

WITHDRAWAL SHEET

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File Folder JGR/PSI (PRIVATE SECTOR INITIATIVES) (4 OF 10)

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FOIA

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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	JOHN ROBERT TO FRED FIELDING RE VIDEO TAPE ON VOLUNTARISM (OPEN IN WHOLE)	2	4/23/1984	B6	732
2	MEMO	JOHN ROBERT TO FRED FIELDING RE VIDEO TAPE ON VOLUNTARISM (PARTIAL)	2	4/16/1984	B6	733
3	MEMO	JOHN ROBERT TO FRED FIELDING RE VIDEO TAPE ON VOLUNTARISM (SAME AS ITEM 2) (OPEN IN WHOLE)	2	4/16/1984	B6	734

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

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
- B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E.O. 13233

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

THE WHITE HOUSE

WASHINGTON

April 23, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: More Video Tape on Voluntarism

You will recall that Jim Coyne asked for our views on how to accept \$20,000 from DuPont to fund completion of a video tape project undertaken by his office. Last week you advised Coyne that acceptance of the money would constitute an illegal supplementation of appropriations, whether the money was provided directly to Coyne's office or through a 501(c)(3) organization. Your memorandum (attached) suggested that Coyne either use appropriated funds to pay for his office's project, or turn the material over to a 501(c)(3) organization for completion. The finished product would then be the property of the 501(c)(3) organization.

It appears that your memorandum on this subject crossed in the mail with the present memorandum from Coyne. In the instant memorandum, Coyne notes that Howard K. Smith will tape the narrative to accompany the video tape on Tuesday, April 24, and Coyne submits the script for your review. He also notes that the tape will "be a product of the President's Advisory Council on Private Sector Initiatives."

As is so often the case with Coyne, it is the unasked questions that raise the most serious concerns. I have read through the script and have no objections. It is not clear, however, who is funding the filming. We should admonish Coyne that any such activity must be consistent with our prior memorandum specifically addressed to that question.

Coyne's statement that the video tape will be a product of the Advisory Council also raises concerns. Coyne may be trying to circumvent limits on his office's activities by having the Advisory Council act in his stead. The statement that the video tape will be a product of the Advisory Council, and earlier efforts by Coyne to involve the Advisory Council in actual fundraising, suggest that he is insufficiently sensitive to the fact that the Advisory Council is limited by law to advisory functions.

Executive Order 12427 (June 27, 1983) specified that the Advisory Council was established "in accordance with the provisions of the Federal Advisory Committee Act." That act provides that "[u]nless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions." 5 U.S.C. App. I § 9(b). The Executive Order, far from specifically providing otherwise, reaffirms that the Advisory Council is limited to advisory functions. The sole function of the Advisory Council under the Executive Order is to "advise the President, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies including methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; and strengthening the professional resources of the private social service sector."

The Federal Advisory Committee Act does not define "advisory functions," nor have there been any court decisions interpreting the term. If the limitation is to have any meaning, however, it would seem that producing a video tape for mass distribution goes beyond giving "advice" to the President. Last week you signed a memorandum prepared by Sherrie Cooksey (attached) advising Coyne that the Advisory Council was limited to advisory functions, and accordingly could not engage in fundraising. We should reiterate the limitation and note that it applies to producing video tapes for mass distribution.

A memorandum for Coyne is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON


April 16, 1984

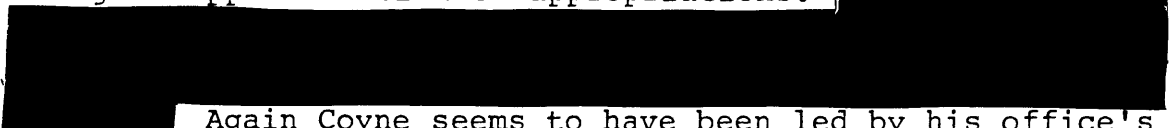
MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Video Tape on Voluntarism

Jim Coyne has asked for guidance on the proper way to accept \$20,000 from DuPont to fund a project of the Office of Private Sector Initiatives. Coyne's office is compiling a video tape of 13 successful examples of private sector initiatives from across the country. The video tape will be widely distributed to encourage others to imitate the successes depicted on the tape. Group W has volunteered to reproduce the tapes, which would be distributed by the National Association of Broadcasters. Production and distribution costs were estimated at \$20,000, so Coyne sought private sector funding and secured a commitment from DuPont for the full amount. Coyne suggests either having the company that will be producing the video tape for his office bill DuPont directly, or having "[t]he \$20,000 going from DuPont to a 501(c) (3) group to be drawn down from this office to cover production and distribution costs."

