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GOVERNMENT IN THE EXECUTIVE DEPARTMENTS

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HEARING
BEFORE THE
COMMITTEE ON CIVIL SERVICE
OF THE
COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
EIGHTY-NINTH CONGRESS

FIRST SESSION
ON

H.R. 6165

A BILL TO REPEAL SECTION 165 OF THE REVISED STATUTES
RELATING TO THE APPOINTMENT OF WOMEN TO CLERKSHIPS
IN THE EXECUTIVE DEPARTMENTS



JUNE 29, 1965

Printed for the use of the
Committee on Post Office and Civil Service



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APPOINTMENT OF WOMEN TO CLERKSHIPS IN THE EXECUTIVE DEPARTMENTS

TUESDAY, JUNE 29, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 219, Cannon House Office Building, Hon. Lindley Beckworth (chairman of the subcommittee) presiding.

(H.R. 6165 and the report of the U.S. Civil Service Commission thereon follow:)

[H.R. 6165, 89th Cong., 1st sess.]

A BILL To repeal section 165 of the Revised Statutes relating to the appointment of women to clerkships in the executive departments

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 165 of the United States Revised Statutes (5 U.S.C. 33) is hereby repealed.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., May 14, 1965.

Hon. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Cannon House Office Building.

DEAR MR. CHAIRMAN: This is in further reply to your requests for the views of the Civil Service Commission on H.R. 6165, H.R. 6859, and H.R. 7322, bills "To repeal section 165 of the Revised Statutes relating to the appointment of women to clerkships in the executive departments."

The Civil Service Commission strongly endorses this legislation.

Section 165 of the Revised Statutes authorizes department heads, in their discretion, to appoint women to clerkships "upon the same requisites and conditions, and with the same compensations as are prescribed for men." It is derived from an old law, the act of July 12, 1870, which was an advanced piece of legislation for its time.

Later, however, this statute was interpreted as vesting in agency heads, rather than the President, the authority to decide whether the filling of a position should be limited to one sex or the other. A 1962 ruling of the Attorney General held this interpretation invalid, thus opening the way for Presidential action to assure that appointment and promotion in the Federal service are made without regard to sex, except in unusual situations where such action has been found justified by the Civil Service Commission on the basis of objective nondiscriminatory standards.

In the light of present circumstances, section 165 is an anachronism. It is only proper that it should be repealed.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to submission of this report.

By direction of the Commission:

Sincerely yours,

(Signed) John W. Macy, Jr.
(Typed) JOHN W. MACY, Jr.
Chairman.

Mr. BECKWORTH. The subcommittee will come to order.

The Subcommittee on Civil Service is meeting this morning to consider H.R. 6165, a bill introduced by Congresswoman Edith Green, that proposes to repeal section 165 of the Revised Statutes.

Section 165 relates to the appointment of women to clerkships in the executive departments. It vested in department heads the discretionary authority to appoint women to positions, upon the same conditions and with the same compensations as prescribed for men.

Eventually the statute was interpreted as restricting to agency heads, to the exclusion of the President, the authority to limit the appointment and promotion in Federal positions to one sex or the other. Subsequently, such interpretation was invalidated, thus opening the way for Presidential action to assure that appointments and promotions are made without regard to sex.

The purpose of this legislation is to eradicate from the statutes an ancient discriminatory provision which has become obsolete in the light of present circumstances.

I take this opportunity to applaud the efforts of the officials and members of the National Federation of Business & Professional Women's Clubs, and the effective leadership they have demonstrated in behalf of our Nation's women. Also I commend the others who have had a part in this effort.

It is my pleasure to salute, also, my fellow Texan, Miss Marguerite Rawalt, who has served with distinction on the President's Commission on the Status of Women, for the leadership she continuously and effectively has given in behalf of worthy causes.

Our first witness will be out distinguished and beloved colleague, Congresswoman Florence P. Dwyer of New Jersey.

STATEMENT OF HON. FLORENCE P. DWYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mrs. DWYER. Thank you, Mr. Chairman.

Mr. Chairman, I greatly appreciate this opportunity to appear before your subcommittee in support of legislation to repeal the outdated provision in section 165 of the U.S. Revised Statutes relating to the appointment and promotion of women employees of the Federal Government.

At first glance, it may appear contradictory for a woman Member of Congress to be appealing for repeal of a statute which, on the surface, seems to provide certain benefits to women employees of the Government. But I am certain the subcommittee recognizes the archaic character of this law and appreciates the fact that what once was a privilege has now become a loophole which could threaten rights which have since become firmly established in Federal employment regulations.

This is the essence of the legislation we have introduced. When it was enacted in 1870, section 165 marked a major step forward in securing women's claim to be considered for Government employment. In the 95 years since that time, however, we have come a long way in establishing women's right to be considered for Government employment on their merits and capabilities as individuals rather than on the irrelevant factor of their sex. Today, Government hiring practices recognize this right, by and large, but the existence of this

outmoded statute may be interpreted as giving department and agency heads a degree of discretion to which, in fact, they are no longer entitled.

The 19th century woman undoubtedly welcomed section 165 heartily. The 20th century woman asks that it be repealed—not as a special privilege or benefit, but solely because women today as, only to be judged on their competence to do a particular job.

I am delighted that the Civil Service Commission has endorsed this legislation, and I am grateful that this subcommittee has recognized the significance of repeal of section 165 as a milestone in women's long struggle for equality of opportunity. I am hopeful that the subcommittee and the full committee will see fit to report the bill favorably and that the House will soon speed it on its way to final enactment.

I want to take this opportunity, too, to pay tribute to the National Federation of Business & Professional Women's Clubs for their leadership in seeking repeal of section 165. I am proud to welcome today the federation's national legislative chairman, my good friend and valued constituent, Miss Emma McGall, who has done so much to further this cause. It is one more excellent example of the work the federation and its officers are doing in the interests of women who work.

Thank you very much.

MR. BECKWORTH. Thank you, Mrs. Dwyer, for a very excellent statement.

Any questions?

MR. MATSUNAGA. I have no questions. I, too, wish to commend the distinguished Congresswoman for her splendid statement.

MR. BECKWORTH. The author of the bill that we are considering, H.R. 6165, was introduced by our distinguished colleague, Congresswoman Edith Green of Oregon, March 11, 1965.

