were not subject to strong counterpresumptions, and in view of fact that there was real and immediate threat of independent opposition to council members' reelection. *Joseph v. U. S. Civil Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

Individual federal civil service employees, who joined with union in action to test validity of the Hatch Act and who were either improperly prevented from engaging in political activity if the Hatch Act were unconstitutional or prohibited from such activity if the Hatch Act were valid, had sufficient interest to give them right to maintain suit to test

its constitutionality regardless of whether union could maintain action in a representative capacity. *United Federal Workers of America (C.I.O.) v. Mitchell*, D.C.D.C.1944, 56 F.Supp. 621, affirmed 67 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754.

15. Persons liable

The Civil Service Commission [now Office of Personnel Management], although not expressly charged by the Hatch Act with enforcement of its provisions, is sufficiently charged under executive orders and rules and by provisions of the Hatch Act with responsibility to dismiss violators as to warrant the naming of members of Commission as parties defendant in an action to test constitutionality of the Hatch Act and to enjoin its enforcement brought by civil service employees. *United Federal Workers of America (C.I.O.) v. Mitchell*, D.C.D.C. 1944, 56 F.Supp. 621, affirmed 67 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754.

16. Judicial notice

In action challenging validity of Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District of Columbia from otherwise applicable prohibitions of this section, district court would take judicial notice of certain verifiable, indisputable facts with respect to number of independent candidates in prior local district elections in an effort to determine if city council members had established threat of injury sufficient to confer standing to challenge regulation. *Joseph v. U. S. Civil Service Commission*, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.

17. Injunction

Testimony of State Director of Farmers Home Administration for Puerto Rico and Virgin Islands that he and his family and particularly his daughter were psychologically troubled by his potential discharge, that he would have to resign from an elective post as member of board of directors of federal employees' credit union and that he would not be able to get other federal or state employment during his removal from office was not sufficient showing of irreparable harm to warrant a preliminary injunction enjoining the Secretary of Agriculture from dismissing the Director pending a final administrative decision on the Director's alleged violations of this section. *Soldevila v. Secretary of Agriculture of U. S.*, C.A.Puerto Rico 1975, 512 F.2d 427.

Note 1

§ 7325. Penalties

An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 526; Pub.L. 96-54, § 2(a)(44), Aug. 14, 1979, 93 Stat. 384.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 1181(b) (less last proviso, and less last sentence)	Aug. 2, 1939, ch. 410, § 9(b), 53 Stat. 1148. Aug. 25, 1950, ch. 784, § 1 "Sec. 9(b) (less last proviso, and less last sentence)", 64 Stat. 475. Oct. 5, 1962, Pub.L. 87-753, 76 Stat. 750.

Explanatory Notes

The word "removed" is substituted for "removed immediately" because of the provisions of the Veterans' Preference Act of 1944, 58 Stat. 387, as amended, which is carried into this title. The words "or office" are omitted as included in "position". The words "by any Act of Congress" are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1979 Amendment. Pub.L. 96-54 substituted "Merit Systems Protection Board" for "Civil Service Commission" and "Board" for "Commission".

Effective Date of 1979 Amendment. Amendment by Pub.L. 96-54 effective July 12, 1979, see section 2(b) of Pub.L. 96-54, set out as a note under section 305 of this title.

Legislative History. For legislative history and purpose of Pub.L. 96-54, see 1979 U.S. Code Cong. and Adm. News, p. —.

Cross References

Report to President on individuals on whom Office of Personnel Management has imposed penalty under this section, see section 1308 of this title.

Library References

Elections ⇐ 323.
Officers ⇐ 30.

C.J.S. Elections § 355.
C.J.S. Officers and Public Employees §§ 46, 48.

Notes of Decisions

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1. Constitutionality

Provision in former section 1181 of this title [now this section] which forbade officers and employees in the executive

branch of the federal government, with exceptions, from taking any active part in political management or in political campaigns, under penalty of immediate removal was constitutional as applied to industrial worker whose removal from office was ordered because of his activities during his free time as a ward executive committeeman and a worker at the polls. *United Public Workers of America (C.I.O.) v. Mitchell*, 1947, 67 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754.

2. Duty of employees

Generally, at least, it is the duty of persons who conceivably may come within the terms of inhibitions in statutes such as the Hatch Act to shape their conduct so as to avoid raising questions of the applicability to them of the statutory penalties. 1940, 39 Op. Atty. Gen. 446.

