

NIXON TAX REPORT RAISES NEW ISSUE

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Democrats on House Panel Said to See a Violation of Constitution on Income

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WASHINGTON, April 4—

Several Democrats on the House Judiciary Committee are convinced that yesterday's report on President Nixon's taxes point to a violation of a constitutional provision prohibiting a President from receiving extra compensation or emoluments, sources close to the committee reported today.

This constitutional issue has been referred to the committee's inquiry staff, the sources added.

Yesterday's report by the staff of the Joint Congressional Committee on Internal Revenue Taxation found that a number of Federal expenditures during Mr. Nixon's first term had benefited him personally and should have been taxed a personal income.

Among these expenditures were \$92,298 in Federal funds used to improve the President's private estates, \$27,015 worth of purely personal airplane travel by the Nixon family and friends and \$5,391 for a "masked ball" given by his daughter Tricia.

The committee members were said to believe that these expenditures go beyond the tax issue raised yesterday to pose a question of constitutional propriety that was specifically avoided by the tax staff.

Provision in Constitution

In Article II, Section 1 of the Constitution of the United States it is stated:

"The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them."

The Federal expenditures described in yesterday's report as personal income constitute violations of the constitutional provision, according to legal briefs prepared for several members of the Judiciary Committee, the sources said.

These briefs were said to draw on the Federalist Papers and other commentaries on the Constitution to prove that the emoluments given to President Nixon, such as paying for his terrazzo shuffleboard court, were illegal.

The sources declined to name the committee members who had raised this constitutional issue but indicated that those they were referring to were Democrats.

The committee members were said to believe that by agreeing to pay virtually all the taxes specified in the staff report, President Nixon tacitly conceded that he did in fact receive additional personal compensation.

"As soon as he signs that tax check, he has walked into a bear trap," said one of the sources close to the Judiciary Committee.

Possible Agreement

Mr. Nixon could avoid this trap but only by agreeing to reimburse the Government for all expenditures designated as

taxable income by the staff of the joint tax committee, this official asserted.

Mr. Nixon could claim that he believed these expenditures to have been legitimate costs of administration, the official said. But he still would have to return the sums designated as taxable income, which could total at least \$125,000 judging by the staff report.

This amount, of course, would be in addition, to the \$432,787 in back taxes, plus interest, that the President has agreed to pay, according to a White House announcement yesterday.

The question of a reimbursement of these expenditures was raised at today's regular news briefing at the White House, but the deputy press secretary, Gerald L. Warren, said he did not have an answer.

On its report yesterday, the staff of the tax committee said that since the President had not yet repaid any of the expenditures "the staff has assumed for the purpose of this report that the President has not had such a continuing intention to reimburse."

The officials close to the Judiciary Committee emphasized that the possible illegality the committee members were now concerned with was not tax fraud but a violation of the Constitution.

While they did not say so specifically, they made it clear that if such a violation of the Constitution by the President were to be found, it could have an important bearing on the committee's decision on whether to present a bill of impeachment.

One of the officials noted that the legal briefs prepared on the issue drew heavily from a commentary on the constitu-

tional provision in Federalist Paper No. 73 written by Alexander Hamilton.

After commenting on the importance of the particular constitutional provision, the paper notes that the legislature can have no power to increase or diminish the President's compensation during his term of office.

"They can," it continued, "neither weaken his fortitude by operating on his necessities, nor corrupt his integrity by appealing to his avarice. Neither the Union nor any of its members, will be at liberty to give, nor will he be at liberty to receive, any other emolument than that which may have determined by the first act..."

The President's annual salary, set by law, is now \$200,000 plus \$50,000 for expenses. He is also provided with certain allowances for the maintenance of the White House and other activities in connection with his official duties.

The expenditures listed in the report as taxable income came chiefly from such Federal agencies as the General Services Administration, which paid for the improvements on the President's estates out of its own budget.

Prof. Philip Kurland of the University of Chicago, a leading expert on constitutional law, commented in a telephone interview that there is no precedent for the issue of additional income paid to a President but that "it would be stretching a point" to find a violation of the Constitution. He based the opinion on the fact that "every President has received some of the amenities of life" from the public purse.

Even if there were an unconstitutional act by the President involved, Professor Kurland added, it shouldn't mean any more than that Mr. Nixon ought to either pay the taxes or refund all the Federal payments involved.

However, another leading constitutional expert, Robert B. McKay, dean of the New York University Law School, said that the disclosure of additional taxable income to President Nixon "certainly raises questions that the Judiciary Committee should be exploring and giving answers to."

"There is no precedent," Dean McKay said, "because nobody else has managed [the Presidency] with such avarice. But it does seem reasonable to see a possible violation of the Constitution."