DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION
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Chairman:
The Honorable Anthony J. Principi

Commissioners:
The Honorable James H. Bilbray
The Honorable Philip E. Coyle III
Admiral Harold W. Gehman, Jr., USN (Ret.)
The Honorable James V. Hansen
General James T. Hill, USA (Ret.)
General Lloyd W. Newton, USAF (Ret.)
The Honorable Samuel K. Skinner
Brigadier General Sue Ellen Turner, USAF (Ret.)

Executive Director:
Charles Battaglia

23 MAY 2005

The Honorable Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

Dear Attorney General Gonzales:

As Chairman of the Base Closure and Realignment Commission I request your opinion regarding the legal authority of the Secretary of Defense to effect changes to National Guard and Air National Guard units and installations. The Commission is severely constrained in formulating its recommendations to the President as to which military installations should be closed or realigned without a clear understanding of the Secretary's authority.

Title 10, United State Code, Section 18238 and Title 32, United States Code, Section 104 (c) require permission of the governors of the states in which National Guard and Air National Guard units and installations are located before they may be "changed" or "relocated or withdrawn." I am not aware of any authority that clearly indicates contrariwise.

I ask for your opinion on this issue: does the Federal government, acting through the Defense Base Closure and Realignment Act of 1990, as amended, possess the authority to carry out the proposed realignments and closures of Army National Guard and Air National Guard installations in the absence of a consultative process with the governors of the various states? If not, what measures would be necessary to satisfy the consultation requirement?

We need to know whether the National Guard and Air National Guard units and installations that the Secretary has recommended be closed or realigned will, if the Commission concurs with those recommendations, be closed or realigned within the statutory time limits. Will the litigation being contemplated by various state attorneys

general, or other intervening legal proceedings, delay the process or abort it completely?

In order that we might fulfill our duty under the Defense Base Closure and Realignment Act of 1990, as amended, we must test the recommendations of the Secretary of Defense against the selection criteria and force-structure plan that he used in developing his list of military installations to be closed or realigned. Upon determining that the Secretary deviated substantially from the selection criteria and force-structure plan we can remove installations from his list. After making the same determination and meeting other statutory requirements we can add installations to his list. We are also authorized to make other changes to the list, such as privatization-in-place, as alternatives to actions proposed by the Secretary.

While all installations must be evaluated independently, many decisions that the Commission must make are interrelated. The process is involved and complex. Timely action is critical for the expected military value on which the closure or realignment is based to be realized. The legal opinion I have requested of you will provide the Commission the reasonable certainty needed to make informed decisions regarding not only the National Guard and Air National Guard installations being considered for closure or realignment, but also the many other installations affected by those decisions.

Anthony J. Principi
Chairman