3. Positions from which employees may be removed

Former section 1181(b) of this title [now this section] required the removal of an employee from the civil service position or office which he was holding at the time his violation of former section 1181(a) of this title [now section 7324 of this title] was established despite the fact that this position might be different one from that held at the time the violation occurred and it was immaterial whether the second civil service position had been obtained by transfer, promotion or reappointment. 1947, 40 Op. Atty. Gen. 545.

4. Subsequent federal employment

An employee is not forever debarred from securing employment in the federal government and he will be prevented only from thereafter obtaining the position or office from which he was removed. 1947, 40 Op. Atty. Gen. 545.

5. Time of removal

Postponement of the date of removal of an employee merely for the purpose of allowing leave would not conform with the mandate of former section 1181 of this title [now this section] that an employee violating its provisions shall be immediately removed. 1940, 39 Op. Atty. Gen. 506.

6. Hearing and notice

In proceeding for removal from office for political activity, customs inspector who made no attempt to secure attendance of persons whose affidavits had been supplied to him was not entitled to have such persons produced at hearing in

order to give him opportunity for cross-examination. *Brown v. Macy*, C.A.La. 1965, 340 F.2d 115.

Where Civil Service Commission [now Office of Personnel Management] commenced discharge proceedings against veterans' preference eligible United States Post Office [now United States Postal Service] employee based on alleged political activity in violation of former section 1181 of this title [now section 7324 of this title] Commission was required to give to him kind of notice and hearing he would have been accorded under Veterans' Preference Act, former section 851 et seq. of this title, in other cases involving serious disciplinary action, and veteran could not have been restricted to procedures traditionally applied by Commission to Hatch Act cases. *Flanagan v. Young*, 1955, 228 F.2d 466, 97 U.S.App.D.C. 119.

The Attorney General concurred in the conclusion of the Solicitor, Department of the Interior, that an employee charged with violation of former section 1181 of this title [now section 7324 of this title] should have been given notice and an opportunity to be heard. 1940, 39 Op. Atty. Gen. 462.

7. Federal court jurisdiction

Where Civil Service Commission [now Office of Personnel Management] issued final order finding federal employee guilty of violation of Hatch Act and ordering his suspension, employee had no further effective remedy, and district court had jurisdiction to entertain action for declaratory relief. *Wilson v. U. S. Civil Service Commission*, D.C.D.C. 1955, 136 F.Supp. 104.

8. Indispensable parties

Individual members of Civil Service Commission [now Office of Personnel Management] were indispensable parties to proceeding on petition for review of Commission's order suspending deputy collector for an alleged violation of Hatch Act. *Martucci v. Mayer*, C.A.Pa. 1954, 210 F.2d 259.

9. Weight and sufficiency of evidence

Substantial evidence did not exist to support findings of Civil Service Commission [now Office of Personnel Management] which discharged postal clerk for alleged violation of former section 1181 of this title [now section 7324 of this title]. *Gray v. Macy*, C.A.Or. 1960, 358 F.2d 742.

Note 10

10. Scope of judicial review

On review of decision of Civil Service Commission [now Office of Personnel Management] discharging a postal clerk for alleged violations of former section 1181 of this title [now section 7324 of this

title], court cannot try de novo the merits of controversy and substitute its judgment for that of the Commission. *Gray v. Macy*, D.C.Or.1965, 239 F.Supp. 658, reversed on other grounds 358 F.2d 742.

§ 7326. Nonpartisan political activity permitted

Section 7324(a)(2) of this title does not prohibit political activity in connection with—

(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 526.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 118n (less applicability to 5 U.S.C. 118k (a))	July 19, 1940, ch. 640, § 4 "Sec. 18 (less applicability to § 12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, § 4, 54 Stat. 767)", 54 Stat. 772.

Explanatory Notes

The words "or political party of a territory or possession of the United States" are added on authority of former section 118k-2, which is carried into section 1501.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Library References

Elections \Rightarrow 317.
United States \Rightarrow 45.

C.J.S. Elections §§ 329, 356.
C.J.S. United States § 42.

§ 7327. Political activity permitted; employees residing in certain municipalities

(a) Section 7324(a)(2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

(b) The Office of Personnel Management may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 526; Pub.L. 96-54, § 2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 118i(a) (less 1st 4 sentences)	Aug. 8, 1946, ch. 904, 60 Stat. 937.
(b)	5 U.S.C. 118m	July 19, 1940, ch. 640, § 4 "Sec. 16", 54 Stat. 771.

