

\$BY MESSENGER

April 28, 1961

Honorable David E. Bell
Director
Bureau of the Budget
Washington 25, D. C.

My dear Mr. Bell:

Since you wrote me on April 8, 1961, requesting that I suggest items which might be included in a reorganization plan for the Securities and Exchange Commission, the President has submitted to the Congress Reorganization Plan No. 1 of 1961. This plan provides in broad terms for the Commission to delegate various functions which have heretofore been vested in the Commission as a whole, subject to a procedure for review by the full Commission, and for the Chairman to designate Commission personnel to perform the functions which are so delegated by the Commission. Since this plan encompasses the principal areas in which I might otherwise have made suggestions, I have only a few items to which I wish to direct your attention. They are as follows:

1. Authority for the Commission by rule to establish its own quorum requirements.
2. Authority for the Commission or the Chairman, as the case may be, to include in its or his delegation of authority the power to subdelegate in whole or in part.
3. Clarification on the question of the authority of the Chairman to remove, as distinguished from appoint, department heads without approval of the Commission.
4. Clarification on the question of the relative authority of the Chairman and of the Commission with respect to the budget and distribution of funds within the agency.

I shall discuss these items briefly in the order listed above. The suggestion that consideration be given to authorizing the Commission to establish its own quorum requirements stems from the fact that on several occasions the Commission has found itself powerless to dispose of matters of considerable urgency because of illness, absence or personal disqualification of one or more Commissioners or a vacancy in office. Balanced against these undesirable delays is, of course, the basic question of whether only two or perhaps even one member of a five-member agency should have authority to act. I feel confident, however, that the Commission could be counted upon to exercise sound discretion in the extent to which it

utilized such authority and if it were deemed desirable, the reorganization plan itself could impose limitations on the authority.

The question of whether a person to whom authority has been delegated can in turn delegate that authority in whole or in part to another person presents a "gray" area in the law. If the authority of both the Commission and the Chairman to delegate Commission functions and to appoint Commission personnel to perform them is to be substantially expanded at this time as proposed in Reorganization Plan No. 1 of 1961, I believe that consideration should be given to spelling out the extent to which such delegation should carry with it the power to subdelegate.

As to items 3 and 4 above, I realize that there is substantial Congressional opposition to expansion of the authority of agency heads in the areas of appointment and removal of top agency personnel and control over the agency budget and distribution of funds. On the basis of my relation with my fellow Commissioners I do not want to be understood as saying that the authority of the Chairman of this agency need be enlarged with respect to these items. I am merely calling attention to the fact that this agency's present Reorganization Plan No. 10 of 1950 is ambiguous on these points, with the thought in mind that if the President and the Congress reach a conclusion one way or the other as to either or both of these matters which they feel should prevail as to the independent agencies generally, they would in all probability want to clear up the uncertainty which exists in this particular agency's present reorganization plan.

If it is determined that one or more of the foregoing suggestions should be incorporated into a plan of reorganization, I shall, of course, render any assistance you may desire in the formulating of the plan.

Very sincerely yours,

William L. Cary
Chairman

WPNorth/sk