We welcome you, Mrs. Green, to the subcommittee.

STATEMENT OF HON. EDITH GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

MRS. GREEN. Thank you very much, Mr. Chairman and members of the subcommittee.

I am sure that in the course of the year you have far more controversial legislation and legislation that affects a great many more people than does this legislation. However, this legislation is very important. It has come to my attention first as a member of the President's Commission on the Status of Women, and secondly because of very determined efforts of some of the women's organizations, and, as Congresswoman Dwyer suggested, especially the Business and Professional Women's Clubs and Marguerite Rawalt, who served also as a member of the President's Commission on the Status of Women and who offered such valuable advice and made a great contribution.

I want to thank you for making arrangements for this hearing when you have so much other legislation pending before you. This bill is designed to prevent future conflict. It seems to me most of the time we are passing on legislation designed to repair damage already done or to meet urgent current needs. The intent of this bill, by repeal of section 165 of the Revised U.S. Statutes, is to preclude any possible future misunderstanding and dissension.

Section 165, which this bill seeks to repeal, reads as follows:

Women may, in the discretion of the head of any department, be appointed to any of the clerkships therein authorized by law, upon the same requisites and conditions, and with the same compensation as are prescribed for men.

As Mrs. Dwyer suggested, on the surface this seems to be a perfectly reasonable thing and, indeed, the law from which it originally derived was specifically designed to permit the hiring of women on an equal compensation basis with men. Unhappily, however, the statute was actually interpreted as giving heads of departments discretionary power to request "male only" or "female only" appointees to Federal positions. In my judgment the particularly offensive language is that women "may, in the discretion of the head of any department" be employed.

In 1934, the then Attorney General, Homer Cummings, was asked to rule on a proposed amendment to civil service rule VII which would have read:

Certifications shall be made without regard to sex unless sex is specified in the request, and the request is approved by the Commission.

It was Mr. Cummings' opinion that the phrase "and the request is approved by the Commission" must be deleted because it conflicted with the discretionary power given to department heads in section 165 to specify the sex of a potential employee. This was the language which I said a moment ago I found particularly objectionable, and that this language was used to discriminate against women is clearly demonstrable.

In very recent years, although still without the authority to disapprove an appointing officer's request for an employee of a specific sex the Civil Service Commission did direct that the agencies specify their reason for so requesting. For the period from November 13 to December 8, 1961, before this direction went into effect, only 47.6 percent of the total employee requests from all the Federal Service entrance examinations came in with no specification as to either sex for a particular job.

Then, for the period from February 4 to March 3, 1962, when an explanation was required by the Civil Service Commission—and I must pay tribute to John Macy for his excellent leadership here—during this period 98.3 percent of the total certifications requested from this examination came in without stating any preference or any requirement as to sex for eligibility for any particular job. This, I think, clearly demonstrates that the agencies were using their discretionary power to actually discriminate against women in Federal employment.

Happily, however, in 1962 the then Attorney General, now Senator, Robert Kennedy, reviewed the ruling of his predecessor, Attorney General Cummings, and, after thorough examination of the legislative history of the statute and of the statute itself, he reversed Attorney General Cummings' opinion, pointing out that under the civil service statutes the President has the power to prescribe the rules for appointment and promotion in the Federal civil service and that section 165 of the U.S. Revised Statutes does not limit this.

As you gentlemen well know, in December of 1961 the late President Kennedy established the President's Commission on the Status of Women, to which I referred a while ago, and he appointed as Chair-

man, Eleanor Roosevelt, who very imaginatively and devotedly served until her death in late 1962. One of the duties of this Commission, on which I had the privilege of serving, was to review "the employment policies and practices of the Government of the United States, with reference to additional affirmative steps which should be taken through legislation, executive or administrative action, to assure nondiscrimination on the basis of sex and to enhance constructive employment opportunities for women."

The Commission was divided into a number of Committees, one of which, the Committee on Federal Employment, was chaired by the very able Miss Margaret Hickey. Also serving on that Committee was the very distinguished and able Chairman of the Civil Service Commission, Mr. John W. Macy, and it is my understanding that he will testify also in favor of this legislation. As I said a moment ago, it was through his leadership that we have eliminated a lot of the discrimination in recent years.

The Committee members learned that there was considerable discrimination in Federal employment, as in private employment, in relation to promotion and advancement of women. They learned that based on an Attorney General's 1934 interpretation of section 165, as previously explained, that a high percentage of appointment officials were requesting "men only" or "women only" for specific positions. As a result of the Committee's work, Mrs. Roosevelt requested a review of the legal basis for this discretionary power with the happy result, as I have mentioned, that the 1934 opinion was reversed by Attorney General Robert Kennedy.

The President, his authority to regulate civil service policies in this connection having been restored, immediately ordered department heads to employ personnel solely on the basis of merit, and this, I am advised, is the basic policy which the Civil Service Commission has adopted and followed since that time. However, it has also been pointed out, and very effectively, by the business and professional women's clubs and other groups, that a future Attorney General might also reverse the opinion that was given by Attorney General Robert Kennedy, and it is for this reason that I hope you will give favorable consideration to this bill and I hope you share with me the conviction that this policy not be placed in possible future jeopardy by a reinterpretation of section 165. Repeal would be a step forward in precluding the possibility of future conflict.

When I was looking into this in the last few weeks I turned to the FEPC section of the civil rights bill and I am sure you know the Federal Government is specifically excluded from the provisions of section VII of the civil rights bill. I point this out if the question should come up as to why this particular legislation is necessary.

Thank you very much, Mr. Chairman. If there are any questions I will try to answer them.

MR. BECKWORTH. I have no questions. I just want to say, Congresswoman Green, that I personally appreciate the extent to which you have delved into this question, and I commend you on the fact you have taken the leadership in doing something about it. It has been my feeling all along that we should undertake to do away with all kinds of discrimination in the Federal Government.

I personally have been interested in the question of older people having an opportunity to obtain jobs in Government when they have

had no job in the Government in the past. It is the desire of all of us, I know, to have the very best people we can have in Government, and I agree with you that Mr. Macy has taken a great lead in that. I join you in your words of commendation of him. We do want to get the best people possible in the Government and along the line you are working we stand a better chance to get them.

