

Ronald Reagan Presidential Library Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Roberts, John G.: Files
Folder Title: JGR/Farm Bill
Box: 25

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

THE WHITE HOUSE

WASHINGTON

December 13, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS
HUGH HEWITT

SUBJECT: Memorandum for John Block re: Section 129
of S. 1714

Attached for your review and signature is a memorandum for Secretary Block that reviews our objections to the referenced proposal. The Conference on the legislation is scheduled to reconvene at 1:00 p.m.

THE WHITE HOUSE

WASHINGTON

December 13, 1985

MEMORANDUM FOR JOHN BLOCH
SECRETARY OF AGRICULTURE

FROM: FRED F. FIELDING *F.F.*
COUNSEL TO THE PRESIDENT

SUBJECT: Section 129 of S. 1714

This office has preliminarily reviewed the referenced section of the Senate version of the Farm Bill. This section, if adopted by the Congress and signed into law, would create the new position of "Special Assistant to the President for Agricultural Trade and Food Aid." This Special Assistant would serve in the Executive Office of the President with broad advisory, coordinating, and operational authority over agricultural policy. The Special Assistant would be compensated at Executive Level I. 5 U.S.C. § 5312.

This proposal raises several concerns on our part. Our records going back to the Administration of Franklin Roosevelt indicate that such a position would be an unprecedented attempt by the Congress to structure the Office of the President. Historically, Congress has respected the constitutionally-based need for the President to have a generally free hand in selecting his closest advisors and structuring his White House staff as he sees fit.

The organization of the Executive Office of the President consists of five active offices or bureaus. 3 U.S.C.A. § 101, note. One of these, "The White House Office, comprises the officers and employees of the staff of the President required in the performance of the detailed activities incident to his immediate office." Id. The "Assistants to the President" are in the White House Office, and paid from that appropriation. The personnel policies governing the White House Office are set forth at 3 U.S.C. § 105. These provisions are general, and seek only to determine the number and salary of employees available to the President. None of these positions are subject to the advice and consent of the Senate, and all are viewed as extensions of the President. As such the White House Office is exempt from the Freedom of Information Act, 5 U.S.C. § 552, and the Government in the Sunshine Act, 5 U.S.C. § 552b. See Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136 (1980), Rushforth v. Council of Economic Advisers, No. 83-02632, D.C. Circuit, May 24, 1985.

The proposed new position is a curious hybrid of a traditional White House Office position and title and a new agency position. A

wide array of powers are proposed for this new official, an unparalleled intrusion on the President's authority to organize his personal staff in his own discretion. The proposal, in effect, contemplates the creation of a Cabinet-level official within the Executive Office of the President, if not the White House Office. However, if not in the latter entity, there is no other organized place for this person. The presence of such an official may compromise the protected status of White House documents and internal deliberations, protections that are based on constitutional separation of powers concerns. The ability of such an official to function effectively and to enjoy the full confidence of the President as a member of his senior staff is questionable, if for no other reason than the possibility that the paperwork of the Presidency would no longer enjoy freedom from premature public inspection under its FOIA exemption and/or the claim of executive privilege. It is possible that this official would quickly be condemned to an ineffective and obscure place within the Executive Office of the President in order that his curious status not come to impede the functioning of the Presidency.

More important than this objection is the assertion of Congressional control over the personal staff of the President. It is easy to see how such a precedent could tempt further attempts by Congress to exercise authority over the functioning of the White House Office. There are serious Constitutional questions raised by that possibility, all of them linked to a concern that the traditional separation of powers not be eroded.

We also point out that the proposal with its contemplated assignment of wide duties to the new official, if assigned to a new entity within the Executive Office of the President, would entail great expense and an additional layer of bureaucracy. We believe this to be an unnecessary and unwise attempt to essentially duplicate functions already assigned to various agencies within the Executive Branch. The policy arguments against creating still another office to patrol duties already assigned are obvious.

In summary, the proposal appears to raise serious questions, not only of a Constitutional variety, but also in terms of the efficiency of the Presidency and the integrity of the policy-making process. We will continue to study this, but I wanted you to have my preliminary views and thoughts.

cc: M. Peter McPherson
Director
International Development Cooperation Agency

FFF/HH/JGR:jmk

cc: FFFielding
✓GRoberts
HHewitt
subject
chron.