It seems clear that having DuPont fund an activity of the Office of Private Sector Initiatives would constitute an illegal supplementation of appropriations. 

 Again Coyne seems to have been led by his office's mission of promoting charitable activity to consider his official duties as charitable in nature, and proper subjects of private sector contributions. *bb*

Neither of Coyne's suggested approaches avoids the supplementation problem. Having the company doing the production work on the video tape bill DuPont would be a direct supplementation. Funneling the money through a 501(c) (3) organization, newly created or established, is no less problematic, since supplementation of appropriations from such organizations is just as contrary to law as supplementation from corporations or private individuals.

If Coyne is desirous of producing the video tape, he can either pay for the production costs out of the funds appropriated for his office, or turn over what he has produced

thus far to a private sector charitable entity for completion. In the latter case the completed tape would be the property of the private sector entity, not the government, although Coyne's office could make others aware of the tape, encourage its use, etc. -- precisely the more modest function his office was envisioned as having when it was formed. You may recall that in December of 1982 we approved a similar arrangement involving the transfer of a computer databank compiled by the President's Task Force on Private Sector Initiatives to a 501(c)(3) organization. We advised that the transfer could take place, with the 501(c)(3) organization agreeing to maintain, develop, expand, and distribute the databank, so long as the Government retained a set of whatever materials were turned over.

The draft memorandum for Coyne advises him that having a private sector entity -- charitable or otherwise -- fund his office's production of the video tape is not permissible. It also suggests the alternative of having a private charitable organization take over the project, noting that the product would then be that of the private organization.

Attachment

THE WHITE HOUSE

WASHINGTON

April 16, 1984

MEMORANDUM FOR JAMES K. COYNE
SPECIAL ASSISTANT TO THE PRESIDENT
FOR PRIVATE SECTOR INITIATIVES

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

SUBJECT: Video Tape on Voluntarism

You have asked for our views on a proposal to complete production of a video tape depicting 13 successful examples of community involvement in social and economic issues. You noted that your office has developed a draft tape but that further work is necessary to finish the project. You solicited private sector funding to cover estimated production and distribution costs of \$20,000, and secured a funding commitment from DuPont for the entire amount. Now you have asked how the \$20,000 may be accepted, suggesting either that the production company bill DuPont directly or that DuPont give the money to a 501(c)(3) organization and your office draw funds from that organization.

Either suggested approach would constitute an illegal supplementation of appropriations. As an office within the White House the Office of Private Sector Initiatives is, like most entities within the Federal Government, limited to using appropriated funds for official activities. Neither DuPont nor a 501(c)(3) charitable organization nor any other private sector entity can fund the official activities of your office. As I have had occasion to advise you in the past, the unique mission of your office to encourage private sector support of charitable activities does not mean that your official duties are themselves charitable in nature or a proper subject of private sector financial support, whether from a corporation or charitable organization.

The fact that you cannot use private sector funds to pay for your office's production of the tape does not, however, mean that the tape cannot be produced and distributed. Appropriated funds may be used to cover the costs, or the work you have done thus far may be provided to a 501(c)(3) organization for completion by that organization. The finished product would then be the product of that organization, not the government. Your office could, however, alert others to the existence of the tape and encourage its use, in keeping with the function of your

office to encourage private sector initiatives. If this latter course is followed, you should be careful to retain a set of whatever is turned over, to avoid any difficulties with the law governing alienation or disposal of records. I would note that a similar approach was taken when the President's Task Force on Private Sector Initiatives turned its computer databank over to a 501(c)(3) organization, for maintenance and further development. If you have any questions on implementing such a course of action, please do not hesitate to contact this office.

FFF:JGR:aea 4/16/84

cc: FFFielding/JGRoberts/Subj/Chron