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OGC HAS REVIEWED.

OPINIONS
OF THE
OFFICE OF GENERAL COUNSEL
CENTRAL INTELLIGENCE AGENCY

VOLUME I
(1943 - 1947)

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OPINIONS

of the

OFFICE OF GENERAL COUNSEL

CENTRAL INTELLIGENCE AGENCY

Volume I
(1943-1947)

The volumes in this series contain in chronological order notes, memoranda, and opinions of law (published and unpublished) of the Office of Strategic Services, Strategic Services Unit, Central Intelligence Group, and the Central Intelligence Agency. They have been compiled for the use of the Office of General Counsel and are known as the Opinions of the General Counsel. Citations should include the designation "OGC" and volume and page numbers as in the following example; 1 OGC 24.

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App Availability File Legal Decisions

16 November 1943

The Files

[redacted] 25X1A9A

Availability of Appropriations

1. 18 Comp. Gen. 363 (1938) - "It has long been the accepted general rule of the accounting officers of the Government that a claim against an annual appropriation when otherwise proper is chargeable to the appropriation for the fiscal year in which the liability was incurred. The rule is applicable in all cases in which there is a definite determination as to the time the public funds became obligated for the payment of a given liability whether the amount is, or is not, certain at the time."

2. 4 Comp. Gen. 918 (1925) - States the general rule that amounts appropriated in annual Appropriation Acts are not available for expenditure until the beginning of the fiscal year.

3. 16 Comp. Gen. 1007 (1936) - Contracts obligating fiscal year funds may not be entered into prior to appropriation made, but there is no objection after appropriation is made to the execution of such contracts prior to the beginning of the fiscal year, notwithstanding the funds are not available for expenditure until the beginning of the fiscal year. See also 20 Comp. Gen. 868 (1941) and 21 Comp. Gen. 864 (1942).

No. 1

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RESTRICTED

Public Buildings
(Repairs + Improvements)

Chief, Finance Branch 11 March 1944

Legal Division

Payment of claims for alterations and repairs to OSS buildings

1. Please refer to your memorandum of 7 February 1944 relating to this subject, with two attached claims of [redacted] 25X1A9A [redacted] 25X1A9A both of which are returned herewith.

2. As your memorandum points out, there is no specific provision in the OSS appropriation language for repairs to or alterations in public buildings occupied by OSS, although under some circumstances, discussed below, basis for such expenditures might be found in the general language, "For all expenses necessary to enable the Office of Strategic Services to carry out its functions and activities * * * ". Further, the statutes referred to in your memorandum vest charge of public buildings occupied by OSS in FWA (40 U. S. C. 19), and prohibit the expenditure of funds for repair purposes greater than the amount specifically appropriated (41 U. S. C. 12).

3. It does not follow from the foregoing, however, that this agency is powerless to expend regularly appropriated funds for alterations and improvements to public buildings occupied by it. Even though an appropriation for repairs and improvements may have been made to the agency charged with the supervision of public buildings, the agency occupying the buildings may properly expend generally appropriated funds for such repairs, alterations and improvements where the latter are not necessary to the ordinary use or operation of the building but are to accommodate special functions or activities of the agency for which funds have been generally appropriated. 16 C. G. 816; see also 16 C. G. 160; 18 C. G. 389. The determinative factor is the relationship borne by the expenditures to proper agency objectives; e. g., generally appropriated funds may not be used to make space in public buildings suitable for occupancy by a government office force, even though the FWA appropriation may be inadequate for such purposes. 17 C. G. 1050. The only justification for such expenditures is that the building repairs and improvements are necessary to the proper functioning of the agency and are incidental to the accomplishment of some activity or objective of the agency recognized directly or indirectly by the appropriation act.

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RESTRICTED

4. We therefore recommend that, where security considerations permit, payment for repairs and alterations falling within the class described in the foregoing paragraph be made out of .001 funds. (In the first instance, as your memorandum points out, all repairs and improvements should be procured from FWA, wherever possible to do so, and recourse may be had to any appropriated fund of this agency only where it is impossible to call on FWA, or where FWA is for any reason unable or unwilling to effect the necessary repairs or alterations.)

5. We recognize that the rule set forth above with respect to .001 funds will be difficult of application in many cases, and the Finance Branch may be reluctant to undertake the advance determination of the question how a given expenditure is to be classified with reference to the rules enunciated by the Comptroller General in his decisions cited above. If any doubt exists, such charges may properly be made against .002 funds, as the statutes cited in paragraph 2, supra, cannot be considered to prohibit the expenditure of .002 funds for making repairs, alterations and improvements where the services and facilities of FWA cannot be utilized. 19 C. G. 926, 930; In re T. N. Wilson, Inc., 24 F. Supp. 651 (S. D. N. Y. 1938).

6. Unvouchered funds are, of course, available for such expenditures where, for security reasons, the cost cannot be charged against .001 or .002 funds. Generally speaking, the use of unvouchered funds for such purposes should be restricted to situations where security considerations do not permit the use of FWA personnel, materials and equipment on the project, nor any disclosure of the existence of the project.

7. With reference to the attached claims, it appears from the file that plans and specifications were furnished by Public Buildings Administration, FWA, but that security necessitated outside contracting. It does not appear, however, that security requires that the very existence of the project be kept secret, or that disclosure of the nature and extent of the repairs and alterations involved would be prejudicial to the best interests of this agency. Hence we do not believe payment out of .003 funds would be appropriate.

8. Nor do we believe that this is a clear case where .001 funds may be used. Assuming that the necessity of the work done to the proper functioning of the agency can be shown, it might not be possible to present such proof for security reasons.

9. It is therefore our opinion that the claims represented by the attached invoices may properly be charged against .002 funds.

25X1A9A

cc: Col. [redacted] 25X1A9A
Chief, Services
Chief, Special Funds

[redacted] 25X1A9A

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File Legal Decisions

18 June 1944

MEMORANDUM

TO: Executive Officer

FROM: Office of General Counsel

SUBJECT: Avoidance of Conflicts of Interest by OSS Personnel

This memorandum is in response to your request for a statement on the Federal statutes generally prohibiting officers and employees of the United States from in any way interesting themselves in claims against the United States. In a broad sense, these statutes impose a standard of undivided loyalty to the interests of the government to which all officers and employees are required to adhere, under penalty of severe criminal punishment.

