

Legal Interpretation  
of E.O. 9835 I-E

RESTRICTED



See JAGB  
B

JAGA 1947/6577

TO Security Advisory Board State-War-Navy Coordinating Committee (Attn: Colonel Charles C. Blakeney, War Member)	FROM The Judge Advocate General	DATE 13 AUG 1947	COMMENT NO. 2 Lt. Col. Lawrence/6377
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1. It is the opinion of this office that in view of the history of the [Federal] Employees Loyalty Program as reflected in Executive Orders No. 9806, 25 Nov 1946 and No. 9835, 21 March 1947, and the report of the President's Temporary Commission on Employee Loyalty, the authority given the Security Advisory Board of the State-War-Navy Coordinating Committee by Executive Order 9835 (par. 2, Part VI)

"\* \* \* to draft rules applicable to the handling and transmission of confidential documents and other documents and information which should not be publicly disclosed, \* \* \*"

is not limited in its application to rules for the handling and transmission of document and information relating solely to the employee loyalty program.

2. In any event, the Board has the initial responsibility of determining the scope of its activity under the pertinent directive, and should it exceed its intended duties, the same cannot commit the President to acceptance and implementation of its report.

FOR THE JUDGE ADVOCATE GENERAL:

Incls - n/c

9

signed  
WILLIAM P. CONNALLY, JR.  
Colonel, JAGD  
Chief, Military Affairs Division



414-17

WDGID/Security Grp  
Col. Blakeney/ml/2468~~SGB~~  
SGB  
HRMID 918  
The Judge Advocate GeneralMinimum Standards for handling and transmission  
of Classified InformationChief, Security  
Group30 Jul 47  
Col. Blakeney/ml/2468

1

1. Executive Order No. 9835, 21 March 1947, was issued by the President to prescribe "Procedures for the Administration of an Employees Loyalty Program in the Executive Branch of the Government." In "Part VI-Miscellaneous" thereof (Paragraph 2), the Security Advisory Board of the State-War Navy Coordinating Committee was directed to "draft rules applicable to the handling and transmission of confidential documents and other documents and information which should not be publicly disclosed, and upon approval by the President such rules shall constitute the minimum standards for the handling and transmission of such documents and information, and shall be applicable to all departments and agencies of the Executive Branch."
2. Executive Order No. 9835 was issued as a result of a report of the President's Temporary Commission on Employees Loyalty appointed by Executive Order No. 9806, dated November 25, 1946. A copy of the report of the Commission is attached as Inclosure #1.
3. In response to Executive Order No. 9835, the Security Advisory Board of SWNMC drew up a preliminary draft of Minimum Standards for the Handling and Transmission of Classified Information and disseminated copies thereof to some sixty-five (65) agencies of the Executive Branch of the Government requesting comment as to the applicability of such regulations within the individual agency. At this time copies were transmitted to the Commanding General, Army Air Forces, requesting comment thereon. A copy of the preliminary draft is attached as Inclosure #2.
4. In response to the request for comment on the preliminary draft (Inclosure #2) the Air Judge Advocate has submitted an opinion which in essence, indicates that the authority of the Security Advisory Board should be limited to the drafting of rules applicable to the handling and transmission of confidential documents and information in connection with the employees loyalty program only. The opinion of the Air Judge Advocate is attached as Inclosure #3.
5. It will be noted in Section V, Page 21, of the report of the President's Temporary Commission on Employee Loyalty, and thereafter, that such Commission considered the necessity for providing basic standards for the handling of "all confidential documents or other documents or information which should not be publicly disclosed." There is no indication that the elimination of the word "all" from the recommendations of the President's commission when Executive Order No. 9835 was issued was done by design or not. It is, however, the opinion of the Security Advisory Board that such minimum rules to govern the handling and transmission of classified information is basic to any program in which the national security is involved. In this connection reference is made to Inclosure #1, Page 22.