Mrs. GREEN. Thank you very much.

Mr. BECKWORTH. Are there any questions?

Mr. MATSUNAGA. I have no questions. I do wish to commend the Congresswoman for being alert to these matters which too many of us, in our busy day, overlook.

Mrs. GREEN. Thank you.

Mr. CLEVINGER. I have a question, if I may.

We are all concerned about the difficulty of retaining women in executive positions in Government and elsewhere. Do you suppose part of the reason for this is that many women, as they come up in their careers, have children and it is hard to combine an 8-hour day with rearing children? Would it help any if we had work shifts, say from 9 to 3, used more frequently?

Mrs. GREEN. I think there are many things that could be done that are not being done at the present time, Congressman. The one you suggest is certainly an area where we could get the largest number of qualified personnel where we have shortages, and being on the Education Committee I have been critical that superintendents of schools do not make more flexible policies in the administration of their school systems. I am convinced there is a large number of highly qualified women who have completed their graduate work, perhaps dropped out of the labor force for a short period of time because of small children, but if given the opportunity they would welcome the chance to go into the schools for a half day. We do this at the college level. We do not require them, at the college level, to come in at 8:30 in the morning and stay until 5 in the afternoon. If the school superintendents made this a flexible policy and made it possible for women to be at home a half day, I think we would overcome a great deal of the shortage of qualified teachers. The same is true in the field of nursing.

Mr. CLEVINGER. And what about the field of government?

Mrs. GREEN. I think this is true in the field of government. I think there are a great many women who are highly qualified and could work on a part-time basis. This is one of the things we need to work on at the same time we need to work on the problem of discrimination against women in other areas.

Your suggestion is a very helpful one and I would hope it would be heard by those who can and will do something about it.

Mr. BECKWORTH. Thank you very much, Congresswoman Green.

Mrs. GREEN. Thank you.

Mr. BECKWORTH. Our next witness is the Honorable John W. Macy, Jr., Chairman of the U.S. Civil Service Commission.

STATEMENT OF HON. JOHN W. MACY, JR., CHAIRMAN, U.S. CIVIL SERVICE COMMISSION

Mr. MACY. Thank you, Mr. Chairman and members of the subcommittee. It gives me a great deal of pleasure to appear before you in the same hearing with the distinguished Congresswomen who preceded me in connection with your consideration of H.R. 6165, which was introduced by Congresswoman Green.

Mr. Chairman, if I may I would like to make reference at this point in my statement to the official report of the Civil Service Commission dated May 14, 1965, which provides a detailed review and a statement of support for this bill.

This legislation would repeal an old law that has far outlived its usefulness. Section 165 of the Revised Statutes dates back to a time when women were still a novelty in the Federal service. What few women there were in the Government were generally employed as clerks and were generally paid less than their male counterparts for the same work.

Section 165, which was derived from the act of July 12, 1870, was an early step forward on behalf of equal opportunity for women. By today's standards it did not amount to very much. Specifically, it permitted Department heads to employ women at any grade of clerkship authorized by law at the same rates and under the same conditions authorized for men.

This law did not make equal pay for women mandatory. It simply permitted an agency head to hire women as clerks under the same conditions as men if he chose to do so. A requirement for equal pay for equal work was not to come for some time thereafter.

At any rate, what started out as an advanced piece of legislation later turned out to be an obstacle to providing full opportunity to women in employment and advancement in the Federal service. It formed the basis for perpetuating the age-old practice of permitting appointing officers to specify a particular sex when filling any position, regardless of the duties involved and without advancing any reasons. In an opinion of September 17, 1934, the then Attorney General held that Revised Statute 165 vested in agency heads exclusive authority to employ or not to employ women as they saw fit, and that the President was without authority to intervene in the matter.

Although women continued to make steady gains in Federal employment despite the ruling on section 165, it was recognized that full opportunity to employment could never be a reality as long as this interpretation prevailed. Just prior to the establishment of the President's Commission on the Status of Women in 1961, an analysis had been made of requests from agencies that specified a particular sex. It showed little basis for most requests in relation to the duties of the position.

On the recommendation of the President's Commission, the Attorney General was asked to review the 1934 opinion. In a ruling dated June 14, 1962, the Attorney General took the view that section 165 "does not limit the constitutional and statutory authority of the President to prescribe rules regulating the eligibility of women for positions in the Federal service."

This opened the way for the President to direct agencies to make all future appointments without regard to sex "except in unusual situa-

tions where such action has been found justified by the Civil Service Commission on the basis of objective nondiscriminatory standards." The results were prompt and effective. As a consequence, subsequent requests for referrals by sex became insignificant.

Times have changed, and Revised Statute 165 is now past history. Equal pay for equal work has been required in the Federal service for more than 40 years. Women are employed in most occupations, and not just in clerkships. Progress is being made in the advancement of women to higher level positions and in the placement of women in positions heretofore filled almost exclusively by men.

It is only appropriate, therefore, that section 165 be removed from the statute books, as this bill provides.

Mr. Chairman, I might add that if it is the desire of you and your committee, I have with me for possible insertion in the record copies of the two Attorney General opinions that I have referred to, and also a copy of the Civil Service Commission instructions that were issued pursuant to the President's directive.

Mr. BECKWORTH. Without objection they will be inserted in the record at this point.

(The following documents were submitted for the record:)

AMENDMENT OF CIVIL SERVICE RULE VII GOVERNING CERTIFICATION

Section 165 R. S., providing that women may, in the discretion of the head of any department, be appointed to any clerkship therein upon the same requisites and conditions prescribed for men, has not been repealed by the Civil Service Act; and the President is without authority under that Act to amend paragraph (a) of section 1 of Civil Service Rule VII, governing certification, by requiring that certification shall be made without regard to sex unless sex is specified in the request and the request is approved by the Civil Service Commission. (See Executive Order No. 6866 of October 5, 1934.)

DEPARTMENT OF JUSTICE,
September 17, 1934.

SIR: I am herewith returning the proposed Executive order submitted by you under date of September 13, 1934, amending paragraph (a) of Section 1 of Civil Service Rule VII, governing certification.