There is little difficulty in applying these statutes to cases of actual conflict of interest, which are legally as well as morally reprehensible. More difficulty arises, however, in borderline cases, not mala in se, which although involving at most a remote possibility of conflict, or no conflict at all, may yet be held to fall within the prohibition of the statutes as they have been construed in recent opinions of the Attorney General.

I.

STATUTES INVOLVED

The principal statutes involved in this field are sections 109 and 113 of the Criminal Code. Recent opinions of the Attorney General, referred to below, have indicated that these sections are applicable to practically all employees of the Federal government, as well as to officers of the armed forces.

Section 109 (18 U. S. C. 198), originally enacted 26 February 1853, reads as follows:

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> "Whoever, being an officer of the United States, or a person holding any place of trust or profit, or discharging any official function under, or in connection with, any executive department of the Government of the United States, or under the Senate or House of Representatives of the United States, shall act as an agent or attorney for prosecuring any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, shall aid or assist in the prosecution or support of any such claim, or receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall be fined not more than $5,000, or imprisoned not more than one year, or both. Members of the National Guard of the District of Columbia who receive compensation for their services as such shall not be held or construed to be officers of the United States, or persons holding any place of trust or profit, or discharging any official function under or in connection with any executive department of the Government of the United States within the provision of this section."

The Supreme Court has defined a "<u>claim against the United States</u>" as a right to demand money from the United States (<u>Hobbs</u> v. <u>McLean</u>, 117 U. S. 567).

The companion statute is section 113 (18 U. S. C. 203), originally enacted 11 June 1864:

> "Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being the head of a department, or other officer or clerk in the employ of the United States, shall, directly or indirectly, receive, or agree to receive, any compensation whatever for any services rendered or to be rendered to any person,

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> either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military, or naval commission whatever, shall be fined not more than $10,000 and imprisoned not more than two years; and shall moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States."

It is understood that the Attorney General interprets "before any department", etc., to mean "with any department", so that the statute cannot be considered as applying only to quasi-judicial matters and proceedings. There is judicial authority seemingly to the contrary. U. S. v. Peisley, 35 F. Supp. 102 (D.N.J. 1940).

In addition to these general statutes, there are more specific statutes which are concerned with particular phases of the problem of conflicts of interest. Section 41 of the Criminal Code (18 U. S. C. 93), enacted 2 March 1863, prohibits government officers or agents from transacting business on behalf of the United States with any private organization in which they are interested:

> "No officer or agent of any corporation, joint-stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint-stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint-stock company, association, or firm. Whoever shall violate the provision of this section shall be fined not more than $2,000 and imprisoned not more than two years."

Section 112 of the Criminal Code (18 U. S. C. 202), enacted 16 July 1862, forbids an officer or agent to receive any compensation for procuring a government office or contract:

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"Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being an officer or agent of the United States, shall directly or indirectly take, receive, or agree to receive, from any person, any money, property, or other valuable consideration whatever, for procuring, or aiding to procure, any contract, appointive office, or place, from the United States or from any officer or department thereof, for any person whatever, or for giving any such contract, appointive office, or place to any person whomsoever; or whoever, directly or indirectly, shall offer, or agree to give, or shall give, or bestow, any money, property, or other valuable consideration whatever, for the procuring, or aiding to procure, any such contract, appointive office, or place, shall be fined not more than $10,000 and imprisoned not more than two years; and shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States. Any such contract or agreement may, at the option of the President, be declared void."

Finally, section 190 of the Revised Statutes (5 U. S. C. 99) reads as follows:

"It shall not be lawful for any person appointed as an officer, clerk, or employee in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee."

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It is well settled that this statute is applicable only to employees of the ten executive departments of the government (40 Op. Atty. Gen. no. 74, 12 December 1943), and not to independent establishments such as OSS.

II.

APPLICATION OF STATUTES

A. Civilian Personnel

Two recent opinions of the Attorney General have focused much public attention upon this problem generally and upon sections 109 and 113 of the Criminal Code in particular. In his opinion of 6 November 1943 (Vol. 40, No. 73), Attorney General Biddle held that a temporary consultant in the War Department (employed without compensation on a temporary assignment) was liable to the penalties of sections 109 and probably 113 where he or his law partners prosecuted as attorneys any claims against the United States during the period of his appointment.

In the opinion of 9 December 1943 (Vol. 40, No. 74), the Attorney General ruled that members of local War Price and Rationing Boards were officers of the United States and hence subject to sections 109 and 113, which foreclosed them from acting as attorneys and agents for the prosecution of claims against the United States. In other words, this opinion abandoned the requirements of actual conflict which was at least implicit in earlier opinions (e.g., 40 Op. Atty. Gen. no. 48, quoted below).

The effect of these opinions was twofold:

(a) For the first time it was indicated that section 109 was applicable to employees of government agencies and establishments outside the executive departments;

(b) A large number of government employees, who had previously considered themselves obliged only to avoid actual conflicts of interest, were suddenly confronted with the fact that they were in technical violation of Federal criminal statutes.

A storm of protest followed the decisions, and there were threats of widespread resignations from government service. The New York Times, 9 January 1944. Congressional

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action followed with the inclusion in the revised renegotiation statutes (Title VIII of the Revenue Act of 1943) of a section limiting the applicability of sections 109 and 113 to persons employed in the principal war procurement agencies.* The section now reads (P. L. 235, 78th Cong., sec. 701(b)):

> "(j) Nothing in sections 109 and 113 of the Criminal Code (U. S. C., title 18, secs. 198 and 203) or in section 190 of the Revised Statutes (U. S. C., title 5, sec. 99) shall be deemed to prevent any person by reason of service in a Department or the Board during the period (or a part thereof) beginning May 27, 1940, and ending six months after the termination of hostilities in the present war, as proclaimed by the President, from acting as counsel, agent, or attorney for prosecuting any claim against the United States: Provided, That such person shall not prosecute any claim against the United States (1) involving any subject matter directly connected with which such person was so employed, or (2) during the period such person is engaged in employment in a Department."