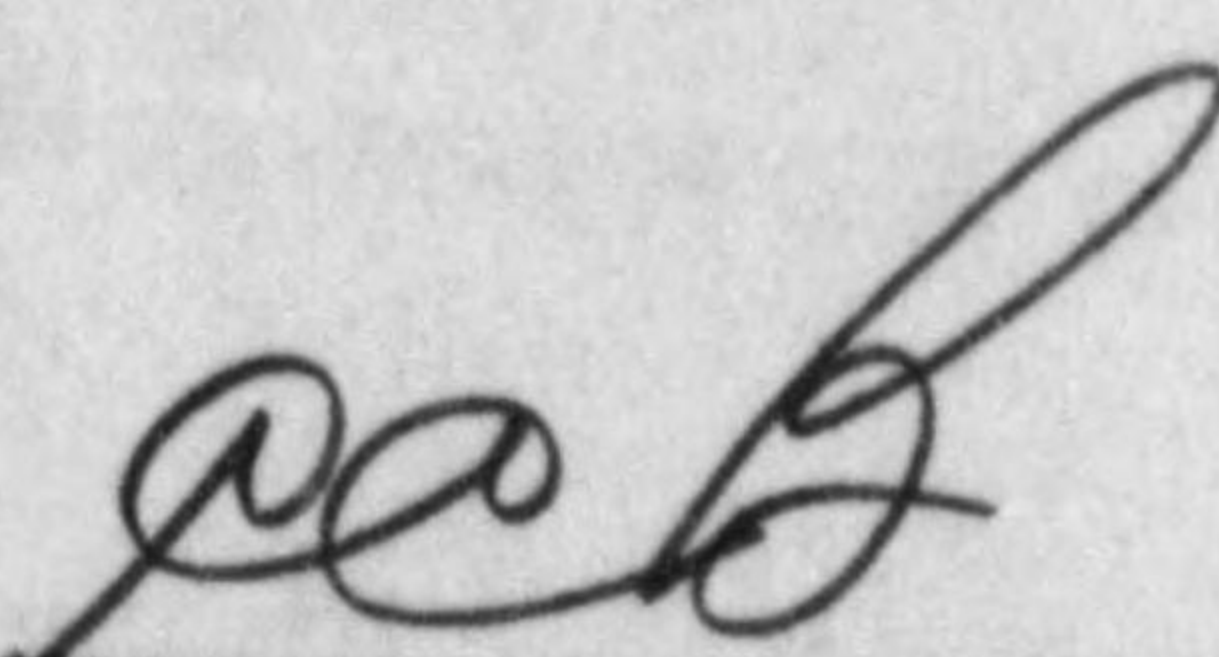


MID 918

## 6. An opinion is requested:

- Advocate; and
- a. Concurrence or non-concurrence in the opinion of the Air Judge
  - b. In the event the opinion of the Air Judge Advocate is concurred in, advice as to the necessary steps to be taken in order that the Security Advisory Board may proceed with what it construes to be the requirement contained in Executive Order No. 9835.

Incls -- noted above

  
CHARLES C. BLAKENEY  
Colonel, GSC  
War Member, Security Advisory Board

Note: For Air Force  
opinion on legal interpretation  
See Tab B - Air Force  
Comments on Draft.  
File 2A - Comments of Agencies.  
my



**UNCLASSIFIED**  
**Serial No. 485**

May 8, 1947

MEMORANDUM FOR

State Member, Security Advisory Board  
War Member, Security Advisory Board  
Navy Member, Security Advisory Board

Subject:

Informal Meeting of the Security  
Advisory Board re Legal Interpretation  
of Part VI, para. 2, Executive Order  
No. 9835.

Reference:

a. SAB Serial No. 478

Enclosure:

Minutes of Subject Meeting

1. The enclosed minutes of the informal meeting of the Security Advisory Board on May 7, 1947 are circulated for the information of the Board members.
2. No mimeographed copies of the minutes will be circulated in view of the informal nature of the meeting.