The proposed order eliminates the final sentence of paragraph (a) "Certifications shall be made without regard to sex unless the nature of the duties of the position to be filled are such as, in the opinion of the Commission, can be performed only by men or women as the case may be", and substitutes therefor the sentence "Certifications shall be made without regard to sex unless sex is specified in the request, and the request is approved by the Commission."

The present final sentence was inserted in Rule VII by the President on December 23, 1932, upon the recommendation of a majority of the Civil Service Commissioners. At the time of the amendment the last sentence provided that "Certifications shall be made without regard to sex unless sex is specified in the request." This rule was based on the provisions of Section 165 of the Revised Statutes, which, as now embodied in Section 33, Title 5 of the United States Code, is as follows:

"Women may, in the discretion of the head of any department, be appointed to any of the clerkships therein authorized by law, upon the same requisites and conditions, and with the same compensations, as are prescribed for men."

The Congress has by this statute vested in appointing officers certain discretionary authority. In an opinion of June 28, 1934, the Attorney General advised the President that since the Congress had vested in the Land Bank Commissioner discretionary authority to make appointments without regard to the Civil Service Law and Rules, the President was without authority to control that discretion by placing the positions involved in the classified civil service so as to require appointments thereto to be made in accordance with the Civil Service Law and Rules. The principle thus stated is applicable to the instant case. Since the present rule transfers to the Civil Service Commission the discretion vested in appointing officers by Section 165 of the Revised Statutes, it and also the proposed amendment, insofar as it makes certifications subject to the approval of the Commission, are invalid unless Section 165 of the Revised Statutes has been

repealed by the Civil Service Act of January 16, 1883 (c. 27, 22 Stat. 403). I am of the opinion that it has not been so repealed.

Section 165 provides that women may, in the discretion of the head of any department, be appointed to any clerkship therein upon the same requisites and conditions as are prescribed for men. The Civil Service Act authorizes the President to promulgate rules or, in other words, to prescribe the "requisites and conditions" for the admission of persons into the Civil Service of the United States. The Act makes no distinction as to sex but deals generally with persons and positions. This would seem to indicate that the Congress itself did not intend to authorize the President to make any such distinction. In my judgment, the two statutes are consistent and should be read together. This view is supported by the administrative construction of the two statutes which obtained for many years prior to the amendment of Rule VII on December 23, 1932.

In view of the foregoing, I suggest that the words of the proposed amendment "and the request is approved by the Commission" be deleted so that the sentence will read as it was prior to the amendment of December 23, 1932, "Certifications shall be made without regard to sex unless sex is specified in the request."

I have revised the proposed order to read accordingly, and, with this change, it has my approval as to form and legality.

Respectfully,

HOMER CUMMINGS.

To the ACTING DIRECTOR OF THE BUDGET.

JUNE 14, 1962.

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: I have the honor to respond to your request, made on behalf of the Chairman of the Civil Service Commission, for my opinion on the following question:

Does section 165 of the Revised Statutes prohibit the President, or the Civil Service Commission acting under delegated authority from the President, from prescribing the conditions under which appointing officers of the Federal Government may consider only male or only female candidates for appointment, promotion, and other personnel actions?

I

Section 1753 of the Revised Statutes (5 U.S.C. 631) provides:

"The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service."

Section 1753 was derived from section 9 of the act of March 3, 1871, 16 Stat. 514. Pursuant to this section President Grant appointed a Civil Service Commission, which established a system of competitive examinations. However, Congress appropriated funds for the work of that Commission for only 2 years. (See S. Rept. 576, 47th Cong., 1st sess., (1882) pp. IV to VIII; Van Riper, "History of the United States Civil Service" (1958), pp. 68-71.)

The Civil Service Act of 1883, 22 Stat. 403, 5 U.S.C. section 632 et seq., implemented and provided effective machinery for carrying out the policy reflected in the act of 1871. The act provided that appointments and promotions to positions in the classified civil service should be made from among those qualified by competitive examination. It established a Civil Service Commission, and empowered it to aid the President, as he might request, in preparing suitable rules for carrying out the act. Section 7 of the act expressly preserves all Presidential authority, not inconsistent with the 1883 act, conferred by R.S. § 1753.

The legislative history of the Civil Service Act of 1883 makes it clear that it was intended to establish the "pivotal" idea that appointments and promotions within the classified service should be given to the person who is "best fitted to discharge the duties of the position" and to achieve "coherence" and "uniformity" in carrying out that concept. (S. Rept. 576, supra, pp. IX, X.)

The Senate committee report appends the testimony of Dorman B. Eaton, then Chairman of the (Presidential) Civil Service Commission established under the 1871 law, who had had a leading part in drafting the bill, and who became the first Chairman of the (statutory) Civil Service Commission established pursuant to the 1883 law.¹ Mr. Eaton's testimony lays particular stress on the breadth of Presidential discretion with respect to Federal employment and the intention of the bill not to limit that discretion. Thus, for example, Mr. Eaton emphasized that:

"The Pendleton bill (the bill which was enacted) assumes that the power of appointment to the executive service is vested in the President, and that it is neither legal nor desirable to limit that authority, * * *." (Id., p. 5.)

To the same effect is the testimony of George William Curtis (Id., p. 156).

An alternative proposal before the committee, which was not adopted, was the Dawes bill, S. 939. There was general agreement that the basic intent of the Dawes and Pendleton bills was the same (id., pp. 5, 22). Section 2 of the Dawes bill would have provided that certain appointments "are open to competition to any citizen of the United States, male or female." Commenting on this provision Mr. Eaton said:

"In the next place, section 2 provides that applications for appointments in the departments at Washington shall be received only for appointments, &c., of one class, and 'these appointments are open to competition to any citizen of the United States, male or female.' * * * my suggestion is that such matters should be provided for in the rules themselves, modified from time to time and adapted to the various offices, and not laid down in the statute. Provisions more detailed, more apt, and sufficiently pliable to work conveniently are contained in the rules, and to that I think they should be confined." (Id., p. 25; see also p. 22.)

The power of the President to prescribe rules for the promotion of the efficiency of the Federal service, derived from his constitutional power as Chief Executive as well as from the provisions of R.S. § 1753 and section 2 of the Civil Service Act of 1883, has been broadly construed as including the power to carry out the spirit as well as the letter of the civil service laws, to supplement the statutory rules by others not specifically covered by statute, and to impose regulations not positively restricted by statute. (30 Op. A.G. 512, 516 (1916); 23 Op. A.G. 595, 597 (1901).)

