

# Ervin Unearths 1928 Law He Says Enables Panel to

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WASHINGTON, April 15 — Senator Sam J. Ervin Jr. has found a 1928 law that he said empowers his Government Operations Committee to obtain in writing virtually any information it wants from the Nixon Administration.

The discovery, made known yesterday by aides to the Democratic Senator from North Carolina, could become a significant factor in the clash between Congress and the White House over secrecy.

The little-known section of the United States Code would not affect President Nixon's claim to an unlimited right to withhold witnesses from committees of Congress, a matter

of sharp contention in the Senate's effort to question White House aides about the Watergate conspiracy.

But it could be used to force the White House to provide documentary information that it has been unwilling to make available.

### On Any Request

Attorney General Richard G. Kleindienst testified at a Senate hearing on Tuesday that there were no limitations that could be placed on executive privilege, the unwritten doctrine of confidentiality under which Presidents have refused to supply some written information on witnesses to committees of Congress.

But Section 2954 of Title 5 of the Federal Code, enacted in

1928, appears to compel the executive branch to answer any requests for documents if they are sought by the committee that Senator Ervin heads or its counterpart in the House. The section, in its entirety, reads as follows:

"An executive agency, on request of the Committee on Government Operations of the House of Representatives or any seven members thereof, or on request of the Committee on Government Operations of the Senate or any five members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee."

The key phrases are those asserting that the Administration "shall" provide the information and that the law per-

tains to anything in the committee's jurisdiction.

In legal terms, the word "shall" is mandatory and does not give any room for disagreement—unless a court should overturn the law. Furthermore, the Senate Government Operations Committee's jurisdiction covers practically anything that the executive branch might do.

The legal jurisdiction of the committee includes "efficiency and economy of operations of all branches of the Government, including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corrupt or unethical practices, waste, extravagance, conflicts of interest and the improper

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### No Previous Instance

Associates of Senator Ervin said that they could not find any indication that the law had ever been used.

The most recent instance of White House refusal to provide written information was disclosed to a House subcommittee earlier this month by Paul C. Dembling, the general counsel to the Government Accounting Office. He said the White House would not allow the agency, an investigative arm of Congress, to examine records of military flights by Mr. Nixon, members of his family and Administration officials during the 1972 Presidential campaign.

While the Administration last week released records showing that the President's re-election committee paid \$149,291 for 55 flights on Presidential aircraft during the campaign, the White House refused to provide the names of passengers and details of other campaign flights.

The accounting office had sought the information to verify that the Government had been reimbursed for any political trips by the President's campaign organization, as required by law.

Senator Ervin said last week that the Judiciary Subcommittee on Separation of Powers was making a detailed survey of every instance since January, 1964, in which documents or witnesses were denied to Con-

gress. Without providing any breakdowns, he said that the study, which has not been completed, has already identified 166 instances.

"The greater number," he added, "have occurred in the last six years."

In the Watergate inquiry, which Senator Ervin is also directing, the White House offered to provide any written information the committee might want but not personal testimony. Mr. Ervin refused to agree, on the ground that documents could not be cross-examined.

But his associates said he was determined, as a general principle, to insist on Congress's right to documents as well.