Explanatory Notes

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Effective Date of 1979 Amendment. Amendment by Pub.L. 96-54 effective July 12, 1979, see section 2(b) of Pub.L. 96-54, set out as a note under section 305 of this title.

1979 Amendment. Subsec. (b). Pub.L. 96-54 substituted "Office of Personnel Management" for "Civil Service Commission", and "Office" for "Commission" wherever appearing therein.

Legislative History. For legislative history and purpose of Pub.L. 96-54, see 1979 U.S. Code Cong. and Adm. News, p. ---.

Library References

Elections \Rightarrow 317.
United States \Rightarrow 36.

C.J.S. Elections §§ 329, 356.
C.J.S. United States §§ 36, 37, 62 to 64.

Notes of Decisions

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the prohibition against political activity by civil service employees participation of federal employees residing in municipalities or other political subdivisions adjacent to District of Columbia insofar as local campaigns and elections are concerned. *United Federal Workers of America (C.I.O.) v. Mitchell*, D.C.D.C.1944, 56 F.Supp. 621, affirmed 67 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754.

1. Constitutionality

This section is not invalid as unreasonably discriminatory in exempting from

2. Rules and regulations

Regulation of Civil Service Commission [now Office of Personnel Management]

5 § 7327

EMPLOYEES

Part 3

under former section 118m of this title [now subsec. (b) of this section] that federal employees, who resided in certain named municipalities and political subdivisions were excepted from prohibitions of former section 1181 [now section 7324] of this title subject to conditions that employees would not neglect official duties or engage in nonlocal partisan political activities, and that they would not run for local office as candidates representing political parties or become involved in political management in connection with campaign of party candidate for office, and that they would run as independent candidates was not unreasonable, arbitrary, or capricious. *Democratic State Central Committee for Montgomery County, Md. v. Andolsek, D.C. Md.1966, 240 F.Supp. 1009.*

3. Persons employed by government of United States

For purposes of provision of this section authorizing Civil Service Commission [now Office of Personnel Management] to exempt from prohibitions of section 7324 of this title elections in municipalities in which the majority of voters are employed by government of United States, employees of District of Columbia should be considered "employed by the Government of the United States." *Joseph v. U. S. Civil Service Commission, 1977, 554 F. 2d 1140, 180 U.S.App.D.C. 281.*

4. Participation in campaigns of political parties

Former section 118m of this title [now subsec. (b) of this section] which provided that whenever Civil Service Commission [now Office of Personnel Management] determined that in immediate vicinity of national capital in Maryland and Virginia or in municipalities, majority of whose voters were employed by federal government, it was in domestic interest of federal employees to take active part in political management or in political campaigns involving municipality or political subdivision, Commission was authorized to promulgate regulations permitting them to do so was not intended to permit federal employees in Maryland and Virginia counties adjacent to District of Columbia to participate in campaigns of Democratic and Republican candidates or candidates of any other political party. *Democratic State Central Committee for Montgomery County, Md. v. Andolsek, D.C.Md.1966, 249 F.Supp. 1009.*

5. Persons entitled to maintain action

District of Columbia resident who was interested in obtaining employment with

federal government, and who, as a member of Democratic Party, sought to actively support Democratic candidates in future District of Columbia elections, did not establish real and immediate threat of injury sufficient to confer standing in action challenging validity of Civil Service Commission's [now Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District from otherwise applicable prohibitions of section 7324 of this title. *Joseph v. U. S. Civil Service Commission, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.*

District of Columbia residents who were employed by federal government and who sought to participate in campaigns of Democratic candidates for District of Columbia city council had standing to bring action challenging validity of Civil Service Commission's [Office of Personnel Management's] regulation exempting participation in political campaigns as or on behalf of independent candidate in partisan election for local office in District from otherwise applicable prohibitions of section 7324 of this title, in view of fact that such regulation embodied both a decision to exempt participation in campaigns of independent candidates and a decision not to exempt participation in partisan campaigns. *Id.*

6. Weight and sufficiency of evidence

Evidence in action challenging validity of Civil Service Commission [now Office of Personnel Management] regulation exempting participation in political campaigns as or on behalf of independent candidates in partisan election for local office in District of Columbia from otherwise applicable prohibitions of section 7324 of this title was insufficient to sustain finding that majority of voters in District of Columbia were United States government employees so as to authorize Commission to exempt District of Columbia elections from prohibitions of section 7324 of this title. *Joseph v. U. S. Civil Service Commission, 1977, 554 F.2d 1140, 180 U.S.App.D.C. 281.*