In my opinion, the question whether a position may be filled by men only, or by women only, or by qualified members of either sex, is a matter involving the "efficiency" of the Federal service, and the "fitness" of candidates thereto, within the meaning of R.S. § 1753. Hence, it is a matter as to which the President, by the terms of that section as well as by virtue of his inherent powers as Chief Executive, has authority to prescribe rules and regulations. This conclusion is clearly borne out by the testimony of the draftsman of the Pendleton bill, which became the Civil Service Act of 1883.²

II

There remains for consideration the question whether R.S. § 165, 5 U.S.C. 33, is to be read as limiting the foregoing Presidential authority. That section reads:

"Women may, in the discretion of the head of any department, be appointed to any of the clerkships therein authorized by law, upon the same requisites and conditions, and with the same compensations, as are prescribed for men."

Since R.S. § 165 and R.S. § 1753 are both contained in the same enactment; i.e., the Revised Statutes, they must be given, so far as possible, a reading which will be consistent and give full effect to both provisions. Nothing in the language of R.S. § 165 purports to limit the rulemaking authority of the President under R.S. § 1753, or to exclude the subject of appointment of women from that au-

¹ The Pendleton bill, as introduced in 1881, had been redrafted by a committee of the New York Civil Service Reform Association. Eaton was the principal draftsman, and a number of other persons, including George William Curtis, participated in the revision. W. D. Foulke, "Fighting the Spoilsman" (1919) p. 7; appendix to S. Rept. 576, supra, p. 156.

Eaton served as Chairman of the (Presidential) Civil Service Commission from 1873 to 1883, and as Chairman of the (statutory) Civil Service Commission from 1883 to 1886. At the request of President Hayes he had made a study of the British Civil Service system, embodied in his "Civil Service in Great Britain" (1880). George William Curtis was Chairman of the (Presidential) Civil Service Commission from 1871 to 1873 and was chairman for many years of the National Civil Service Reform League. Curtis and Eaton were among the recognized leaders of the American civil service reform movement. See "Dictionary of American Biography," vol. IV, pp. 614-616; vol V, pp. 607-608; Foulke, op. cit. supra, passim, and especially pp. 2, 90, 124; Van Riper, "History of the U. S. Civil Service" (1958), pp. 65, 78-79.

² Mr. Eaton's testimony is explicit that the rulemaking power to which he referred is the power conferred on the President by R.S. § 1753. Id. pp. 12, 13, 23-24. The Civil Service Act of 1883 conferred no new rule-making authority, but preserved the power of the President under R.S. § 173 and empowered the Civil Service Commission "to aid the President, as he may request, in preparing suitable rules." Section 2, 5 U.S.C. § 633. See also 30 Op. A.G. 512, 515, supra.

thority. A limitation on that Presidential authority should not be implied, unless the statutory language and history compels it.

In construing the Revised Statutes it is appropriate to refer back to the language and history of the original enactment. *United States v. Hirsch*, 100 U.S. 33, 35 (1879); *United States v. Lacher*, 134 U.S. 624 (1890); *United States v. Moore*, Fed. Cas. No. 15, 804 (1878); *United States v. Thomas*, 145 Fed. 74 (1906). The intent of the original enactment is presumed to be carried forward. *Pott v. Arthur*, 104 U.S. 735, 736 (1881). The words used by the revisers are "not lightly to be read as making a change." *United States v. Sischo*, 262 U.S. 165, 169 (1923).

R.S. § 165 was derived from section 2 of the act of July 12, 1870, 16 Stat. 230, 250, which provided as follows:

"And be it further enacted, That the heads of the several departments are hereby authorized to appoint female clerks, who may be found to be competent and worthy, to any of the grades of clerkships known to the law, in the respective departments, with the compensation belonging to the class to which they may be appointed, but the number of first, second, third, and fourth class clerks shall not be increased by this section."

This provision was added as an amendment to a general appropriation act. The debate in both the Senate and the House of Representatives indicates that the only purpose of this provision was to clarify the existing law by specifically permitting department heads to hire women at any grade of clerkship authorized by law, and to pay equal compensation to men and women. This was considered necessary because Department heads assumed that since Congress had appropriated funds for the employment of females at a lower rate of pay than the four grades of clerkships then provided for, they were without authority to employ women at these grades of clerkships. (Congressional Globe, 41st Cong., 2d sess. (1869-70), pp. 3890, 4330.) Nothing in the text or legislative history of this section discloses any intention to limit the authority of the President with respect to matters involving the efficiency of the Federal service and the fitness of candidates. I do not believe the addition, by the revisers, of the words "in the discretion of the head of any department" should be read as changing the intention of the 1870 act, or as creating an implied exception to the Presidential rule-making authority conferred by the act of March 3, 1871, and carried forward as R.S. § 1753.

Congress has recently declared a statutory policy against discrimination in Federal employment on the basis of sex. Section 1103 of the Classification Act of 1949 (63 Stat. 972, 5 U.S.C. 1074) provides that:

"In the administration of this Act, there shall be no discrimination with respect to any person, or with respect to the position held by any person, on account of sex, marital status, race, creed or color."

Authority to implement this provision by regulation is conferred on the Civil Service Commission (sec. 1101, 63 Stat. 971, 5 U.S.C. 1072). While the foregoing provision is contained in an act relating to classification of positions, rather than to appointments and promotions, I believe it can fairly be said to reflect a congressional policy opposed to discrimination solely on grounds of sex in any aspect of Federal employment. In any event, I believe the President has authority, under R.S. § 1753, to extend that policy to appointments to and promotions within the civil service.³

The conclusion expressed herein is contrary to that expressed by Attorney General Cummings in 38 Op. A.G. 77 (1934). However, it does not appear that Mr. Cummings' attention was called to the fact that the phrase "in the discretion of the head of any department" was not contained in the act of July 12, 1870, or to the relevant legislative history of that act and the Civil Service Act of 1883 discussed above.

In my opinion section 165 of the Revised Statutes does not limit the constitutional and statutory authority of the President to prescribe rules regulating the eligibility of women for positions in the Federal service. The answer to the question submitted is therefore in the negative.

