

U.S. Criticized for Hiring Private Defense Lawyers

201T 11/30/78
Associated Press

The Justice Department is illegally employing private lawyers to defend federal employees being sued for mail openings and other violations of constitutional rights, a staff report by a Senate subcommittee said yesterday.

"If the report's conclusion is sustained, then government contracts to pay 79 law firms to represent 107 defendants in 27 cases may be invalidated," said Sen. James Abourezk (D-S.D.), chairman of the administrative procedures subcommittee of the Judiciary Committee.

The cost of private attorneys hired by the department has risen from \$12,000 in 1974 to last year's appropriation of \$1.86 million. The department did not seek funds for the current fiscal year, but said it may have to later.

The department has said it hires private lawyers to prevent conflicts of interest which might otherwise arise—for instance, when the employee who has been sued may also be the subject of a federal criminal indictment. Such attorneys are free to raise "a legal position or defense not in the interest of the United States to assert"—such as a claim that the employee was acting in good faith on orders of his superiors.

The staff report, however, says "The government should have no part—direct or indirect—in subsidizing legal arguments that mail openings, surreptitious entries, and other similar conduct are legal."

A study made for Abourezk by the Congressional Research Service of the Library of Congress also said there is "substantial doubt whether the Department of Justice has the statutory authority to retain private attorneys who are not subject to the supervision, control and direction of the attorney general."

The staff report recommended that no additional funds be appropriated to hire private lawyers in such cases and that Congress change the law so that the government, instead of an individual, could be sued. Abourezk said he agreed, as long as disciplinary procedures are strengthened to assure that the employee would still be subject to sanctions.

Abourezk's subcommittee and the Judiciary subcommittee on citizens' rights are considering such legislation. Attorney General Griffin B. Bell testified last week that he is willing to change the bill to include stronger disciplinary proceedings.