Nixon Gift, Tax Break Legal, Lawyer Says

6/16/73

By Nick Kotz
Washington Post Staff Writer

Frank DeMarco Jr., President Nixon's personal tax attorney, said that in 1969 he legally executed a gift of pre-presidential papers worth more than $200,000 in tax savings to Mr. Nixon, but acknowledged that he followed markedly different procedures than in previous presidential gifts.

DeMarco, on instructions from the White House, consented to an interview this week to explain the circumstances of a gift to the country of pre-presidential Nixon papers that were valued for tax purposes at $570,000, resulting in a tax saving of at least $200,000.

DeMarco said the gift was legally made as of March 27, 1969, which qualified for income tax deductions that later were eliminated by a new law that became effective July 25, 1969.

The papers, given to the National Archives for eventual deposit in a Nixon presidential library, included Mr. Nixon's general correspondence as Vice President, files on his foreign trips as Vice President, correspondence regarding invitations, and files on the 1960 visit to the United States of Soviet Premier Nikita Khrushchev.

Officials at the archives had

See PAPERS, A5, Col. 1

PAPERS, From A1

privately raised questions about the gift because the deed for it was not delivered until April, 1970, was not signed by the President, and has never been formally accepted by the archives in the traditional written document.

The key issue concerning the legality of the gift as a tax write-off involved whether the gift was made in proper form by July 25, 1969. As of that date, Congress changed the law so that the tax deduction value for income tax purposes of, for example, Mr. Nixon's 1952 Checkers speech, would be worth only the inconsequential value of the piece of paper it was written on, not the appreciated value of what a collector might pay for the manuscript.

DeMarco, a partner in the California firm of Kalmbach, DeMarco, Knapp and Chillingworth, said that the procedures used by Presidents Johnson and Eisenhower, and by President-elect Nixon in December, 1968, were unnecessary to make the Nixon gift. In the previous cases, the Presidents had signed a formal deed which also was signed by the administrator of the General Services Administration.

DeMarco said that no deed was necessary and that the gift became a legal one merely by President Nixon's action in shipping his papers to the Archives on March 27, 1969, with the intention of giving part of them as a gift and leaving the rest in storage. The papers and other items—exclusive of the gift—have been tentatively valued by appraiser Ralph Newman of Chicago at about $1.5 million if sold as historical documents on the open market.

DeMarco acknowledged in the interview that the deed delivered to the Archives in April, 1970, does not reflect the actual date it was prepared and contains a description of the gift which DeMarco added to the document at a much later date.

These changes are as follows:

The deed purports to have been written on March 27, 1969, and signed on that date by Edward Morgan, then deputy counsel to the President. DeMarco acknowledged that he prepared the deed some days after March 27 and that Morgan signed it and DeMarco notarized it on April 21, 1969.

The deed purports to contain a "Schedule A" which contains the only description in the deed of the papers included in the gift. DeMarco acknowledged that the Schedule A attached to the deed was not actually prepared by him until a year later, most likely sometime in March, 1970.

DeMarco said the original deed contained another "Schedule A" which stated only that: the gift consisted of "private pre-Presidential papers of Richard Nixon of the approximate value of $500,000, delivered to the National Archives on March 27, 1969. A detailed schedule to be attached hereto upon final sorting, classification and appraisal."

When appraiser Newman, in 1970, finally sent him a detailed list of the papers given to the country, DeMarco said he substituted that in place of the original Schedule A.

DeMarco said he kept the deed in his office until April, 1970, when someone at the White House told him to send it to archives.

DeMarco has not responded to requests by a reporter over the last three days to be shown DeMarco's record of notarizing the deed and to be shown the original description of the gift accompanying the deed, which DeMarco said he later replaced with another description of the gift.

DeMarco said the chronology of the 1969 gift was as follows:

- Morgan called him in late March, 1969, and told him the President wanted to make a 1969 gift "of about $500,000 value."
- DeMarco called appraiser Newman in early April, 1969, and told him to "segregate papers worth about $500,000 as a gift."
- Newman examined the papers on April 7 and 8 and made some preliminary recommendations. The final selection of the papers to be given was made "sometime in the next three or four months" or possibly "by May or June."

Newman, however, has a different recollection. He does not remember DeMarco or Morgan ever asking him in April, 1969, to select $500,000 worth of papers, but only to go through the materials and recommend what should be given.

Newman said he made his preliminary recommendations in April, suggesting that certain sensitive documents and particularly valuable documents including personages be excluded.

Newman said he had no way of knowing in April that t papers that he generally commended for a gift wou be eventually appraised $570,000. He said he could r have made that determinati until November or Decemb 1969, when he examined t documents in detail.

Dismissing the need for deed, DeMarco said: "Tl President's intention to mal a gift was demonstrated b the transfer" of his papers the archives on March 2 1969.

DeMarco said the transfe was all that was required eve though the President has r tained possession of some c the papers that were shippe to the archives.

Asked why he prepared deed if none was necessary DeMarco said the main pur pose was to restrict use of the papers during Mr. Nixon's presidency, to retain his exclusive right to use the papers for writing books, and to show that the papers eventually should go to a Nixon presidential library.

In addition, DeMarco said the deed was useful "because I felt there were more papers than $500,000 (worth), and we weren't going to give the other papers."

Asked why he didn't deliver a copy of the deed to archives so that officials there could be aware of what was given and what wasn't, DeMarco replied: "We are kind of outside counsel. The inside counsel are at the White House. I took my orders from Mr. Morgan." (Morgan said in an interview that he was merely a middle man between John Ehrlichman, then White House counsel, and DeMarco.)

De Marco, whose speciality is tax law, said he was unaware from conversations with Morgan or Ehrlichman that Congress in 1969 was considering changing the tax write-off law for gifts of historic papers, or that White House aides were lobbying against enactment of the law.

As matters turned out, no one could have known whether the law would pass or what its precise provisions would be until December, 1969. The Senate passed a bill that would have eliminated the tax advantage as of the end of 1968, but the final bill passed in December made the new law retroactive to July 25, 1969.

If the Senate version of the

bill had prevailed, Mr. Nixon's gift of papers would have been ineligible for a tax break no matter what time during 1969 the gift was made.

Mr. Nixon's tax write-off worked as follows:

The old law permitted a taxpayer to take deductions for such charitable gifts of papers against 30 per cent of his income in 1969, and against 50 per cent in later years. If a taxpayer could not use up the full tax write-off advantage of his gift in one year, he could continue to take deductions the next four years.

Mr. Nixon had potential deductions of $570,000, the appraised value of the papers. From his presidential salary of $200,000, he coul have taken a tax deduction of about $30,000 in 1969 and of $50,000 in each of the next four years. If he had sufficient income above his presidential salary, he could theoretically have saved as much as $570,000 in federal taxes.

DeMarco said the President didn't have sufficient income to use all of the potential $570,000 deduction.

Questioned about other income above the President's salary to which the deduction could be applied, DeMarco replied: "He doesn't have much."