

SBG

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4 THE CONSTITUTIONAL PROHIBITION AGAINST
THE ACCEPTANCE OF
GIFTS FROM FOREIGN POTENTATES

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4 In connection with the recent visit to the United States of Prince Abdullah Al-Faisal Ab Saud, a grandson of the King of Saudi Arabia and himself Minister of Interior and Public Health there, the question has arisen whether certain presents which he gave to officials and employees of the United States during his visit may be accepted by them or fall within the prohibition of Article I, section 9, clause 8, of the Constitution. That provision reads as follows:

10 No Title of Nobility shall be granted by the United States; And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

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The plain meaning of this language would indicate that such presents may not be accepted without the consent of Congress. Acting Attorney General Henry M. Hoyt so held in 1902, with reference to photographs presented to each of several military and civil officers of the United States by Prince Henry of Prussia during a visit to this country. 24 Op. A.G. 117. The Acting Attorney General in his opinion said that:

10 "It is evident from the brief comments on this [constitutional] provision, and the established practice in our diplomatic intercourse * * * that its language has been viewed as particularly directed against every kind of influence by foreign governments upon officers of the United States * * *. Although it is manifest that the particular collocation of words in the Constitution * * * refers chiefly to a foreign government and its regular executive * * * it would not, in my judgment, be sound to hold that a titular prince, even if not a reigning potentate, is not included in the constitutional prohibition. * * * it must be observed that even a simple remembrance of courtesy, which from motives of delicacy recognizes our policy, like the photographs in this case, falls under the inclusion of 'any present * * * of any kind whatever.'"

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As to the proper disposition of the gifts, it would seem appropriate to follow the spirit of the act of January 31, 1881, 5 U.S.C. 115, which reads as follows:

10 Any present, decoration, or other thing, which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by act of Congress.

The procedure to be followed in compliance with these provisions was set forth in a letter of January 6, 1950 from the President to the heads of executive departments and establishments. A copy of his letter is attached. Under its terms, lists of the individuals affected in each agency are to be submitted by it each December to the State Department, which shall submit to Congress a bill consenting to acceptance of the gifts. It appears that such bills have not been enacted for several years and the Department of State has, in the meantime, retained the gifts in its custody. It apparently is the practice, however, upon the separation of any individual concerned from Government service, to turn his gift over to him even though Congress has not acted.

In the present instance, although the gifts involved were not tendered through the Department of State in accordance with the provisions of 5 U.S.C. 115, it seems clear that their acceptance without the consent of Congress is barred by the constitutional provision and that the intent of 5 U.S.C. 115 would require that gifts presented in violation of its provisions should be turned over to the State Department as if these provisions had been followed.

COPY

4 THE WHITE HOUSE
4 Washington

4 January 6, 1950

4 TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS:

4 Except where other procedures are authorized by law (as, for example, in the case of personnel of the Armed Forces under certain circumstances), each department and establishment hereafter will comply with the following procedures with respect to requesting the consent of Congress for their personnel to accept gifts, decorations, awards, or any other thing tendered to them by a foreign government:

1. Annually, in the month of December of each year, each agency will compile and transmit to the Secretary of State a list of all active, former or retired personnel for whom the Department of State, under the provisions of the Act of January 31, 1931 (U. S. Code, Title V, Section 115), is holding decorations, awards, medals, gifts, orders, or any other thing tendered to such personnel by foreign governments and for the acceptance of which the agency desires to request the consent of Congress. All necessary supporting documentation will be submitted with the list and will include the full name of the recipient, the name of the donor government, the name or title or other identification of the thing to be accepted and such other information as may be deemed pertinent.

2. The Secretary of State will cause consolidated lists to be compiled by departments in the form of an omnibus authorizing bill which it will transmit to the Congress as the situation requires, but in no event oftener than once during each session of the Congress, provided, that with respect to retired officers or employees the provisions of the Act of June 27, 1934 (U. S. Code, Title V, Section 115(a)), shall apply.

3. Each department and establishment will be prepared to provide, on behalf of any individual, such further information as the appropriate Committees of the Congress may require with respect to any award tendered to such person.

4. Before submitting any consolidated list to the Congress, the Secretary of State will cause the list to be reviewed in order to ascertain whether there be any objection to the acceptance of any award therein proposed from the point of view of the foreign policy of the United States. If there be any such objection, the matter will be referred to the President for his decision.

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/s/ Harry S. Truman