It was recently said in Congress that the Comptroller General feared that the quoted section had greatly weakened the effect of sections 109 and 113, and that such sections were largely inoperative as to a great many Federal employees. (90 Cong. Rec. 3781). It is difficult to agree with this view. The new section does not waive sections 109 and 113 as to employees who prosecute claims against the United States in the course of their employment. The most it does is to liberalize existing restrictions in the case of certain intermittent and irregular employees. Certainly the vitality of sections 109 and 113 has not been impaired as to civilian employees of many agencies such as OSS.

In subsequent legislation, Congress has further limited the scope of these sections. A typical example is the joint resolution exempting members of OPA rationing boards (P. L. 287, 78th Cong. 2d Sess.):

> "Nothing contained in sections 109 and 113 of the Criminal Code (U. S. C., title 18, secs. 198 and 203) shall be deemed to apply to any person because of any appointment under the authority of the Emergency Price Control Act of 1942 (Public Law Numbered 421, Seventy-seventh Congress) or under authority of title III

* The scope of this section is not clear. It may apply to all executive departments, or only to War, Navy, and some war agencies. In any event it does not apply to OSS.

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of the Second War Powers Act, 1942 (Public Law Numbered 507, Seventy-seventh Congress), as a member of a War Price and Rationing Board or to any other position in a regional, district, or local office of the Office of Price Administration, if such person is serving or has served in such capacity without compensation: Provided, however, That the provisions of this Act shall not apply to any representation before the Office of Price Administration while such person is an officer or employee of the Office of Price Administration."

Similar resolutions have been introduced to exempt counsel to special Congressional committees (P. L. 249, 250, 78th Cong., 2d Sess.).* And even before the Attorney General's two recent opinions, Congress had expressly excluded from the operation of the sections members of local draft boards (Act of May 2, 1941, 55 Stat. 150) and alien enemy hearing boards (Act of December 26, 1941, 55 Stat. 861). Legislation is now pending, modeled on the OPA section, to exempt WOC (without compensation) and WAE (when actually employed) employees of OSRD (H. R. 4446), WLB (H. R. 4349), and the War Department (H. R. 4468).

In the light of the interpretation given these statutes by the Attorney General, it is our opinion that sections 109 and 113 must be deemed applicable to all civilian employees of OSS, including

1. Civil service employees;
2. Special funds employees;
3. WOC and WAE appointees.

If, in your opinion, circumstances warrant, Congress might be requested to enact remedial legislation exempting those in "3" from the application of these sections, although the relatively small number of WOC and WAE employees at OSS make the problem less acute for this agency than, for example, OPA, OSRD or WLB. As to the employees in "1" and "2", it is our judgment that Congress would not favorably regard any attempt to exclude full time officers and employees of the United States from the operation of these sections.

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* A joint resolution exempted [redacted] from the provisions of these sections before he undertook the investigation in the Teapot Dome cases (43 Stat. 5).

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E. Military Personnel

Sections 109 and 113 are probably applicable to officers of the armed forces as well as to civilian officers and employees. Consequently, military officers are subject to the same restrictions as civilian employees, with the important exception that they may in some cases be permitted to receive compensation from private sources where such would be forbidden to civilian employees. This right is derived from the provisions of Section 3(f) of the Selective Service and Training Act of 1940 (54 Stat. 885; 50 U. S. C. App. 303(f)):

> "Nothing contained in this or any other Act shall be construed as forbidding the payment of compensation by any person, firm, or corporation to persons inducted into the land or naval forces of the United States for training and service under this Act, or to members of the reserve components of such forces now or hereafter on any type of active duty, who, prior to their induction or commencement of active duty, were receiving compensation from such person, firm, or corporation."

The Attorney General has held that the foregoing section annulls the effect of sections 109 and 113 so far as they might prevent an officer of the armed forces from receiving compensation indirectly derived from contracts with the United States or from the prosecution of claims against the United States. After holding that the benefits of section 3(f) are applicable to officers commissioned directly under the Act of September 22, 1941 (55 Stat. 728; 10 U. S. C. 484 note), as well as to reserve officers, Attorney General Biddle held that the term "compensation", as used in section 3(f), was broad enough to include a share of the net profits resulting from work done by others. The opinion closes with this note of caution:

> "An actual or probable conflict between the Government's interest and the private interest of one of its officers would, of course, be intolerable, even in time of war, and many specific statutes and rules of law can be invoked to prevent or punish in such cases. See e. g., sections 109, 112, and 113 of the Criminal Code (secs. 198, 202, and 203, title 18, U. S. C.); section 1 of the act

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of March 3, 1917, 39 Stat. 1106 (sec. 66, title 5, U. S. C.); United States v. Carter, 217 U. S. 286,306. Section 3(f) of the Selective Training and Service Act of 1940 was not intended, in my opinion, to so suspend those statutes and rules of law as to make lawful such conflict of interest. Whether the attorney referred to in your letter will serve in violation of those statutes and rules of law will depend upon the work to which he is assigned while on active duty."

The indication in the quoted portion of the opinion that section 109 is applicable to officers of the armed forces is contrary to an indication in an opinion given four days later (40 Op. Atty. Gen., No. 47, April 27, 1942), that section 109 does not apply to officers who do not hold positions in the War or Navy Departments, which in turn relied on an earlier opinion to the same effect (31 Op. Atty. Gen. 471). The wisdom of relying on the statement in the 27 April opinion is doubtful, as it is quite possible that the Attorney General may later directly hold (as the 23 April opinion indicates) that section 109 applies to all Army officers. Despite the 27 April opinion holding section 109 applicable only to the executive departments, a year and a half later the Attorney General held the section applicable to all employees, wherever employed or appointed. (40 Op. Atty. Gen. No. 74, December 9, 1943). A similar about-face may be expected on the earlier ruling as to military officers.