For the Security Advisory Board:

Ruth C. Barton  
Secretary

FILE



UNCLASSIFIED  
Informal Meeting  
8 May 1947

STATE-WAR-NAVY COORDINATING COMMITTEE  
SECURITY ADVISORY BOARD

Minutes of Informal Meeting Held in  
Room 701, 515 22nd Street, N. W.  
on Wednesday, 7 May 1947, at 1000

MEMBERS PRESENT

Mr. Robert L. Bannerman, State (Acting)  
Col. Harry H. Mole, War (Acting)  
Capt. H. W. Taylor, Navy, (Acting)

SECRETARIAT

Mrs. Ruth C. Barton, State (Secretary)  
Mrs. Shanette G. Blake, State



ITEM 1, Serial No. 478, (1 May 1947), LEGAL INTERPRETATION  
OF PART VI, PARA. 2, EXECUTIVE ORDER NO. 9835.

MR. BANNERMAN stated that the position of the State Member of the Security Advisory Board on this question was that the presidential directive to the Board included all types of information and was not limited to personnel information. He felt that the present approach of the Security Advisory Board in carrying out the provisions of Executive Order No. 9835 was correct and that concern over a strict legal interpretation was unnecessary.

He pointed out that the provision regarding the Security Advisory Board was contained in a section called "Miscellaneous", and that no mention of the Employee Loyalty Program appeared in the paragraph regarding the Board. He described the difficulties which might be encountered if the Board drafted one set of security regulations for the handling of personnel information when no regulations existed for the handling of other types of documents.

MRS. BLAKE mentioned that Part IV, para. 3 of the Executive Order gave to each agency and department a mandate to develop and maintain a staff specifically for the handling of personnel information, including the development of an effective control system for protecting such information.

COL. MOLE stated that he had conferred with the



Military Advisor to the President's Temporary Commission on Employee Loyalty who had emphatically stated that the Commission had intended that the Security Advisory Board carry out the full intent of the directive and draft overall security regulations applicable to all agencies of the Executive Branch.

CAPT. TAYLOR said that he had harbored some doubt originally that the Board's interpretation of the Executive Order was correct but stated that after hearing the arguments of the other Members, he agreed with their views.

After some discussion, the Board agreed that no query should be made to the Attorney General for an interpretation of this matter, in view of the general agreement among the Members as to its intent and meaning.

With regard to the time element involved in the processing of the security regulations, it was agreed that the Board should meet on or about the 16th of May at which time it should make what changes in the first draft of the regulations as were considered desirable. It was agreed that a period of two weeks should be allowed the civilian agencies for comments and suggestions and that the regulations should be forwarded to SWNCC only after the Board had taken cognizance of these comments. There was general agreement that the regulation should



be expedited as much as possible.

In the discussion which followed, regarding the degree of latitude to be allowed agencies and departments in implementing these regulations, COL. MOLE stated that it would seem desirable that the Board should review any implementation of these regulations before it was issued and the Board agreed that this would be desirable.

THE BOARD:

a. Agreed that the intent of the Commission in Part VI, para. 2, Executive Order No. 9835, was sufficiently clear and that the Board should continue to prepare its regulations under the present interpretation of the Executive Order.

The meeting adjourned at 1120.



UNCLASSIFIED  
Informal Meeting  
8 May 1947

*File  
minutes*

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Unclassified  
Serial No. 483

May 6, 1947

MEMORANDUM FOR

State Member, Security Advisory Board  
War Member, Security Advisory Board  
Navy Member, Security Advisory Board

Subject:

Informal Meeting

Reference:

a. SAB Serial No. 478 dtd 1 May 1947

1. There will be an informal meeting of the Security Advisory Board at 1000, May 7, 1947, in Room 701, 515 22nd Street, N. W., for the purpose of discussing Serial No. 478, Subject: Legal Interpretation of Part VI, para. 2, Executive Order No. 9835.
2. There will be no formal agenda issued for this meeting.

