2 Tax Lawyers Aid Nixon In Preparing Finance Case

Ex-Treasury Officials Are Consultants to Staff—Allegations Refer to Tax Returns and Land Purchases

By EILEEN SHANAHAN 8/21/73

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WASHINGTON, Aug. 20 — Two of the nation's most eminent tax lawyers are working as consultants to the special White House staff group that is preparing President Nixon's defense against charges of possible wrongdoing ranging from politics to personal finance.

They are H. Chapman Rose of the Cleveland law firm of Jones, Day, Cockley & Reavis and Kenneth W. Gemmill of the Philadelphia firm of Dechert, Price & Rhoads. Mr. Rose was Assistant Secretary and later Under Secretary of the Treasury during the Eisenhower Administration, and Mr. Gemmill served in high positions in the Internal Revenue Service and the Treasury under President Eisenhower.

The precise problem or problems on which the two lawyers are working have not been disclosed. However, two allegations of irregularity in President Nixon's tax returns have already been made publicly, and a third has been the subject of private discussion among tax lawyers and accountants.

The third allegation concerns Mr. Nixon's purchase of land surrounding his oceanfront home at San Clemente, Calif., and the subsequent resale of most of this land to his friend Robert H. Abplanalp, a multimillionaire inventor and industrialist.

Question of Capital Gain

The May 25 accounting that the White House gave of the San Clemente transaction shows that Mr. Nixon sold the land to Mr. Abplanalp for substantially more per acre than he and Mrs. Nixon paid for it 15 to 18 months earlier.

Based on the official White House figures, "it would appear that a capital gain should have been reported," in the opinion of Sheldon S. Cohen, who was Commissioner of Internal Revenue under President Johnson. Mr. Cohen, now in private tax practice, is also general counsel of the Democratic National Committee.

It is not known whether Mr. Nixon reported a capital gain on the transaction. The White House statement of May 25 made no mention of any Federal tax liability arising from the land sale.

The White House has so far not answered a question on the matter that was submitted to the President's press secretary, Ronald L. Ziegler, on Aug. 1. Gerald L. Warren, the deputy press secretary, has replied to inquiries by saying only that the question will be answered "in due course." He has pointed out that the White House has promised a "detailed accounting" of the expenditures on all of the Nixon family's various properties by a "highly respected firm."

Improvements on Property

One of the other questions raised about Mr. Nixon's Federal income tax payments also involves his real estate. Representative Edward I. Koch, Democrat of Manhattan, has argued that at least some of the improvements on Mr. Nixon's San Clemente and Key Biscayne properties that were paid for with Government funds were not necessary for security purposes and will permanently enhance the value of the properties.

Mr. Koch maintains that these improvements constitute "income" to the President, as it is defined in the tax laws. He has asked for information on this point from the Internal Revenue Service.

The other allegation of tax irregularity on Mr. Nixon's part involves his gift to the National Archives of his pre-Presidential papers, which were valued at $570,000 by an independent appraiser. A public-interest tax group, Tax Analysts and Advocates, has charged that, if Mr. Nixon deducted this gift on his tax return, he did so illegally.

The organization said that, in an apparent effort to make the gift before a law tightening up on the deductions for such papers became July 25, 1969, Mr. Nixon neglected to take care of certain details. For example, Tax Analysts and Advocates said, the records of the General Services Administration show that no actual deed for the papers has been signed, as required by law.

A White House spokesman, when asked recently about the allegedly illegal deductions, said: "The matter has been previously raised and considered. The allegations are unfounded."

'Consulted Intermittently'

It could not be learned whether the two tax lawyers from outside the Government, Mr. Rose and Mr. Gemmill, were working on any of these problems for President Nixon.

Mr. Rose, who has apparently been in Washington several times recently on White House assignment, acknowledged that he had been "consulted intermittently" by "the group at the Executive Office Building" that is working on Mr. Nixon's defense. The group, consisting mainly of younger lawyers, is being directed by J. Fred Buzhardt, special counsel to the President.

Mr. Rose declined to discuss what he was doing for the White House on the ground that "that isn't what one does as a lawyer."

Attempts to reach Mr. Gemmill were unavailing.

The office of Leonard Garment, counsel to the President, acknowledged that Mr. Gemmill, as well as Mr. Rose, was working with the Buzhardt Group, however.

The deputy press secretary, Mr. Warren, has previously denied that outside lawyers were being used by the Buzhardt group.

Private Comment

The figures that have caused so much private comment among tax lawyers and accountants are those detailing the purchase of the San Clemente property by the Nixons. It was bought, in two parcels, in July and September, 1969, and part of it was resold in December, 1970, to Mr. Abplanalp.

The Nixons paid $1.4-million for the San Clemente house and 26 acres. They subsequently bought a small adjoining parcel of 2.9 acres, for which they paid $100,000. They subsequently sold 23 acres to Mr. Abplanalp for $1,249,000. These are all figures supplied by the

White House, which differ somewhat from those recorded by California officials.

Using the White House figures, the total of 28.9 acres sought by the Nixons was obtained at an average price of $51,903 per acre, if no value whatever is assigned to the San Clemente house. The land that was sold to Mr. Abplanalp was sold at $54,304 an acre.

These figures would indicate that President and Mrs. Nixon had a gain of $2,401 per acre, or a total of $55,223, on the transaction, again assuming that the house had no value and that all the land was of similar value.

Statement by Abplanalp

If a value were assigned to the house—still assuming the land was all of approximately the same value — the Nixons' capital gain would be significantly higher.

Mr. Abplanalp, in an interview recently with The Washington Star-News, said that he had bought the land as a straight business deal because he expected to make a profit on it. Earlier, the White House had announced, he lent the Nixons $625,000 to help them purchase the property.

Mr. Abplanalp said in the interview that the land he had bought was more valuable than the land retained by the Nixons because it was undeveloped.

Lawyers and accountants who are questioning the transaction suggest, however, that the price of undeveloped land in the area might be more accurately reflected in what the Nixons paid for the relatively small parcel of undeveloped land they bought after their original purchase.

One Point Disputed

This 2.9 acres went for an average price of $34,482 per acre, or very much less than the average of $54,304 that Mr. Abplanalp paid for the 23 acres he bought from the President.

Mr. Abplanalp, in the Star-News interview, disputed one point that the White House made in its statement of May 25. That statement said that the 23 acres had been "purchased by an investment company set up by Mr. Abplanalp."

Mr. Abplanalp said there had never been such an investment company. Such a company would probably have been required to register under California law.

Tax experts are agreed that Mr. Nixon should have reported the whole San Clemente transaction on a tax return, even if he planned to make the argument that he had no real capital gain, or even if he had some losses or some "tax shelters" that offset the gain, leaving no tax due.

Abraham J. Briloff, professor of accounting at Baruch College of the City University of New York, noted that the gain might not be on the President's own tax return if he had set up some sort of trust or corporation through which his property and other business transactions were channeled. However, the White House has never said anything to indicate that such a trust or corporation exists.

"I cannot help but feel that he would have reported the gain," Professor Briloff said. "But the circles in which he moves would probably have steered him into enough tax shelters to have offset that capital gain. He would have reported the transaction as a gain and then, presumptively, offset it."