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ATE: JAN 16 1974

TO: Alfred L. Edwards, Special Assistant to Commissioner Newman

ROM: Richard W. Allen, Office of the General Counsel

THRU: Michael A. Brown General Counsel

JBJECT: Copyright of Monograph

This is in reference to your memorandum dated January 8, 1974 in which you inquire whether a monograph prepared by Commissioner Newman on Commission time and using Commission resources may be copyrighted by a non-government organization.

The monograph may not be copyrighted. Writings made by a government official in connection with his official duties are in the public domain and cannot be copyrighted. 17 U.S.C. 8 (attached). The principle has been enunciated in a number of decisions and is based on the rationale that when an employee creates something in connection with his duties under his employment, the product is the property of the employer. See e.g., Sawyer vs. Crowell Pub Co., 142 F2d 497 (2 Cir. 1944). In contrast, writings which are made by a government official which are unrelated to his official duties may be copyrighted. See Public Affairs Associates, Inc. vs. Rickover, 268 F. Sup. 444 (Dist. Ct., D.C. 1967).

Apart from the copyright question, your memorandum raises a question as to the advisability of providing government prepared material to an organization on an exclusive basis. Ordinarily, the grant of a right to use Government-owned property in a manner not permitted to the public at large creates a valuable privilege for which the Government should be compensated. Moreover, the award of an exclusive privilege involving government property is subject to the same statutory advertising requirements as the award of any other public contract. See 42 Comp. Gen. 651 and cases cited therein. In this respect, the General Accounting Office strongly criticized the National Advisory Commission on Civil Disorders for releasing its final report to a single private publisher (i.e., the New York Times) prior to its official release. Although the report was in the public domain, the "exclusive" gave the Times an economic advantage

over its competition. (Comptroller General letter dated May 21, 1968, to Senator John J. Williams, U.S. Senate, reported in Cong. Record, Senate S 6741, June 3, 1968). Although the Joint Center for Political Studies is a non-profit organization, I believe the release of the monograph to them on an exclusive basis would give them an advantage, economic or otherwise, to the detriment of other similar organizations.

Please advise me if I can be of further assistance.

Attachment

RWAllen:mli:1/16/74

cc: Executive Director
RWAllen
GC Files
GC Chron
GC Reading