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(w/gate)

Nixon Tax Write-Off

--Questions on Legality

By Nick Kotz
Washington Post

Washington

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

DeMarco, on instructions from the White House, consented to an interview to tell the circumstances of a gift to the country of pre-presidential Nixon papers that were valued at \$570,000 for tax purposes.

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.

ARCHIVES

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 U.S. of Soviet Premier Nikita Khrushchev.

Officials at the archives had raised questions about the gift because the deed 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 writeoff involved whether the gift was transacted 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 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.

PREVIOUS

DeMarco said that the past procedures used by Presidents Johnson and Eisenhower, and by President-elect Nixon in December, 1968, were unnecessary to make the gift. In these previous cases, the Presi-

Rhodesia Executes 4

Salisbury, Rhodesia

Three Africans who admitted bringing weapons into Rhodesia to kill white people were hanged in Salisbury prison yesterday, the government announced. A fourth was executed for murder.

The three men, who were not named, were found guilty on March 20 of possessing arms in Rhodesia's guerrilla-hit northeastern area late last year for the purpose of committing "terrorism and sabotage."

Reuters

dent 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 the President's action in shipping his papers to the archives on March 27 with the intention of giving part of them as a gift and leaving the rest in storage. The papers and other items of the gift have been tentatively valued by appraiser Ralph Newman of Chicago at about \$1.5 million.

DeMarco acknowledged in the interview that the deed, which was 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.

CHANGES

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 in March, 1970.

DIFFERENT

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 here to 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 the Archives.

DeMarco has not responded to requests by a reporter 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.

CHRONOLOGY

DeMarco said the chronology of the 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 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."

REMEMBER

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 the papers that he generally recommended for a gift eventually would be appraised at \$570,000. He said he could not have made that determination until November or December when he examined the documents in detail.

TRANSFER

Dismissing the need for a deed, DeMarco said: "The President's intention to make a gift was demonstrated by the transfer" of his papers to the Archives on March 27, 1969.

DeMarco said the transfer was all that was required even though the President has retained possession of some of the papers that were shipped to the Archives.

Asked why he prepared a deed if none was necessary, DeMarco said the main purpose of the deed 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.)