In addition to sections 109 and 113, there are specific statutes applicable to military officers which relate to the conflicts of interest problem:

(a) Section 1224 of the Revised Statutes (19 Stat. 243; 10 U. S. C. 496), forbidding an Army officer to engage in any extra employment interfering with the performance of his military duties;

(b) Section 1136 of the Revised Statutes (39 Stat. 169; 10 U. S. C. 1315), forbidding officers of the Quartermaster Corps from receiving "any gain or emolument" for negotiating any business connected with the duties of their office;

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(o) The Act of June 10, 1896, as amended, (49 Stat. 400; 10 U. S. C. 883), cutting of the pay of any Navy or Marine officer on the active list who is employed by any contractor furnishing naval supplies or war materials to the government.

Thus, officers of the armed forces are subject to the same general restrictions which are applicable to civilian officers and employees, and in addition to specific statutes applicable only to them. The one important exception is that, unlike civilian employees, they may continue to receive compensation from private sources even though such compensation may be indirectly derived in part from the prosecution of claims against the United States or from contracts or other matters in which the United States is interested.

III.

PROHIBITED ACTS

Such scant judicial interpretation as these statutes have received has shed little or no light on their scope, as reported decisions involving those statutes have been prosecutions where a clear conflict of interest existed. Nor are the opinions of the Attorney General of any great value for determining which acts fall within the prohibition of the statutes, for some of the recent opinions are inconsistent with earlier ones (e. g., 14 Op. Atty. Gen. 483) without overruling or attempting to distinguish the earlier interpretations. So far, there is no judicial authority either for or against the position taken by the Attorney General that no actual conflict of interest need exist before the statutes* will apply. Such was the holding of the opinion of 6 November 1943, to the effect that a WOC appointee in the War Department would be liable to the penalties provided by the statutes simply because he was a member of a law partnership whose practice included tax and admiralty claims against the United States. It is manifestly absurd to say that any conflict of interest could arise in such a situation. Nevertheless, such construction is binding upon all agencies of the government and must be taken as correct in any matters involving their own officers and employees.

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* Recently Senator Maloney (D., Conn.) said on the floor of the Senate, "The statutes in question certainly were not enacted on the basis of the present ramification of Federal regulation." 90 Cong. Rec. 3573 (21 April 1944)

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Officers + Employees Liability

Files 5 August 1944

Office of General Counsel

Liability of Government Employees for Negligence

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1. At the request of [redacted] the following questions concerning the liability of an employee of the OSS for damages resulting from an automobile accident caused by his own negligence while acting in the scope of his employment were checked:

(a) whether any Congressional act exonerated Federal employees from liability to third parties under such circumstances;

(b) whether Congress had by special act relieved individual employees from such liability.

2. With regard to the first point, a general statute authorized heads of Federal departments to adjust claims for damages to private property not exceeding $1000, caused by the negligence of any officer or employee acting within the scope of his employment (31 U. S. C. 215). The Secretary of State has similar powers to settle claims arising from the "act or omission" of United States officers or employees in territories where the United States has extraterritorial jurisdiction (31 U. S. C. 224a). The Postmaster General may specifically settle even those claims (up to $500 in amount, arising from the negligence of Post Office employees acting in the scope of their employment (31 U. S. C. 224c). The Attorney General can also settle claims against FBI agents, who were not acting in the scope of their employment (31 U. S. C. 224b). On the other hand, the Secretary of War cannot settle claims arising from the negligence of War Department employees (31 U. S. C. 223b; see also D. C. Code, Sec. 1-902 [20:103]). It will be noted that none of these statutes relieve the employee of any personal liability for his negligence to a person injured thereby.

3. A recent Supreme Court decision reaffirms the principle that even public instrumentalities or public officers are individually liable as agents for their own negligence. Brady v. Roosevelt SS Co., 317 U. S. 575, 87 L. Ed. 471, 63 Sup. Ct. 425, rev. 128 F (2d) 169, certiorari granted 317 U. S. 609, 63 Sup. Ct. 54, 87 L. Ed. 495, certiorari denied Roosevelt SS Co. v. Brady,

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319 U. S. 783, 63 Sup. Ct. 1320, 87 L. Ed. 1714, rehearing denied, 318 U. S. 799, 63 Sup. Ct. 659, 87 L. Ed. 1163 (1942). In that case the administratrix of the estate of a customs official who was killed as the result of the breaking of a defective rung in a ladder while boarding a vessel operated for the United States Maritime Commissioner, its owner, by the Roosevelt SS Co., a private agency, sued the steamship company for damages under the Suits in Admiralty Act. It was originally held that a maritime tort was involved; that under the act the remedy was exclusively against the United States or the United States Maritime Commission. The Supreme Court reversed this, holding that the intention of the Act was merely to prevent the United States shipping from being tied up by a libel in rem, and not to deprive the liability of private agents for their torts. Mr. Justice Douglas said:

> "The liability of an agent for his own negligence has long been embedded in the law. Quinn v. Southgate Nelson Co., 121 F (2) 190, is a recent application of that principle to a situation very close to the present one. But the principle is an ancient one and applies even to certain acts of public officers or public instrumentalities. As stated in Sloan Shipyards Corp. V. Emergency Fleet Corp., 258 U. S. 549, 567, 'An instrumentality of government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts.'"

4. The same principle is affirmed by implication in 15 C. G. 927 (1936). In that case an employee of the Bureau of Entomology and Plant Quarantine wrecked a Government automobile to such an extent that after repairs and sale the net loss to the Government was $58.50, which was decided to be chargeable to the employee. The accident, however, occurred at a time when the employee was not on official business. In 14 C. G. 221 (1934), an indorser bank refused liability on a check cashed to an imposter, charging the Government with laches, but it was decided that laches might not be charged against the sovereign, and that the Government is not liable for the nonfeasance, misfeasance or negligence of its officers, citing Cooke v. U. S., 91 U. S. 389, 398, German Bank v. U. S., 148 U. S. 573, 579. In 15 C. G. 503 (1940), discussing the liability of the WPA for damage to private property caused by the negligence of WPA workers acting in the scope of their employment, it is stated, that "in the absence of a specific statutory provision the Government is not liable for loss or damages resulting from the negligent act of its officers or employees", citing the German Bank case, supra. Hence, the necessity for Sec. 26 of the

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Emergency Relief Appropriation Act of 1939 and Sec. 20 of the Act of 1938, allowing WPA Commissioner and New York Administrator to adjust claims up to $500. It would seem to follow that in the absence of contrary legislation, government employees remain liable to third persons injured by their torts.