ROBERT F. KENNEDY.
Attorney General.

³ Compare Executive Orders 10925, Mar. 6, 1961, 26 F.R. 1977, and 10590, Jan. 18, 1955, 20 F.R. 409, declaring the "policy of the U.S. Government that equal opportunity be afforded all qualified persons, consistent with law, for employment in the Federal Government" and stating that that policy "necessarily excludes and prohibits discrimination against any employee or applicant for employment in the Federal Government because of race, color, religion or national origin."

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., July 31, 1962.

FEDERAL PERSONNEL MANUAL SYSTEM

FPM letter No. 330-1.

Subject: Elimination of sex discrimination.

(This letter supersedes and cancels FPM letter 332-3.)

Heads of Departments and Independent Establishments:

The Chairman, in a letter addressed to the head of each department and agency, dated July 24, 1962, has indicated that the Civil Service regulations and instructions were being amended to provide, in accordance with the President's recent directive, that appointments and promotions to the Federal career service shall be made without regard to sex except in unusual circumstances where such action has been found justified by the Civil Service Commission.

This change in policy was made possible by the Attorney General's ruling of June 14, 1962, to the effect that section 165 of the Revised Statutes does not prohibit the President, or the Commission acting under delegated authority from the President, from prescribing the conditions under which appointing officers of the Federal Government may consider only male or female candidates for appointment, promotion, or other personnel actions. This ruling reversed the earlier conclusion expressed in 38 Op. Atty. Gen. 77 (1934).

This FPM letter sets forth the changes in the regulations and the modifications in the Federal personnel manual instructional material.

REVISED REGULATIONS

The Commission has revised section 2.101 and revoked section 2.204(c) of its regulations to conform with the President's directive. Section 2.101 as revised reads as follows (new material italic):

SEC. 2.101. Methods of Filling Vacancies. (a) *General.*—In his discretion an appointing officer may fill any position in the competitive service either by competitive appointment from a civil service register or by appointment of a present or former Federal employee through noncompetitive action in accordance with the regulations in this chapter. He shall exercise his discretion in all personnel actions solely on the basis of merit and fitness. (In determining the merit and fitness of any person under this paragraph, there shall be no discrimination on the basis of the person's religious or political affiliations, or the person's marital status, physical handicap, race, color, national origin, or sex.)

(b) *Restriction of consideration to one sex.*—*Consideration of eligibles or employees for appointment, noncompetitive action, or for purposes of training, shall not be restricted by sex, except in unusual circumstances where such action is found justified by the Commission.*

POLICY

The basic employment concept is that no training or position shall be denied any person on the basis of sex who meets the applicable experience, skills, and physical requirements for the training or duties in question. The Commission has determined that exceptions to this basic concept may be made (1) in law-enforcement positions requiring the bearing of firearms, or in some few kinds of institutional or custodial employment; and (2) in certain unusual circumstances where it can be clearly and logically concluded from the facts at hand that a particular individual under consideration cannot reasonably be expected to perform effectively the duties of the position.

APPLICATION OF THE POLICY

To implement the revised regulations and the policy stated above, current instructions and procedures in the Federal personnel manual system are modified as indicated below. It will be noted that the criteria to be followed in making exceptions is largely negative in nature. This is because it is difficult to pre-determine or prejudice unusual circumstances where exceptions may be justified. It is anticipated that with experience gained through the joint efforts of the agencies and the Commission additional criteria will be developed over a period of time.

Restriction in certification

Within the basic employment concept, the Commission has determined that certification of eligibles will be made without regard to sex *except* where the position is one of law enforcement requiring the bearing of firearms or is one of an institutional or custodial nature where the duties may be properly performed only by a member of the same sex as the individuals under his or her care or for whom the services are rendered. (Examples: Certification of males to correctional officer positions at a penitentiary for male criminals; or certification of females to correctional officer positions at a penitentiary for women where the duties involve internal custody.) Appointing officers who ask for certification of one sex only for the type of employment covered herein should include a statement indicating the employment circumstances which, in their opinion, bring the position under this exception.

Objections to individual eligibles

A certifying office of the Commission may sustain objections in unusual circumstances where it can be clearly and logically concluded from the facts at hand that the *particular male or female eligible* cannot reasonably be expected to perform effectively the duties of the position.

Objections of this kind, if based on *physical requirements* of a particular job, will not be sustained unless it can be shown that the person is not physically able to perform the duties of that particular job. For example, work of an arduous nature will have to be evaluated in the light of the actual physical demands of the job and the physical capabilities of the eligible. (Determinations with respect to the physical inability of a particular person to perform the duties effectively shall be made in accordance with instructions in chapter M of the FPM.)

The following are examples of the kind of employment conditions which, within themselves, will not be considered a basis for sustaining objections because of the sex of any eligible.

Travel, including extensive travel, travel in remote areas, or travel with a person or persons of the opposite sex.

Rotating assignments or other shift work.

Geographical location, neighborhood environment, or outdoor work.

Contact with public or a particular group or groups.

Exposure to weather.

Living or working facilities, except where the sharing of common living quarters with members of the opposite sex would be required.

Working with teams or units of opposite sex.

Monotonous, detailed, or repetitious duties.

Limited advancement opportunities.

Other agency actions

Each agency shall adopt internal procedures that will result in the application by the agency of the basic concept and the criteria shown above for certification and objections to other selections for which the agency has responsibility; i.e., selections for appointment outside registers, for noncompetitive action, or for training purposes. The selections will not require prior approval of the Commission, but will be subject to post audit by the inspection process.

Promotion plans

Any necessary modifications to carry out these principles shall be made in existing promotion plans.

EFFECTIVE DATE

The regulations and instructions herein must be put into effect as quickly as possible, and implementation must be completed no later than August 31, 1962.

By direction of the Commission:

WARREN B. IRONS,
Executive Director.

Mr. MACY. Thank you for affording me the privilege of appearing before you this morning and testifying in support of this legislation.

Mr. BECKWORTH. We appreciate your excellent presentation.

Are there any questions?

Mr. MATSUNAGA. I wish to commend Mr. Macy for his comprehensive statement. I think his statement is such that there can be no objection to the bill.

Mr. MACY. Thank you.