7. Declaratory judgment

Central committee of political party for county and for federal employees residing in county could maintain action for declaratory judgment that Civil Service Commission [now Office of Personnel Management] regulation granting to federal employees residing in county only limited exemption from prohibitions against political activities by federal employees contained in former section 1181 of this title [now section 7324 of this ti-

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tle], if, but only if, regulation contained and imposed on federal employees arbitrary or capricious discrimination not justified by purposes of the Hatch Act. *Democratic State Central Committee for Montgomery County, Md. v. Andolsek, D. C.Md.1966, 249 F.Supp. 1009.*

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

Historical Note

1967 Amendment. Pub.L. 90-83, § for "Foreign Decorations" in the sub- 1(45)(A), Sept. 11, 1967, 81 Stat. 208, sub- chapter heading. stituted "Foreign Gifts and Decorations"

§ 7341. Repealed. Pub.L. 90-83, § 1(45)(B), Sept. 11, 1967, 81 Stat. 208

Historical Note

Section, Pub.L. 89-554, Sept. 6, 1966, 80 of foreign decorations, and is now cover- Stat. 526, related to receipt and display ed by section 7342 of this title.

§ 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 and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

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

(D) a member of a uniformed service;

(E) the President and the Vice President;

(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the

meaning of section 152 of the Internal Revenue Code of 1954) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

(2) "foreign government" means—

(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

(C) any agent or representative of any such unit or such organization, while acting as such;

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

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

(5) "minimal value" means a retail value in the United States at the time of acceptance of \$100 or less, except that—

(A) on January 1, 1981, and at 3 year intervals thereafter, "minimal value" shall be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(B) regulations of an employing agency may define "minimal value" for its employees to be less than the value established under this paragraph; and

(6) "employing agency" means—

(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e)(1), and (g)(2)(B) shall be carried out by the Clerk of the House;

(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsections (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate;

(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and

(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

(b) An employee may not—

(1) request or otherwise encourage the tender of a gift or decoration; or

(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

(c)(1) The Congress consents to—

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

(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that—

(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall—

(A) deposit the gift for disposal with his or her employing agency; or

(B) subject to the approval of the employing agency, deposit the gift with that agency for official use.

Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2).

(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in

paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.

(d) The 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 employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency for official use, for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).

(e)(1) Except as provided in paragraph (2) gifts and decorations that have been deposited with an employing agency for disposal shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.

(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration may be returned by the Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe, (A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (iii) the District of Columbia, or (B) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, except that such gift or decoration may be

sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.

(f)(1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.

(2) Such listings shall include for each tangible gift reported—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance;

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;

(D) the date of acceptance of the gift;

(E) the estimated value in the United States of the gift at the time of acceptance; and

(F) disposition or current location of the gift.

(3) Such listings shall include for each gift of travel or travel expenses—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance; and

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

(4) In transmitting such listings for the Central Intelligence Agency, the Director of Central Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

(g)(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

(2) Each employing agency shall—

(A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;

(B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and

(C) take any other actions necessary to carry out the purpose of this section.

(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus \$5,000.

(i) The President shall direct all Chiefs of a United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

Added Pub.L. 90-83, § 1(45)(C), Sept. 11, 1967, 81 Stat. 208, and amended Pub.L. 95-105, Title V, § 515(a)(1), Aug. 17, 1977, 91 Stat. 862; Pub.L. 95-426, Title VII, § 712(a)-(c), Oct. 7, 1978, 92 Stat. 994.

Historical and Revision Notes

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
7342(a)	22:2621	Oct. 15, 1966, Pub.L. 89-673, § 2, 80 Stat. 952.
7342(b)	22:2622	Oct. 15, 1966, Pub.L. 89-673, § 3, 80 Stat. 952.
7342(c)	22:2623	Oct. 15, 1966, Pub.L. 89-673, § 4, 80 Stat. 952.
7342(d)	22:2624	Oct. 15, 1966, Pub.L. 89-673, § 5, 80 Stat. 952.
7342(e)	22:2626	Oct. 15, 1966, Pub.L. 89-673, § 7, 80 Stat. 952.