25X1A9A

5. With regard to [redacted] second point, there appear to be no private congressional acts relieving Federal employees from liability in cases where the Government had settled claims arising from their negligence, or in cases where judgments had been obtained against them personally. There are numerous private acts compensating private individuals for injuries suffered as the result of negligence of government employees. See for instance the Act of April 14, 1937 (Ch. 83, Sec. 420, Private 27), paying $5000 to one [redacted] for the death of a child killed by an automobile operated by a CCC employee, who is neither named nor relieved. See also the Act of April 15, 1937 (Ch. 96, Sec. 316, Private 39), awarding $2500 to [redacted] for damages caused by a CCC truck driven by [redacted]; there is no act relieving House whatever.

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[redacted]

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19 CG 503

It is well settled that in absence of a specific statutory provision the Government is not liable for loss or damages resulting from the negligent acts of its officers and employees. German Bank v U. S., 148 U.S. 573, 579.

14 CM 221

Laches may not be imputed to the Government in its character as sovereign. Cooke v. U. S., 91 U.S. 389.

22 CG 221, 11 September 1942

The Government itself is not responsible for the misfeances or wrong, or negligences, or omissions of duty of the subordinate officers or agents employed in the public service; for it does not undertake to guarantee to any person the fidelity of any of its officers or agents whom it employs; since that would involve it, in all its operations, in endless embarassments, and difficulties, and losses, which would be subversive of the public interests. Robertson v. Sechel, 127 U.S. 507.

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Public Buildings

File
Legal
Decisions

15 March 1945

MEMORANDUM

TO: [redacted] 25X1A9A

FROM: JSM

SUBJECT: Restrictions on Construction of Buildings for Public Use in the District of Columbia

1. Reference is made to the attached memorandum to the Director from the Board of Review, dated 8 March 1945, concerning additional buildings to provide space for OSS activities. It is recommended therein that $65,000 be allocated for the purchase and erecting of three pre-fabricated buildings together with the ground rent necessary to be paid for the land at 25th and E Streets, N. W.

2. Title 40 of the U.S.C. contains the provisions of law relating to Public Buildings.

Sec. 1 The Public Buildings Administration in the Federal Works Agency shall have the absolute control of and the allotment of all space in the several public buildings owned or buildings leased by the United States in the District of Columbia.......

Sec. 19 The Federal Works Administration shall have charge of the public buildings and grounds in the District of Columbia, under such regulations as may be prescribed by the President........ .

Sec.254 In the selection of a site for any public building, reference shall be had to the interest and convenience of the public.....and the Federal Works Administrator shall have power, and it shall be his duty, to set aside any selection which in his opinion has not been made solely with reference thereto.

Sec.267 No money shall be expended upon any public building until after plans, estimates, etc. have been made by PBA and approved by Federal Works Administration.

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Sec. 268 No plan shall be approved until after the site therefor shall have been finally selected.

From the foregoing it seems that any plans for the construction or erection of buildings for public use should be submitted to Public Buildings Administration in the Federal Works Agency.

3. From the attached files it appears that Public Buildings Administration will not approve the erection of temporary buildings in the District of Columbia. (Memoranda of [redacted 25X1A9A], Chief, Services, to the Director, dated 8 May 1944 and to [redacted 25X1A9A] dated 12 May 1944). However, recently, [redacted 25X1A9A] has been informally advised by PBA that, though permission will not be granted for the erection of temporary buildings in the District of Columbia, this restriction does not apply in the case of prefabricated buildings.

4. The question of the use of .002 funds for the purchase and erection of pre-fabricated buildings and payment of ground rent should be considered. There appears to be no legal objection to such an expenditure in view of the language used in the OSS appropriation act. It should be noted that Sec. 267 of Title 40, U.S.C. relates to the expenditure of Government funds whereas Sections 1, 19, 254, 268 contain other provisions of law concerning public buildings and should be complied with. Thus, it follows that, although the buildings were to be paid for and erected with OSS funds, the PBA, under Section 1 of Title 40 U.S.C. would have absolute control of and allotment of space therein with the power to allot the buildings to an agency other than OSS.

5. In the memorandum from the Chief, Services to [redacted 25X1A9A], dated 12 May 1944, it is stated that, in the opinion of the Bureau of the Budget, Congress clearly did not intend that .002 funds should be used to construct a building. The Board of Review makes no suggestion in its recommendation of 8 March 1945 that the proposed expenditure should be cleared with the Bureau of the Budget. This, of course, is a policy matter which is not for the decision of this Office.

6. Before any funds are expended for the purchase and erection of pre-fabricated buildings or the payment of ground rent, the entire proposal, including plans, and estimates, should be submitted to the Public Buildings Administration in the Federal Works Agency for the approval of the Federal Works Adminis tator.

cc: [redacted 25X1A9A]

JSW:TL

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Off + Emp
17

Files — Legal Decisions — Officers & Employees (3) (Foreign Gov. Presents, titles, etc.)

18 May 1945

[redacted] 25X1A9A

Acceptance of Awards by Foreign Governments.

1. The following provisions are taken from Army Regulations 600-45 and present the whole picture of the law including the constitutional prohibitions and the blanket statutory consent during the present war:

"32. May not be accepted without consent of Congress.--No person holding any office or profit or trust under them (the United States) 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. [See Const. Art. I, Sec. 9, Cl. 8.]

"33. Acceptance of awards.--a. That officers and enlisted men of the armed forces of the United States be, and they are hereby, authorized during the present war and for a year thereafter to accept from the governments of cobelligerent nations or the other American republics such decorations, orders, medals, and emblems, as may be tendered them, and which are conferred by such governments upon members of their own military forces, hereby expressly granting the consent of Congress required for this purpose by clause 8 of section 9, article I, of the Constitution: [Provided], That any such officer or enlisted man is hereby authorized to accept and wear any decoration, order, medal, or emblem heretofore bestowed upon such person by the government of a cobelligerent nation or of an American republic. Sec. I, act 20, July 1942 (56 Stat. 662). This statute constitutes congressional consent for the duration of the present war and for a year thereafter for acceptance of the decorations covered by it, as set forth above.