Mr. BECKWORTH. The next witness is Miss Emma McGall, national legislative chairman of the National Federation of Business and Professional Women's Clubs, and she is accompanied by Mrs. Hattie B. Trazenfeld, legislative director, and Mrs. Mildred Prather, secretary to Mrs. Trazenfeld.

STATEMENT OF MISS EMMA C. McGALL, NATIONAL LEGISLATIVE CHAIRMAN, NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC., ACCOMPANIED BY MRS. HATTIE B. TRAZENFELD, LEGISLATIVE DIRECTOR; AND MRS. MILDRED PRATHER, SECRETARY TO MRS. TRAZENFELD

Miss McGALL. Mr. Chairman and members of the committee, I am Emma C. McGall, national legislative chairman of the National Federation of the Business and Professional Women's Clubs, Inc., and appear here today in their behalf. Our national federation represents 175,000 members in over 3,500 communities of our 50 States. This number includes clubs located in every congressional district as well as in Puerto Rico, Virgin Islands, and the District of Columbia. Our members are owners of businesses, doctors, lawyers, teachers, executives, clerks, nurses, secretaries, and those engaged in many other occupations. We have long supported removal of and prevention of discrimination in Government employment including repeal of section 165 of the Revised Statutes of the United States (sec. 33 of title 5 of the United States Code). It is the second item on our present national legislative platform.

On September 17, 1934, Attorney General Homer Cummings rendered an opinion on a proposed amendment of section 1(a) of Civil Service Rule VII, which read: "Certifications shall be made without regard to sex unless sex is specified in the request, and the request is approved by the Commission."

The Attorney General's opinion stated that by R.S. 165¹ the Congress has vested in appointing officers certain discretionary authority. The President is without authority to transfer that discretion to the Civil Service Commission, therefore the words "and the request is approved by the Commission" must be deleted so that the sentence will read: "Certification shall be made without regard to sex unless sex is specified in the request."

In other words, the heads of the departments had free discretion to specify sex in their request to the Civil Service Commission for certification, and the President could not authorize the Civil Service Commission to overrule them.

Attorney General Cummings' opinion was overruled by an opinion of Attorney General Robert F. Kennedy of June 14, 1962.

The Attorney General ruled that the President's power to prescribe rules for appointment and promotion in the Federal Civil Service derived from section 1753 of the Revised Statutes, the Civil Service Act of 1883,² and his constitutional power as Chief Executive, includes the power to prescribe the conditions under which appointing officers of the Federal Government may consider only male or only female candidates for appointment, promotion, and other personnel action.

¹ 5 U.S.C. 33.

² 22 Stat. 403.

Section 165 R.S. does not limit the constitutional and statutory authority of the President to prescribe rules regarding the eligibility of women for positions in the Federal service.

To quote from Senator Clifford Case's broadcast on April 20, 1965, regarding this issue he said:

While the Attorney General has ruled that the President has power to prescribe the conditions under which appointing officers may consider only male or female candidates for promotion, the existence of the section leaves open a way in the future to reverse present policy.

We hope this makes clear that as long as the statute is on the books nothing can stop another Attorney General from reverting to the original interpretation that the heads of the departments have discretion to specify sex in their requests to the Civil Service Commission for certification. A Presidential Executive order cannot overrule a statute.

During this 1st session of the 89th Congress, bills besides Representative Edith Green's H.R. 6165 relating to this item have been introduced by Representative Florence Dwyer, H.R. 6859 and Representative Catherine May, H.R. 7322 as well as Senator Case's bill, S. 1769.

In conclusion, Mr. Chairman, I wish to thank you and the members of your subcommittee must sincerely for this opportunity to present the views of our federation regarding Representative Edith Green's bill, H.R. 6165. For the many reasons described in our statement we hope this committee will favorably rule that this statute be repealed.

Mr. BECKWORTH. Thank you very much for a very excellent statement, Miss McGall. I have no questions. Do either of you gentlemen have any questions?

Mr. MATSUNAGA. I wish to add my commendation for your excellent statement and commend the organization which you represent for the aggressive leadership it has taken in this area in eliminating discrimination on the basis of sex.

Miss MCGALL. Thank you very much.

Mr. CLEVINGER. I have a question. The question is the same as I asked Representative Green. We are all in agreement that we are going to eliminate discrimination, and that women should have the right to work without discrimination. But, I think we want to do more to utilize the resources of women. I am sure you agree they are not being used adequately. Is there an avenue you think we could explore and develop in terms of affording different work hours so that those in the society, including women, who do not want to work a full workweek on a particular job can do so?

Miss MCGALL. Yes, I do. I know it is being done at the individual level.

Mr. CLEVINGER. Have you or your organization explored ways we might encourage this?

Miss MCGALL. I see no reason why we cannot accept a time limit and set certain hours for employing women.

Mr. CLEVINGER. I trust we will be pursuing this question.

Miss MCGALL. Thank you.

Mr. MATSUNAGA. Will the gentleman yield?

Mr. CLEVINGER. Yes.

Mr. MATSUNAGA. I have working for me a woman who works from 9 to 2:30, and within those hours she produces more work than some

who are on a full-time basis from 8:30 to 5. So that I think, as you say, on an individual basis, hours have been arranged to make full use of such talent.

Mr. CLEVINGER. I am talking in terms of having the Civil Service Commission actually establish positions, however this is done, to provide for a specific number of positions that would be for a 5-hour day or a 4-hour day. Let's not leave it to the discretion of the employer, but set it up in the organization tables of the departments, so that there shall be a certain number of part-time positions, in order to encourage it. I feel when a woman has had children, and the children are in school or have finished school, and these women come back in the labor market, they simply do not have the experience or background to take the positions they long ago were trained for. We are wasting a resource we could better utilize if they had several years' experience in an agency.

Miss McGALL. That is right.

Mr. CLEVINGER. Thank you.

Miss McGALL. Thank you.

Mr. BECKWORTH. We have with us a lady who has taken a great deal of interest in this legislation to my certain knowledge. She is from Texas, Miss Marguerite Rawalt, and she would like to be heard briefly.

STATEMENT OF MISS MARGUERITE RAWALT, MEMBER, PRESIDENT'S COMMISSION ON THE STATUS OF WOMEN

Miss RAWALT. Thank you, Mr. Chairman. I am glad to add just a word. The entire subject has been most ably covered by Mrs. Green and Mr. Macy, but I might add a word from the background of other women's organizations as well.