Explanatory Notes

The definitions of "employee" and "uniformed services" in 5 U.S.C. 2105 and 2101 are broad enough to cover the persons included in 22 U.S.C. 2621(1) with the exception of (1) individuals 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, (2) the President, and (3) Members of Congress, who, accordingly, are covered in paragraphs (B), (D), and (E). As the Canal Zone Government is an independent agency of the United States, see section 31 of title 2, Canal Zone Code, an employee thereof is an "employee" as defined in 5 U.S.C. 2105.

In subsection (b), the words "An employee may not" are substituted for "No person shall" to conform to the definition

applicable and style of title 5, United States Code.

In subsection (c), the words "under regulations prescribed under this section" are substituted for "in accordance with the rules and regulations issued pursuant to this Act".

In subsection (e), the words "The President may prescribe regulations to carry out the purpose of this section" are substituted for "Rules and regulations to carry out the purposes of this Act may be prescribed by or under the authority of the President". Under 3 U.S.C. 301, the President may delegate the authority vested in him by this subsection.

References in Text. Section 152 of the Internal Revenue Code of 1954, referred to in subsec. (a)(1)(G), is classified to section 152 of Title 26, Internal Revenue Code.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (e)(1), is Act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of that Act relating to disposal of government property are classified to chapter 10 (section 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables volume.

Section 501 of the Internal Revenue Code of 1954, referred to in subsec. (e)(2), is classified to section 501 of Title 26, Internal Revenue Code.

Section 108A of the Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (k), is classified to section 2458a of Title 22, Foreign Relations and Intercourse.

1978 Amendment. Subsec. (a)(6)(A). Pub.L. 95-426, § 712(a)(1), substituted "(e)(1)" for "(e)".

Subsec. (a)(6)(B). Pub.L. 95-426, § 712(a)(2), added "except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsection (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate".

Subsec. (c)(2). Pub.L. 95-426, § 712(b)(1), substituted "subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2)" for "subsection (e)".

Subsec. (d). Pub.L. 95-426, § 712(b)(2), substituted "official use, for forwarding", for "official use, or forwarding", and

"subsection (e)(1), or for disposal in accordance with subsection (e)(2)" for "subsection (e)".

Subsec. (e). Pub.L. 95-426, § 712(c), designated existing provisions as par. (1), and in par. (1) as so designated, substituted "Except as provided in paragraph (2), gifts" for "Gifts", "(A)" and "(14)" for "(1)" and "(2)", respectively, and added par. (2).

1977 Amendment. Subsec. (a). Pub.L. 95-105 in par. (1) added provisions expanding definition of "employee" to include an officer or employee of the United States Postal Service or Postal Rate Commission, certain experts and consultants, the Vice President, and any Delegate to Congress, in par. (2) incorporated existing provisions into subpars. (A) and (C) and added subpar. (B), in par. (3) substituted reference to tangible or intangible present for reference to present, in par. (4) added reference to award, and added pars. (5) and (6).

Subsec. (b). Pub.L. 95-105 designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub.L. 95-105 incorporated existing provisions of pars. (1) and (2) into par. (1), and in par. (1) as so incorporated, added provisions giving congressional consent to acceptance of a gift in the nature of an educational scholarship, medical treatment, or travel or travel expenses and added pars. (2) and (3).

Subsec. (d). Pub.L. 95-105 struck out provisions requiring the Secretary of State to concur with the approval of the employing agency and substituted provisions requiring the employee to deposit property within 60 days of acceptance with the employing agency for official use or forwarding to the Administrator of General Services for disposal for provisions requiring the employee to deposit the decoration for use and disposal as the property of the United States under regulations prescribed under this section.

Subsec. (e). Pub.L. 95-105 substituted provisions relating to the disposal of decorations for provisions authorizing the President to prescribe regulations to carry out the purposes of this section.

Subsecs. (f) to (k). Pub.L. 95-105 added subsecs. (f) to (k).

Effective Date of 1977 Amendment. Section 515(a)(2) of Pub.L. 95-105 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall take effect on January 1, 1978."

Leasing of Space and Facilities for Storing and Safeguarding Property. Section 712(d) of Pub.L. 95-426 provided that: "In the event that the space and facilities available to the Secretary of the Senate for carrying out his responsibilities in storing and safeguarding property in his custody under section 7342 of title 5, United States Code [this section], are insufficient for such purpose, he may, with the approval of the Committee on Rules and Administration of the Senate, lease such space and facilities as may be necessary for such purpose. Rental payments under any such lease and expenses incurred in connection therewith shall be paid from the contingent fund of the Senate upon vouchers approved by the Secretary of the Senate."

