

U.S. Department Justice
Office of Legal Counsel

Washington, D.C. 20530

April 14, 1995

GUIDELINES ON 18 U.S.C. § 1913

The Anti-Lobbying Act, 18 U.S.C. § 1913, prohibits officers and employees of the executive branch from engaging in certain forms of lobbying. If applied according to its literal terms, section 1913 would have extraordinary breadth, and it has long been recognized that the statute, if so applied, might be unconstitutional. The Office of Legal Counsel has interpreted the statute in light of its underlying purpose "to restrict the use of appropriated funds for large-scale, high-expenditure campaigns specifically urging private recipients to contact Members of Congress about pending legislative matters on behalf of an Administration position. Memorandum for Dick Thornburgh, Attorney General, from William P. Barr, Assistant Attorney General, Office of Legal Counsel, Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts," 13 Op. O.L.C. 361, 365 (1989) (prelim. print) (citation and footnote omitted) (~1989 Barr Opinions). Although there has never been a criminal prosecution under the Act since its adoption in 1919, the Criminal Division and its Public Integrity Section have frequently construed the Act in the context of particular referrals. The principles that the Criminal Division has developed over time provide guidance to the meaning of the statute that is necessary in order for the Act to provide reasonably ascertainable guidance to those to whom it applies.

Section A below describes officials whose lobbying activities are not inhibited by the Anti-Lobbying Act. Section B describes the kind of lobbying permitted under the Act. Section C describes the kind of lobbying prohibited by the Act. Section D describes a further restriction that agencies may wish to observe, although they are not required to do so under the Act. Section E describes additional prohibitions imposed by typical "publicity or propaganda riders, as interpreted by the Comptroller General, although identifying the precise restrictions, if any, applicable to any particular agency requires an examination of that agency's appropriations act.

A. The Department of Justice consistently has construed the Anti-Lobbying Act as not limiting the lobbying activities personally undertaken by the President, his aides and assistants within the Executive Office of the President, the Vice President, cabinet members within their areas of responsibility, and other Senate-confirmed officials appointed by the President within their areas of responsibility.

- B. Under the Anti-Lobbying Act, government employees MAY:
- o communicate directly with Members of Congress and their staffs in support of Administration or department positions. The Act does not apply to such direct communications.
 - o communicate with the public through public speeches, appearances and published writings to support Administration positions -- including using such public fore to call on the public to contact Members of Congress in support of or opposition to legislation.
 - o communicate privately with members of the public to inform them of Administration positions and to promote those positions -- but only to the extent that such communications do not contravene the limitations listed in Section C below.
 - o lobby Congress or the public (without any restriction imposed by the Anti-Lobbying Act) to support Administration positions on nominations, treaties, or any non-legislative, nonappropriations issue. The Act applies only to lobbying with deject to legislation or appropriations.
- C. Under the Anti-Lobbying Act, government employees MAY NOT:
- o engage in substantial "grass roots" lobbying campaigns of telegrams, letters, and other private forms of communication expressly asking recipients to contact Members of Congress, in support of or opposition to legislation. Grass roots lobbying does not include communication with the public through public speeches, appearances, or writings. Although the 1989 Barr Opinion does not define the meaning of "substantial" grass roots campaigns, the opinion notes that the 1919 legislative history cites an expenditure of \$7500 -- roughly equivalent to \$50,000 in 1989 -- for a campaign of letter-writing urging recipients to contact Congress.
- D. Although not required by the Anti-Lobbying Act, agencies may wish to observe a more general restriction with reject to officials other than those listed in Section A:
- o against expressly urging citizens to contact Congress in support of or opposition to legislation. As Sections B and C taken together indicate, the Anti-Lobbying Act does not forbid

government employees from urging citizens to contact Members of Congress on behalf of an Administration position, except in the context of a grass roots campaign. Nevertheless, the Comptroller General, following his understanding of the Department of Justice's historical interpretation of the Act before the 1989 Barr Opinion, has construed the restriction as being triggered by explicit requests for citizens to contact their representatives in support of or opposition to legislation. Given the Comptroller General's interpretation, and given the difficulty of predicting what may be perceived as a grass roots campaign in a particular context, agencies may wish to err on the side of caution, by refraining from including in their communications with private citizens any requests to contact Members of Congress in support of or opposition to legislation.

E. The Office of Legal Counsel's published opinions do not set out a detailed, independent analysis of "publicity or propaganda" riders contained in the appropriations acts of some agencies. The Comptroller General has suggested that, under such riders, government employees also MAY NOT (1) provide administrative support for the lobbying activities of private organizations, (2) prepare editorials or other communications that will be disseminated without an accurate disclosure of the government's role in their origin, and (3) appeal to members of the public to contact their elected representatives in support of or opposition to proposals before Congress.

"ANTI-LOBBYING ACT DO'S AND DON 'TS"

DOL employees may:

- o Contact Members of Congress directly on matters of concern to the Department, including pending legislation.
- o Speak about the Labor Department's legislative positions in meetings with individuals or groups, at public forums, at news conferences and during news interviews.
- o Distribute normal press releases, DOL officials' speeches, fact sheets, and other informational materials unless the distribution includes a request or suggestion that the person contact the Congress.
- o Have regular contact with non-governmental organizations which may or may not have among their purposes lobbying Members of Congress or attempting to influence the general public to lobby the Congress.
- o Provide to non-governmental organizations limited copies of DOL documents (such as press releases, letters, reprints of public officials' speeches, and fact sheets) that are otherwise available for public distribution. Any decision to reproduce, publish or distribute such material must be left entirely to the judgment of the outside organization.

DOL employees may not:

- o Produce written or electronic communications for distribution which suggest that members of the public lobby Members of Congress.
- o Give a speech asking the recipients to contact their Senators and Representatives in support or opposition to a legislative proposal.
- o Assume responsibilities for or direct the operation of an outside organization which is engaged in grass roots lobbying (encouraging people to write to Congress).
- o Suggest that an outside organization activate its membership to contact Members of Congress in relation to a legislative proposal.
- o Provide multiple copies of materials to be distributed by an outside organization which is engaged in grass roots lobbying.
- o Share non-public information with an outside organization engaged in a lobbying campaign.
- o Gather information or produce materials specifically for such an organization which cannot properly or would not ordinarily be gathered or produced as part of the DOL official's regular work.