"b. Offers by the governments of cobelligerent nations or the other American republics to personnel of the United States Army of decorations, orders, medals, and emblems, as set forth in (a) above, may be received, accepted, or worn by members of the United States Army provided the award and presentation have first been approved by any one

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of the appropriate commanders designated in paragraph 8b(3). Such cases not falling within the afore-mentioned category will require prior concurrence of the War Department.

"34. Unauthorized wearing of foreign decorations.--a. That it shall be unlawful for any person, with intent to deceive or mislead, within the United States or Territories, possessions, waters or places subject to the jurisdiction of the United States, to wear any * * * decorations, or regalia of any foreign State, nation, or Government with which the United States is at peace, or any * * * decoration, or regalia so nearly resembling the same as to be calculated to deceive, unless such wearing thereof be authorized by such State, nation, or Government.

"Any person who violates the provisions of this Act shall upon conviction be punished by a fine not exceeding $300 or imprisonment for not exceeding six months, or by both such fine and imprisonment. [Sec. I, act 8 July 1918 (40 Stat. 821; 22 U.S.C. 246; M.L. 1939, sec. 2158].

"35. Notations and report on awards of foreign decorations.--All awards of foreign decorations will be noted in service and other similar records, in personnel files, in efficiency records, and in historical records of organizations. Report of such awards giving citation and other specific information therefor with reference to the official foreign document upon which the award is made will be forwarded to the headquarters of the field force concerned for recording and transmission to The Adjutant General.

"8B (3) * * * (a) The commanding general of United States Army Forces in a theater of operations.

"(b) The commanding generals of any of the following, when operating directly under the War Department:

1. An army or air force.
2. A group of armies.
3. A defense command in Alaska or outside the continental United States.

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"4. Any separate force commanded by a major general or officer of higher grade.

"(4) The Purple Heart may be awarded by commanders named in (3) above, and the commander of any force which is commanded by, or the appropriate command of, a brigadier general or officer of higher grade, the commander of a named general hospital in the continental United States, and the commander of any general or evacuation hospital outside the continental United States.

"(5) Contemplated awards to personnel of the Navy will be submitted to the senior naval commander present for concurrence."

25X1A9A

25X1A9A

cc:

jom/ah

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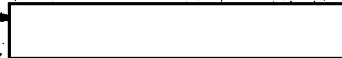
CIVILIAN PERSONNEL

Awards by foreign governments to civilian personnel are still controlled by the act of 31 January 1881, Chapter 32, Sections 2 and 3, 21 Stat. 604, 5 U.S.C.A. 114, 115. Note that the act of 20 July 1942 affects only members of the armed forces and does not vitiate the effect of the act of 31 January 1881 with respect to civilians. These provisions are as follows:

"114. Foreign Decorations. Except as otherwise provided, in chapter 33 of Title 10, no decoration, or other thing, the acceptance of which may be authorized by consent of Congress, by any officer of the United States, from any foreign government, shall be publicly shown or exposed upon the person of the officer so receiving the same. (Jan. 31, 1881, c. 32, para 2, 21 Stat. 604.)

"115. Same; Delivery through State Department. 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. (Jan. 31, 1881, c. 32, Para 3, Stat. 604.)"

25X1A9A



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OFFICE OF STRATEGIC SERVICES

WASHINGTON 25, D. C.

22 May 1945

File
Leg Decisions
Leaves of Absence

MEMORANDUM

TO: Files

FROM: J.S.W.

SUBJECT: Lump-sum Payments under Public Law 525

1. Several questions have recently been presented concerning the application of Public Law 525, approved 21 December 1944.

a. Under what conditions may accrued annual leave of a Federal employee be transferred to his credit when he is transferred to OSS and compensated from Special Funds?

b. Where a person has received a lump-sum payment under Public Law 525 and is immediately placed on the Special Funds payroll of OSS, will any refund of the lump-sum payment be required?

2. Section 1 of the subject Act provides in part that whenever a civilian employee of the Federal Government is separated from the service he shall be paid compensation in a lump sum for all accumulated and current accrued annual leave. Such lump-sum payment shall equal the compensation that such employee would have received had he remained in the service until the expiration of the period of such annual leave. However, if such employee is reemployed in the Federal service under the same leave system prior to the expiration of the period covered by such leave payment, he shall refund to the employing agency an amount equal to the compensation covering the period between the date of reemployment and the expiration of such leave period, and the amount of leave represented by such refund shall be credited to him in the employing agency. It is provided that such lump-sum payment shall not be regarded, except for purposes of taxation, as salary or compensation.

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3. Section 3 of the subject Act provides in part that all accumulated and current accrued leave be liquidated by a lump-sum payment to any civilian employee of the Federal Government in cases involving transfer to agencies under different leave systems. Such lump-sum payment shall equal the compensation that such employee would have received had he not been transferred until the expiration of the period of such leave. It is provided that such lump-sum payments shall not be regarded, except for purposes of taxation, as salary or compensation.

4. It is understood that it is the policy of Special Funds Branch where possible to credit and accrue leave in the same manner as required under Civil Service laws and regulations. Therefore, it would appear that a regular Civil Service employee, or an employee of a government establishment having a substantially similar leave system, may properly have his accumulated leave transferred to his credit with OSS even though he is to be compensated from Special Funds. Where security considerations are such that no transfer of accrued leave should be made, it appears that the employee would be entitled to receive a lump-sum payment for his accrued leave at the former employing agency.

5. Where a person has received a lump-sum payment under Public Law 525 and is immediately placed on the Special Funds payroll of OSS, no refund will be required if the leave systems of the two agencies concerned are different. The dual compensation statutes are not involved since such lump-sum payments are not to be regarded as salary or compensation except for purposes of taxation. Comptroller General's decision B-46726, 13 January 1945. If the leave systems are substantially similar it would seem that a refund should be made of the lump-sum payment and credit for leave therefor should be granted in accordance with the provisions of Public Law 525.

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DATE 6 Aug 1945

TO: General Counsel Files

25X1A9A

I spoke to [redacted] this orning about the proposed contract with an auditing firm wherein the firm or members thereof would serve as the Comptroller.

