



441 G St. N.W.  
Washington, DC 20548

B-329372

June 27, 2018

The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce

The Honorable Raúl M. Grijalva  
Ranking Member  
Committee on Natural Resources  
U.S. House of Representatives

Subject: *U.S. Department of the Interior—Telephone calls between the Secretary of the Interior and United States Senators from Alaska*

This is in response to your letter of July 27, 2017, requesting that the Government Accountability Office provide a legal opinion on whether the Secretary of the Interior’s July 26, 2017 telephone calls with the United States Senators from Alaska violated the governmentwide anti-lobbying provision, or other provisions applicable to Interior’s use of its appropriation.<sup>1</sup> See Pub. L. No. 115–31, div. E, title VII, § 715, 131 Stat. 135, 380 (May 5, 2017). We note that the Department of the Interior Office of Inspector General (Interior OIG) received a request from you on the same day to investigate the telephone calls. For the reasons explained below, we are unable to issue a legal opinion on this matter.

The applicable anti-lobbying provision is found at section 715 of the Consolidated Appropriations Act, 2017. Section 715 prohibits the use of appropriations for publicity or propaganda designed to influence pending legislation, and provides as follows:

“No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication,

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<sup>1</sup> Letter from Ranking Member, Committee on Energy and Commerce, House of Representatives, and Ranking Member, Committee on Natural Resources, House of Representatives, to Comptroller General, July 27, 2017.

radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.”

Pub. L. No. 115–31, 131 Stat. at 380. We have interpreted similar appropriations act language as prohibiting indirect or grassroots lobbying, and have specifically found that the prohibition is violated where there is evidence of a clear appeal by an agency to the public to contact Members of Congress in support of, or in opposition to, pending legislation. B-325248, Sept. 9, 2014. We have expressly rejected the argument that a prohibition such as this one is inapplicable to Presidentially-Appointed and Senate-Confirmed officials, such as the Secretary of the Interior. *Id.* We have acknowledged that anti-lobbying provisions such as Section 715 do not restrict the ability of agency officials to voice their position on matters of public policy by direct appeals to Congress. *Id.*

As our staffs discussed, GAO issues legal opinions on the use of appropriated funds, applying the law to settled facts. To apply the anti-lobbying provision in this case, it is necessary to understand the substance of the telephone calls, and in particular, what the Secretary said during those telephone calls. Consequently, our staffs agreed that GAO would render an opinion if Interior OIG made factual findings on the substance of the telephone calls between the Secretary and the Alaska senators. Interior OIG, however, was unable to complete its investigation so it did not make any factual findings. In her response to you, the Deputy Inspector General noted that Interior OIG was unable to fully develop the facts surrounding the telephone calls, and “does not believe that it could meaningfully investigate the matter further.”<sup>2</sup>

Following the Interior OIG’s letter, consistent with our practice for legal opinions, we requested information from Interior regarding the factual circumstances of this matter, as well as its legal views as to whether the Secretary’s actions complied with appropriations laws, including the anti-lobbying provision in section 715 of the Consolidated Appropriations Act, 2017. Letter from Managing Associate General Counsel, GAO, to Solicitor (Acting), Interior (Sep. 25, 2017); GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/products/GAO-06-1064SP](http://www.gao.gov/products/GAO-06-1064SP). In his response to our request, the Principal Deputy Solicitor confirmed only that the Secretary spoke by telephone with the Senators. The Principal Deputy Solicitor declined to provide further details about what was said.<sup>3</sup>

Sound application of law to relevant facts is a hallmark of any well-reasoned legal opinion. As discussed above, Interior OIG made no factual findings in this matter, and

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<sup>2</sup> Letter from Deputy Inspector General, Interior, to Ranking Member, Committee on Energy and Commerce, House of Representatives, and Ranking Member, Committee on Natural Resources, House of Representatives (Aug. 29, 2017).

<sup>3</sup> Letter from Principal Deputy Solicitor, Interior, to Managing Associate General Counsel, GAO (Mar. 27, 2018).

Interior did not provide us with any information on the substance of the telephone calls. In light of this, we lack the requisite facts on which to base a legal opinion. If you have additional questions, please contact Julia C. Matta, Managing Associate General Counsel, at (202) 512-4023 or [mattaj@gao.gov](mailto:mattaj@gao.gov), or Omari Norman, Assistant General Counsel for Appropriations Law, at (202) 512-8272 or [normano@gao.gov](mailto:normano@gao.gov).

Sincerely,

A handwritten signature in cursive script that reads "Thomas H. Armstrong". The signature is written in black ink and is positioned above the typed name.

Thomas H. Armstrong  
General Counsel