As a member of the National Association of Women Lawyers I can say the women lawyers are very much in favor of this proposal to delete section 165. Likewise, Zonta International, of which I am chairman of the public affairs committee, and many other women's organizations are aware of the archaic character of this section 165.

As a lawyer, I would say one of the oddities about this statute is that it was enacted in the first place to benefit women. In 1870 women were new in the Federal service. But it has been turned into an instrument for their destruction, so to speak. The President's Commission on the Status of Women, on which I served, pointed this out.

This is just one of the horse-and-buggy statutes that ought to be eliminated from the books to respond to public opinion today and to the economy of today in which we operate.

Now, some suggestions and questions have been proposed by Congressman Clevenger about part-time work. One of the subjects taken up by the President's Commission on the Status of Women was part-time work. It was taken up by the Education Committee, which Dr. Mary Bunting headed, and by the Federal Employment Committee, headed by Margaret Hickey, and on which Mr. Macy served.

It is recognized there is a need for specialized talents, and there is a tremendous waste of talents of women who have taken specialized training, and then have become mothers and have made the rearing of children their first business. Never mind the need; they should

have the opportunity to make a contribution of their specialized talents. At Radcliffe and at the University of Wisconsin there already have been established schools to retrain women who have lost the immediate impact of their training, if they wish.

I might say the President's Commission on the Status of Women, in spite of what you may have heard, was in no position of trying to urge women to leave their homes. That was in no sense the thrust of this study. But women who wish to use their talents should be afforded an opportunity to do so to the benefit of the whole economy of the Nation.

I think I have said enough, but I sincerely hope the gentlemen on this committee and in the House of Representatives will see fit to eliminate this long-outmoded statute.

Mr. BECKWORTH. Thank you very much.

Our colleague, Hon. Catherine May, of the State of Washington, has asked unanimous consent to submit to the committee a statement for inclusion in the record. Also a statement by Dr. Blanche H. Dow, president of the American Association of University Women. Without objection, that consent will be given and the statements will be made a part of the record at this point.

(The statements follow:)

PREPARED STATEMENT OF HON. CATHERINE MAY, A REPRESENTATIVE FROM
THE STATE OF WASHINGTON

Mr. Chairman and members of the subcommittee, a few months ago I received a letter from the legislative chairman of the Washington State Federation of Business and Professional Women's Clubs, calling my attention to section 165 of the Revised Statutes relating to the appointment of women to clerkships in the executive departments. The letter asked if I would introduce a bill to repeal section 165.

I must frankly admit my great surprise in discovering that section 165 of the Revised Statutes, due to an original interpretation, would invest in the heads of Federal departments a discretion to specify sex in their requests to the Civil Service Commission for certification. Such was an Attorney General's opinion on September 17, 1934. Although that first opinion was overruled by an Attorney General's opinion on June 14, 1962, it seemed clear that as long as the statute remained on the books, there would be nothing to prevent another Attorney General from reverting back to the first interpretation that the heads of departments would have the discretion to specify sex in their requests to the Civil Service Commission for certification.

This being the situation, Mr. Chairman, I was glad to introduce H.R. 7322.

It has been particularly gratifying to note the favorable legislative report of the Civil Service Commission which, in relation to the identical bills, H.R. 6165, H.R. 6859, and H.R. 7322, states: "In the light of present circumstances, section 165 is an anachronism. It is only proper that it should be repealed."

The repeal of this outmoded section, Mr. Chairman, has long been a legislative goal of the National Federation of Business and Professional Women's Clubs, and of the Washington State Federation of Business and Professional Women's Clubs, as well. While these astute organizations recognize that the section is not prejudicial at the present time, they also recognize that at some future time it could again become prejudicial. It is for this reason that section 165 should be repealed.

I am sure the Business and Professional Women's Clubs of the Nation join with me in expressing our appreciation to the distinguished chairman and members of this committee for scheduling this hearing today in consideration of the identical bills on this subject. The interest of the committee is deeply appreciated, and I feel confident the committee, in its wisdom, will see fit to recommend enactment of this legislation, which, when originally enacted, no doubt served a useful purpose, but which today is outmoded and is no longer useful.

Thank you for this opportunity to present this statement in support of the legislation before you today.

PREPARED STATEMENT OF DR. BLANCHE H. DOW, PRESIDENT, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, WASHINGTON, D.C.

Mr. Chairman and members of the subcommittee, the American Association of University Women is an organization with a membership of over 166,000 women, organized into 1,569 branches in the 50 States, Guam, and the District of Columbia.

The association worked at both National and State levels for enactment of the 19th amendment. In more recent years it has worked to eliminate discrimination against women under the law and by regulatory edict. For many years the association had a national committee on the status of women, whose purpose was the advancement of women and opposition to discrimination against women on the basis of sex.

As long ago as 1922, the legislative program of the association recommended to its branches support for reorganization of the civil service system to include a merit system and for appointments made regardless of sex. In the same year the association protested discrimination in salaries against women in the Women's Bureau and urged the introduction of women into the diplomatic service. During World War II the association advocated equality in pay and rank for women in the armed services. The AAUW was in the forefront of those who supported the Federal Equal Pay for Equal Work Act of 1963 and continues its work for State equal pay legislation in those States which have not adopted such a statute. At its most recent convention in June of this year, the AAUW again endorsed the principle of work for "prevention or elimination of discrimination against women on the basis of sex, marital status, or age."

In the light of this long history of effort to advance the status of women and of opposition to discriminatory legislation and regulations, the association is, of course, under obligation to urge the repeal of section 165 of the Revised Statutes relating to the appointment of women in executive departments.

While we understand that the Attorney General in 1962 handed down an opinion that section 165 of the Revised Statutes, which vests in heads of governmental agencies the right to designate a choice of a male or a female in both appointments and promotions, cannot be operative, we see no reason for retention of this ancient, discriminatory, and inoperative section in these statutes. We urge its immediate repeal as proposed in H.R. 6165.

Mr. BECKWORTH. This concludes the hearing of the subcommittee on H.R. 6165.

(Thereupon, on Tuesday, June 29, 1965, the hearing was concluded.)