In view of the rules of law set forth in the attached memorandum (prepared by [redacted] 25X1A9A [redacted] 25X1A9A said that no further work on this matter was NOT required. He stated that it would be necessary for this office to provide him with a formal memorandum on the questions involved.

[redacted]

I did not show the memo to Col. D.; but rather orally explained these rules. Aw

Office of the General Counsel

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22 Comp. Gen. 700

File Legal Decisions

OEM hired Janitor Service from maintenance companies on a contractual basis.

(Personal Services)

Held: The objection to contracting with a firm or a third party for personal services (is based) xx on the fact that such contracts delegate to the contractor the right to select persons to render services for the Government which would be contrary to (5USC .43 - employment of employees to assist in executive departments). Also, the services rendered by the contractors employees would not be subject to direct supervision such as is generally exercised over Federal employees. 6 CG 474; 13 CG 351; 15 CG 951; 17 CG 300; 21 CG 388.

21 CG 388,391 holds that where a contract to get statistics from a firm was merely an "incident or by product" of the procurement of the information, and where the act setting up the procedure for collecting an "auto stamp tax" was very broad, such a contract would be permissible

17 CG 300,301: The general rule is that purely personal services may not be engaged by the Government on a non-personal service contract basis but are required to be performed by Federal personnel, under Government supervision. The fees or amount of the contract price paid in accordance with the terms of a nonpersonal service contract on the result to be accomplished rather than on the time actually worked on the job, covering, not only the contractor's time, but also the use of his facilities x x does not constitute salary.

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(Business Machine Case)

15: 951,953 "The insufficiency of the present personnel in a Government establishment x x does not authorize contracting with a private agency for the performance of duties with which the Government agency is otherwise charged.

13:351 in allowing the employment of archictects by contract the C. G. stated:

"The employment of outside professional services under a contract such as is proposed in the present matter should be resorted to only when, due to the highly technical features of the project or for other reasons, the use of regular employees of the Government would not be adequate to accomplish the purpose authorized by law."

NB: (Janitors, towel service) 6CG 474: "xx the work to be performed was not to be done by the contractor personally, but by employees selected by it. In other words, the duty of selecting employees qualified to perform personal services for the United States was transferred to the contractor instead of being performed by proper administrative officers. The delegation of administrative duties to others by contract ~~to others by contract~~ is not authorized. 6 CG 51; Underwood v U.S. Court of Claims June 14, 1926."

NB NB

6 CG 51: Contract with Dr. William Campbell of Columbia Ohio for services as an advisory metallurgist at $200 per month:

"The contracting with an individual or firm to perform a duty or exercise an authority imposed or conferred by law on a Government department is not, authorized. See in this connection Underwood v. U.S. Ct. of Cl. June14, 1926"

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NB: 6 CG 140,142: Whether power to hire board of professional tea inspectors: "xx The inspection of tea is strictly a personal service. Personal services necessary in connection with Government activities are for performance by regular employees of the Government who are responsible to the Government, and such services should not be performed by contractors who cannot be held personally responsible for failure or misfeasance in the performance of such duties. The board of tea inspectors as constituted in the case here under consideration presents the anomalous situation of two persons, not Government employees and not under Government supervision, being granted absolute and final authority to overrule the actions of persons regularly appointed or employed by the Government x x.

"x x any procedure by which the final determination in such matters could be controlled by the actions of two persons who are not responsible to the Government is unauthorized.

(Real estate broker)

3CG 720,721: "The matter of negotiating for the purchase of land for the U. S. is an administrative duty which may not be delegated to anyone other than a responsible officer of the Government" accord 4CG 356, 358.

6 CG 324: Services of draftsmen and consulting architects:

"The services contemplated under the contract are personal services x x and they may not be engaged by contract."

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6 CG 820,821: The duty of making topographic maps is imposed by law on the geographical, survey, and contracting with an outside agency or individual to perform theduty thus imposed is not authorized."

15 CG 305,306 (desired to hire a firm of architects - no expert Government personnel available - no personnel available who could be hired by the Government and at the same time who were qualified for the necessary work) Held - in allowing a contract for such services:

"It is well established that in the absence of statute specifically providing otherwise, consultants or other expert personal services may be engaged by direct employment, only, and not by contract with a firm, corporation, or association to furnish the services of such persons as it may select."

(The CG then goes on to say that an exception may be made where:

a. No such persons available in Government employ.

b. Such services cannot be obtained in accordance with civil service rules and regulations.

c. Consent for the contracting of such services has been obtained from the Civil Service Commission.

d. That the services will not be contracted for at rates which exceed those specified in the classification Act.)

"The employment of outside professional services under contract should be resorted to only when, due to the highly technical features of the project or for other

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reasons, the use of regular employees of the Government would not be adequate to accomplish the purpose authorized by law." 14 CG 909,911.

"If the services of particular architects are administratively determined to be necessary to the success of the contemplated project, the selection of the particular architects should be made by responsible officials of your administration and the services of such architects to the extent necessary should be secured either by employment or by contracting directly with the individuals and not through an intermediate agency. id.

The section in the U.S. Code which prohibits the employment of any employee in any executive bureau unless there is authorization for such employment and the payment therefor in the law granting the appropriations is 5 U.S. Code 46. This section also limits the rate of compensation for any such employee to the rates established by 5USC Chapter 13 (Classification of Civilian Positions).

21 CG 400: Allows the Dept. of Justice to contract with a private agency for punching and sorting certain statistical cards. 15 CG 951 (International Business Machine Case) distinguished by reference to the respective appropriation language of the two agencies. It was held that the Justice Dept. appro. language was less specific as to its own obligations. An analysis of the two cases, and the respective appropriation's language shows the distinction to be purely factitious.

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16 CG 1055,1056: "Inspection of construction work for the Government is a personal service and is not to be regarded so inherently a part of the construction as to render a purely construction appropriation available for payment of the inspectors salary. x x x The duties of the inspector being presumed to protect the interests of the Government are for performance by the regular personnel of the particular department concerned x x under proper supervision, and the salary constitutes a proper charge against the appropriation, available for salaries."

