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

AUG 12 1964

MEMORANDUM FOR THE HONORABLE LEE C. WHITE
ASSISTANT SPECIAL COUNSEL TO THE PRESIDENT

Re: Policy prohibiting officials and employees of the Federal Government or of the Government of the District of Columbia from appearing before segregated groups.

This is in reply to your request for an expression of the views of this Department concerning a clipping from the Washington Post of July 15, 1964, which states that the District Federation of Citizens Associations has asked for a congressional investigation with respect to a policy statement issued by the Board of Commissioners of the District of Columbia with respect to appearances of officials of the District of Columbia Government before segregated groups.

By a memorandum of June 12, 1964, to the heads of all departments and agencies you pointed out that the President has on numerous occasions made clear his view that Federal officials should not participate in segregated meetings. Your memorandum transmitted a statement of policy concerning this matter and requested the various departments and agencies to take such steps as are necessary to insure that the views of the President in this regard are understood throughout the Government.

The fact that the Constitution and Statutes of the United States, and the judicial rulings thereunder prohibit the Federal Government (including the District Government) from exercising its authority or performing its functions in any manner that discriminates against any individual by reason of his race, color, creed, or national origin is so well recognized that it needs no documentation. In addition, the Constitution and the

laws of the United States prohibit the Federal Government, and State governments as well, from permitting the use of certain of their resources in any such discriminatory manner. In Shelley v. Kraemer and Hurd v. Hodge, 334 U.S. 1 and 24, respectively (1947), the Supreme Court held that State courts and the Courts of the District of Columbia may not be used to enforce racial covenants in private real estate conveyances, even though these covenants are not barred by the Constitution, because such enforcement by State courts would violate the Fourteenth Amendment and such enforcement by the Courts in the District of Columbia would, among other things, violate public policy.

Just as the use of Federal courts to enforce racial covenants would constitute a violation of public policy, so would the use of Federal or District officials as participants in activities designed to support or promote segregated groups be contrary to our public policy and be comparable to the activities prohibited by the above-cited decisions.

Furthermore, the Congress just recently went on record as opposing the use of Federal resources in a manner which tends to promote or preserve discrimination because of race, color, creed, or national origin by enacting the Civil Rights Act of 1964, Public Law 88-352. Title VI thereof provides for the withholding of Federal financial assistance from programs and activities which are conducted in a manner that discriminates against persons on the basis of their race, color, or national origin. Clearly the policy enunciated by the President is in complete accord with the policy enunciated by the legislative and judicial branches of the Government.

It is obvious that the President has the authority to declare such a policy with respect to officials who serve at his pleasure. In addition, he

has express statutory authority under Section 1753 of the Revised Statutes (5 U.S.C. 631) to prescribe regulations with respect to all other officers and employees of the Federal Government and of the Government of the District of Columbia who are subject to civil service laws. In fact, it could be contended that Section 1753 not only confers authority upon the President to proclaim this policy, but also imposes an obligation upon him to do so.

No distinction can be drawn between the authority of the President in this case and the authority of the Commissioners. Whenever the President proclaims a policy that is applicable to officers and employees of the Government of the District of Columbia, the Commissioners must effectuate that policy.

Consequently, I find nothing in your memorandum of June 12, 1964, or in the attachment thereto, or in the memorandum of July 7, 1964, of the District Commissioners that is legally objectionable. The fact is that those documents probably create no new restrictions or restraints upon any officer or employee of the Federal or District Government, but, instead, do nothing more than expressly call our public policy in this regard to the attention of Federal and District personnel.

Compliance with this statement of policy appears to rely upon voluntary acceptance rather than upon some form of compulsion or disciplinary action since none of the three documents imposes, prescribes, or directs any express type of enforcement. This, of course, does not mean that appropriate enforcement measures could not be prescribed should that action become necessary.

Finally, although it is not expressly so limited, it appears that this policy statement is intended to apply to officers and employees only when they are acting in their official capacities as officers or employees of the Government. By contrast it does not appear to be

designed to restrict the activities of those individuals in their private lives. For example, I assume that it was not designed to prohibit an employee from participating, as a private citizen, in the activities of a church or private club that followed a policy of discriminating between persons on the basis of race or religion.

I hope that the foregoing is of assistance to you.

Norbert A. Schlei
Assistant Attorney General
Office of Legal Counsel