

Doubt on Nixon Deed Laid To Staff of Tax Inquiry

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WASHINGTON, March 23—Congressional staff experts who are investigating President Nixon's taxes have reportedly become convinced that the deed establishing the President's right to a \$576,000 tax deduction never existed, despite the contention of his lawyers to the contrary.

In addition, according to sources close to the inquiry, the Congressional investigators believe that they have sufficient documentary evidence to refute the argument made by Mr. Nixon and his lawyers that the deduction was legal even in the absence of the deed.

That argument rests on an assertion that Mr. Nixon's pre-Presidential papers were delivered to the National Archives before a change in the tax laws that disallowed big deductions for gifts of personal papers by public officials.

A document in the hands of the investigators is said to show, however, that more than three months after the cut-off date the papers were still being described by a key man in the transaction—the appraiser of the papers—as the “property” of Mr. Nixon that was merely “presently stored” at the archives.

The evidence on this issue, along with the evidence that

there was never any deed for the papers other than a post-dated one, will be presented shortly by the staff of the Congressional Joint Committee on Internal Revenue Taxation to the members of the committee. The staff is trying to get its report written on all aspects of Mr. Nixon's tax returns by the end of next week, though some of the staff express doubt that this tentative deadline will be met.

The staff appears likely to abstain from reaching any conclusions on the crucial question of how much President Nixon knew about the allegedly nonexistent original deed and about the undisputed fact that the only copy of the deed that exists now is a back-dated version.

On the question of Mr. Nixon's knowledge may hinge the even more important one of whether the committee will say that the President committed fraud in his income taxes.

The chairman and vice chair-

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man of the committee, Senator Russell B. Long of Louisiana and Representative Wilbur D. Mills of Arkansas, have said in recent days that they know of no proof of fraud. However, Senator Long, in particular, has pointed out that that is not the same as saying that there is no evidence of fraud.

The staff's work is incomplete, because the joint committee has been unable to find out anything about a crucial conversation between Mr. Nixon and his tax lawyer, Frank DeMarco Jr. of Los Angeles.

Privilege Rule Invoked

Mr. DeMarco has refused to testify about what he discussed with Mr. Nixon in a half-hour meeting in the Oval Office of the White House on April 10, 1970, the day Mr. Nixon signed his 1969 tax return. That was the first return in which the deduction for the pre-Presidential papers was claimed.

Before the joint committee and also in two other investigations, Mr. DeMarco has invoked the rule that conversations between lawyer and client are privileged—that is, that no one can compel disclosure of the contents of such conversations unless the client gives his permission.

The joint committee, Internal Revenue investigators and the office of the Secretary of State of California have all asked Mr. Nixon to waive that privilege. The first of these requests was made three weeks ago. The White House has responded to none.

The White House press office has not responded, in two weeks, to an inquiry about whether the President would waive the rule of confidentiality.

Edmund G. Brown Jr., the California Secretary of State, said in his request to Mr. Nixon for a waiver that the President could not assert the need for confidentiality because of his high office.

"The present investigation has nothing to do with you in your capacity as President of the United States but involves you only as a private taxpayer," he wrote to Mr. Nixon on March 5.

The joint committee and the Internal Revenue Service are believed to have made similar assertions.

The members of the joint committee will have to decide, when they see the staff's recommendations, whether they will put up a legal fight to compel Mr. DeMarco to disclose how much he told the President about the details of his tax returns or what the President may have known without being told by Mr. DeMarco.

There are a number of items of evidence that have reportedly led the joint committee staff to the conclusion that no deed turning over the pre-Presidential papers was executed before the effective date of the change in the law that denied deductions for gifts of such papers. The cut-off date was July 25, 1969.

Mr. DeMarco has said in testimony that he had his secretary retype the original deed, dated March 27, 1969, because the paper and the style of the original deed were different from those of accompanying documents. Once the new copy of the deed was made, in April of the following year, the old one was destroyed in conformity with his firm's practice on documents that had been replaced, he said.

However, Mr. DeMarco also testified that he learned in November, 1969, that Congress was apparently on its way to adopting legislation that would cut off deductions for gifts of papers as of the previous July 25.

Thus, the investigators say, he testified in effect that he destroyed the original March, 1969, deed, just because he thought it looked unprofessional, even though he had learned that evidence that the gift was made before July 25, 1969, might become important.

Committee investigators have also questioned why Mr. DeMarco, by his own testimony, asked an accountant in May, 1969—two months after the alleged execution of the original deed—what the maximum permissible deduction would be for a gift of papers for someone with Mr. Nixon's income. Such deductions are limited to a certain percentage of the donor's income.

1969 Memo Cited

There are other items of evidence that are said to undermine the argument that Mr. Nixon legally made the gift of the papers—even if there was no deed at all—because the papers were physically delivered to the Archives in March, 1969. There is no dispute that the physical delivery was made in that month.

As late as Nov. 5, 1969, however, more than three months after the statutory cutoff date, Ralph G. Newman, the man who appraised Mr. Nixon's pre-Presidential papers, wrote a memorandum in which he referred to the papers as Mr. Nixon's property that was merely being stored at the Archives.

Mr. Newman's memorandum covered both the papers that are now in dispute, which constituted about one-quarter of the total—and other pre-Presidential papers that are still Mr. Nixon's private property and still stored at the Archives.