Wearing of Certain Decorations. Section 33A of Act Aug. 10, 1956, c. 1041, as added by Pub.L. 85-861, Sept. 2, 1958, § 33(e), 72 Stat. 1568, provided: "A member or former member of an armed force of the United States holding any office of profit or trust under the United States may wear any decoration, order, medal, or emblem accepted (1) under the Act of July 20, 1942, chapter 508 (58 Stat. 662), or (2) before August 1, 1947, from the government of a belligerent or neutral nation or an American Republic."

Legislative History. For legislative history and purpose of Pub.L. 90-83, see 1967 U.S. Code Cong. and Adm. News, p. 1538. See, also, Pub.L. 95-105, 1977 U.S. Code Cong. and Adm. News, p. 1625; Pub.L. 95-426, 1978 U.S. Code Cong. and Adm. News, p. 2424.

EXECUTIVE ORDER NO. 11320

Dec. 12, 1966, 31 F.R. 15789

DELEGATION OF AUTHORITY

By virtue of the authority vested in me by Section 7 of the Foreign Gifts and Decorations Act of 1966 (Public Law 89-673; 80 Stat. 952) [former section 2626 of Title 22, Foreign Relations and Intercourse] and Section 301 of Title 3 of the United States Code [section 301 of Title 3, The President] and as President of the United States, it is ordered as follows:

The Secretary of State, and, when designated by the Secretary of State for such purpose, the Under Secretary of

State, are hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority conferred upon the President by Section 7 of the Foreign Gifts and Decorations Act of 1966 to prescribe rules and regulations to carry out the purposes of that Act. Such rules and regulations shall be published in the Federal Register.

LYNDON B. JOHNSON

EXECUTIVE ORDER NO. 11446

Jan. 16, 1969, 34 F.R. 803

ACCEPTANCE OF SERVICE MEDALS AND RIBBONS FROM MULTILATERAL ORGANIZATIONS OTHER THAN UNITED NATIONS

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, I hereby authorize the Secretary of Defense, with respect to members of the Army, Navy, Air Force, and Marine Corps, and the Secretary of Transportation, with respect to members of the Coast Guard when it is not operating as a service in the Navy, to prescribe regulations for the acceptance of medals and ribbons which are offered by multilateral organizations, other than the United Nations, to members of the

Armed Forces of the United States in recognition of service conducted under the auspices of those organizations. A determination that service for a multilateral organization in a particular geographical area or for a particular purpose constitutes a justifiable basis for authorizing acceptance of the medal or ribbon offered to eligible members of the Armed Forces of the United States shall be made with the concurrence of the Secretary of State.

LYNDON B. JOHNSON

Library References

United States 350.

C.J.S. United States § 51.

West's Federal Forms

Fine, see § 7535.

Jurisdiction and venue in district courts, matters pertaining to, see § 1000 et seq.

Code of Federal Regulations

Standards and applicability, see 22 CFR 3.1 et seq., 41 CFR 101-49.000.

SUBCHAPTER V—MISCONDUCT

§ 7351. Gifts to superiors

An employee may not—

- (1) solicit a contribution from another employee for a gift to an official superior;
- (2) make a donation as a gift to an official superior; or
- (3) accept a gift from an employee receiving less pay than himself.

An employee who violates this section shall be removed from the service.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 527.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 113	R.S. § 1784.

Explanatory Notes

The application of the section is confined to employees, since the President and Members of Congress, though officers, could not have been intended to be "summarily discharged", and members of uniformed services are not covered by this statute. In the last sentence, the word "removed" is substituted for "summarily discharged" because of the provisions of the Lloyd-LaFollette Act, 37

Stat. 555, as amended, and the Veterans' Preference Act of 1944, 58 Stat. 387, as amended, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Cross References

Removals from competitive civil service only for cause, see section 7501 of this title.

Library References

United States 336.

C.J.S. United States §§ 36, 37, 62 to 64.

§ 7352. Excessive and habitual use of intoxicants

An individual who habitually uses intoxicating beverages to excess may not be employed in the competitive service.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 527.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes
	5 U.S.C. 640	Jan. 16, 1883, ch. 27, § 8, 22

Explanatory Notes

The word "employed" is substituted for "appointed to, or retained in" because it includes both. Standard changes are made to with the definitions applicable style of this title as outlined in ace to the report.

Library References

United States Ⓒ36.

C.J.S. United States §§ 36, 37.