For the Security Advisory Board:

*Ruth C. Barton*  
Ruth C. Barton  
Secretary



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*M.S.  
Legal opinion*

MID 031.1

6 May 1947

MEMORANDUM FOR CHAIRMAN, SECURITY ADVISORY BOARD, SWCC:

SUBJECT: Legal Interpretation of Part VI, Paragraph 2, Executive Order No. 9835

1. The writer has conferred with Lt. Colonel Innes Randolph, General Staff Corps, who served as Military Advisor to The President's Temporary Commission on Employee Loyalty. Lt. Colonel Randolph emphatically states that in accordance with Section VIg (4) (i) of the report of the Commission, it was definitely intended that the Security Advisory Board carry out the full intent of that paragraph.
2. If there remains any doubt among the members of the Board that the intent of the Committee did not include the drafting of overall Federal Security Regulations in terms of minimum standards, the opinion of The Attorney General should be sought forthwith.
3. It is dubious that any useful purpose would be served by seeking legal opinions in this matter from the respective departments.

HARRY H. MOLE  
Colonel, GSO  
Alternate War Member  
Security Advisory Board  
SWCC

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Serial No. 478

1 May 1947

MEMORANDUM FOR

State Member, SAB  
War Member, SAB  
Navy Member, SAB

Subject:

Legal Interpretation of Part VI,  
para. 2, Executive Order No. 9835

1. Since receipt of Executive Order No. 9835, the Secretary has been engaged in drafting the rules and regulations called for in Part VI, para. 2, of that Order. Although there has been no clear-cut instruction from the Board as to the method in which these regulations should be drafted, or exactly what scope of information these regulations should cover, there has been a seemingly general agreement that a regulation along the lines of SAB 1 would satisfactorily meet the presidential directive. This regulation was prepared and forwarded to you for your comment under that understanding.
2. It has been the belief of the Board, I am sure, that the regulation should cover all types of classified information since the wording of the directive called for such rules to cover the handling and transmission of all "confidential documents and other documents which should not be publicly disclosed". It has now been brought to my attention that a possibility exists that this interpretation should never have been given to the Executive Order, and that any rules drafted by the Board as a result of it should be confined solely to "the handling and transmission of documents pertaining to the employee loyalty program strictly within the purview of Executive Order No. 9835." This presents an interpretation which evidently has not occurred to any of the officials with whom this Executive Order has been discussed, and if it is legally correct, would mean that the function of the Board under Executive Order No. 9835

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is strictly limited to drafting rules which would cover the handling and transmission of "personnel information" and nothing else. It would also mean that avoiding such issues as the recent one with the Civil Service Commission would be extremely difficult, and that the rules which you presently hold must be redrafted if they are to be satisfactory for the limited purpose stated.

3. I believe that this question cannot be avoided by the Board, and that facing it at this time may save repercussions at a later date and at a much higher level. The fact that the Board is aware of the intent of the drafters of the Executive Order as it applied to the Board does not necessarily mean that the Board will be able to defend its action in extending the directive to all types of classified information if it has no legal interpretation of the Order on which to base its action.

4. Should this limited interpretation be accepted, it would succeed in greatly curbing the function of the Board under the Executive Order and since the terms of reference of the Board under SWNCC are being changed to suit the language of the Executive Order, it would mean that the functions of the Board under SWNCC might be greatly curbed. It would seem to me difficult to justify the continued existence of the Board under this interpretation.

5. It is my suggestion that Mr. Vanech of the Department of Justice be immediately queried for an official interpretation of the meaning of this Executive Order and that the Board members seek immediate interpretation from the legal offices of their respective departments. Please inform me if you consider it advisable to secure the official interpretation from Mr. Vanech.

