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cc: FILES
Mr. Schlei
Mr. Simms
Mr. Siegel
Mrs. Copeland

MAY 25 1965

Honorable Lee C. White
Counsel to the President
Executive Office of the President
Washington, D. C.

Dear Mr. White:

This is in reply to your memorandum requesting advice as to the constitutional or statutory authority of the President to make available to the widow of the Reverend Mr. Reeb an Air Force airplane to transport her from Birmingham to Boston.

I know of no express provision of statutory law that authorizes the President to make an Air Force airplane available to a private citizen in a case of this type; however, I have no doubt that the broad authority conferred upon the President by the Constitution and the statutes of the United States, permits him, as Chief Executive and Commander in Chief of the Armed Forces of the United States, to use personnel and property of the Armed Forces for humanitarian activities of this type.

Section 1 of Article II of the Constitution provides that the executive power of the United States shall be vested in the President. Section 2 of that Article provides that the President shall be the Commander in Chief of the Armed Forces of the United States, and Section 3 provides that the President shall take care that the laws be faithfully executed.

Throughout our history the President's broad authority under those constitutional provisions and under the statutes of the United States (for example, see 10 U.S.C. particularly §§ 121, 836, 1161(b), 1162(a), 3012(1)(2), 5031(b) and 8012(b), and 37 U.S.C., particularly § 301) to employ and deploy military personnel and their equipment has been recognized and accepted. In those rare

instances in which the Congress has seen fit to impose limitations upon that authority, it has done so expressly. For example, the Congress expressly prohibited the use of troops at the polls, 18 U.S.C. 596, or as a posse comitatus, 18 U.S.C. 1385, and expressly prohibited the assignment overseas of members of the armed services until they have completed four months of basic training (10 U.S.C. 671). In the absence of such an express restriction, the President may employ and deploy members of the Armed Forces and their equipment in any manner that he deems to be consistent with the national interest.

Acting under that broad authority, Presidents have used Armed Forces personnel and equipment to fight forest fires; to aid in searches for lost persons; to aid victims of floods, earthquakes, and other disasters; to provide emergency medical care and treatment; to transport critically ill persons to medical facilities; to transport vitally needed drugs, medicines, and serums to the sick; to feed livestock stranded by blizzards; and in other similar cases too numerous to list. These humanitarian activities generally were publicized at the time of their occurrence and the Congress is completely aware of those actions. However, to the best of my knowledge humane responses of this type by the President on behalf of the Nation have never been the subject of criticism or complaint by the Congress or any other responsible source. Furthermore, these activities have never caused an adverse impact upon our national defense or national security, and, to the contrary, have often resulted in special praise and commendation and have tended to enhance public appreciation of and respect for the Armed Forces. It is, of course, a well-established doctrine that long-continued acquiescence by the Congress gives decisive weight to a construction by the executive of its powers. United States v. Midwest Oil Co., 236 U.S. 459, 481 (1915). Youngstown Co., v. Sawyer, 343 U.S. 579, 613 (1952).

Consequently, it is my opinion that the President may, in his discretion, and in the absence of an express statutory restriction, direct the Armed Forces of the United States to perform reasonable humanitarian services, such as transporting Mrs. Reeb from Birmingham to Boston. In view of the foregoing, it is apparent that the flight did not entail any misuse of public funds.

Sincerely,

Norbert A. Schlei
Assistant Attorney General
Office of Legal Counsel