For the Security Advisory Board:

Ruth C. Barton  
Secretary

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CON - Mr. Robinson

May 6, 1947

CSA - R. L. Bannerman

Serial No. 478 (Security Advisory Board)

Reference is made to Serial No. 478 dated May 1, 1947 (Security Advisory Board), concerning the legal interpretation of the Security Advisory Board references contained in Executive Order No. 9835.

The questions posed by Mrs. Barton in this memorandum are extremely pertinent to the future function of the Board. There are certain points, however, I would like to bring to your attention in consideration of this memorandum.

1. A strictly legal interpretation in the narrow sense of limiting the Board activities to the drafting of rules and regulations which would pertain only to the handling of personnel information will immediately pose an operational problem. The operational problem will consist of the handling of personnel information within an existing structure of communications and security regulations which pertain to the control of all classes of information handled by many Departments. Actually it would mean a classification system within a classification system, together with the multitude of problems which would arise in the transmission of such information.

This is not an important problem for the majority of the Government Departments, in view of the fact that they handle a limited amount of classified information. It is an extremely important problem in State, War, Navy, CIG, Treasury, Commerce, and Agriculture, where employees of those Departments are assigned to posts all over the world. Investigation of personnel loyalty necessarily will require communications of varying natures to the posts scattered throughout the world, and such information will be transmitted *through* all forms of communications within the Departments and through their facilities to the various field posts. If personnel information requires unusual regulations not in conformity with present regulations, there will be an added burden to our communication facilities and may readily result in confusion in handling. To avoid confusion and special instructions to be transmitted on a world basis, it would be advantageous to maintain the handling of personnel information within the existing structure of the present security regulations.

2. A request for legal interpretation of the Executive Order of necessity must be transmitted to the legal staffs of State, War, and Navy through SWNCC. It is possible that varying degrees of interpretation might be received, and the problem would be further complicated until the legal interpretation is completely clarified. If the problem becomes involved, it may be necessary even to take the matter to the Attorney General.



3. It is my suggestion that the Board accept the interpretation as set out in our first meetings that the draft of rules and regulations be considered as minimum standards for the handling of all "confidential documents and other documents which should not be publicly disclosed." The drafting of such rules and regulations will be on an overall basis and would apply to all Government Departments, and, most important, would set forth a single standard which would apply to all Departments. Personnel information can readily be assigned one of the existing classifications within the security regulations, and, if properly handled and transmitted, will be adequately safeguarded. Each head of Department will be in a position to impose special rules and regulations as a supplement to the minimum standards set forth by the Security Advisory Board to insure that personnel information within each Department will receive (a) minimum distribution, (b) careful safeguarding at all times, (c) protection of informant information, and (d) protection of individual rights under such rules set out for the use of information from investigative reports in hearings and administrative action taken by the individual departments or agencies.

4. In view of the complicated system of communications and liaison activity in force in State, War, and Navy, I feel strongly against any special rules or classification which might be assigned personnel information which would take such information out of the required handling as specified for the transmission of information within the four categories of security classification.

The above points are set out for your consideration of this particular problem.

CSA:RLBannerman:rnc





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WAR DEPARTMENT  
WAR DEPARTMENT GENERAL STAFF  
MILITARY INTELLIGENCE DIVISION, G-2  
WASHINGTON 25, D. C.

MID 031.1

6 May 1947

MEMORANDUM FOR CHAIRMAN, SECURITY ADVISORY BOARD, SWNCC:

SUBJECT: Legal Interpretation of Part VI, Paragraph 2, Executive Order No. 9835

1. The writer has conferred with Lt. Colonel Innes Randolph, General Staff Corps, who served as Military Advisor to The President's Temporary Commission on Employee Loyalty. Lt. Colonel Randolph emphatically states that in accordance with Section VIg (4) (1) of the report of the Commission, it was definitely intended that the Security Advisory Board carry out the full intent of that paragraph.
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SWNCC

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