Miscellaneous:

Contracts for the employment of accountants expressly prohibited by 5 US Code 55:

"x x No part of any money appropriated in any act shall be used for compensation or payment of expenses of accountants or other expertsx x unless authority for employment of such services or payment of such expenses is stated in specific terms in the act making provision therefor xx." See 1CG 93; 14 CG 617.

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6 CG 568, 569: "The matter of negotiating for the purchase of lands or any interests in lands for the United States as a general rule, is an administrative duty that cannot be delegated to anyone other than to responsible officers of the Government." In accord. 3 CG 720,721. 6 CG 463,464: The delegation to others, by contract, of duties for which the administrative officers are responsible is not authorized. Accord 6 C.G. 51 6 C.G. 474,475. (Persons hired to translate foreign languages.)

There is no authority to delegate by contract to a non Government agency/work which should be performed by a Government agency established by Congress. 12 CG 516,517 (Counting and sorting statistical cards). Accord 15 CG 951.

22 CG 1083, 1085, 1086:

"In performing official acts the Secretary of the Navy acts not as principal for himself but rather as an agent for the Government. The Floyd Acceptances 7 Wall 666. x x x an agent cannot without the principal's consent, delegate powers which involve judgment or discretion." (Citing cases)

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Distinction between a contract for Services and a contract for a finished product:

3 CG 709:

Here the Department of the interior desired a specific manuscript article upon psychological tests. A contractual agreement was entered into under a short form contract, Art. 1, thereof, providing:

"The party of the second part agrees to furnish a manuscript on intelligence testing, in typewritten form and acceptable to the Commissioner of Education on or before January 1, 1923."

The Secretary of the Interior contended that thiswas a contract for a finished product for which a specific sum was to be paid, and that it was not intended as a contract for personal services.

Held: "This contract, however, indicates that what it was really sought to produce was not material or a commodity in existence, or to be produced according to sample or specifications, and which is subject to sale, but rather the services of a particular person having the necessary attainments to prepare a treaties upon a special subject. The fact that the service was engaged by contract instead of by a special appointment, and that compensation was fixed in some other manner than on a basis of a stipulated unit of time, does not operate to establish the character of the transaction as a purchase." (underscoring supplied)

Then quoting 26 MS Comp Gen 664, Oct. 15, 1923:

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"Wh[illegible] engaged in advance by agreement, contract, ~~contract~~ ***, or otherwise to render a service such as the making an investigation, the compiling of data, the writing of articles, preparation of material### for a report etc. the service rendered is and must be regarded as a personal service."

"Under whatever form the right to pay arises whether # under formal appointment or by entering into a contract to perform certain services, it is a right to pay for personal services and the appropriation under which payment is to be made must specifically be available for personal services."

19CJ 941: An applicable act provided that the agency involved could place orders with other agencies for services of any kind, "provided however that if such work or services can be as conveniently or more cheaply performed by private agencies such work" could be let to the private agencies. The agency involved desired to let a contract for testing certain materials. The CG drew the following distinction between contracts for "inspecting" and "testing," in distinguishing a former opinion:

"The term 'inspection' x x would seem to be confined to 'the act of inspecting' x x for the purpose of determining x x whether the supplies x purchased properly were prepared or assembled in accordance with specifications x x. <u>In that sense, it is a personal service and as such a governmental function involving personal judgment, and properly is for performance by Government employees under Government supervision.</u>" (underscoring supplied)

The C G then went on to say that the above quoted act could never be construed to authorize contracting with private agencies for the performance of Governmental functions involving personal services such as "inspecting."

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However, the CG points out, "testing" may be said to be the determination by scientific means of the physical or chemical properties or elements of a material"requiring not only the services of persons possessing certain technical knowledge, but also special appliances x x and involve not so much the element of personal judgment as the application of established scientific principles and procedures. In such cases the results to be accomplished are not dependent upon personal judgment, would not be effected by Government supervision, and the services generally are not necessarily for performance by Government personnel, unless specifically so provided by law."

17 CG 300,301:

"The general rule is that purely personal services may not be engaged by the Government on a nonpersonal service contract basis but are required to be performed by Federal personnel under Government supervision. x x The fees or amount of the contract price paid in accordance with the terms of a non-personal service contract based upon the results to be accomplished rather than on time actually worked on the job, covering not only the contractors time but also, the use of his facilities, office, staff, equipment, etc.--does not constitute salary.

1. The above cases indicate that, in general, the rule applies that it is permissible for the Government to contract with an independent agency for a given result provided that:

a. The result is one which is contemplated by the law creating the agency or,

b. the result is one for which expenditures are justified under the appropriation language of the particular agency, and,

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c. the result is not one which by the appropriation language or by the law establishing the agency, the agency should itself accomplish, and,

d. the contract for the result desired does not involve personal services, that is to say that in carrying out the result the contractor does not in effect become the agent or servant of the contracting agency in the substantive law sense.

2. A Government agency cannot by contract delegate either:

a. Administrative duties for carrying out its legal purposes.

b. Responsibilities which are inherent in its functions as created by law.

c. The selection and or supervision of personnel to accomplish a or b above.

3. An agency may contract with an expert or individual for services, without regard to the Civil Service laws where:

a. The contract is made directly with the individual or expert, and not with an organization for the services of such individual in contravention of 2. c above.

b. The law establishing the agency or appropriating funds for the agency either

i. Specifically provides for such services, and/ii makes it clear that such services are the only means by which the purposes of the agency, as established by such law, can be carried out.

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4. Though EO 9001 as extended to OSS by EO 9241 allows OSS to enter into contracts without regard to the provisions of law relating to the making, performance or modification of contracts, this does not abrogate the provisions of the Act of August 5, 1882, 22 Stat. 255 which prohibits the expenditure of Government funds for the expenses of accountants or experts unless the pertinent appropriation specifies otherwise.

Even though .002 funds would be specifically exempted from the operation of the statute just referred to, the decisions above cited are sufficiently clear to establish that, in the opinion of the comptroller general, such experts can under no circumstances be hired on other than a personal service basis unless what is required from them come within the "contract for a specific result" as defined in those cases. That is to say, a contract which does not require the personal supervision of the contracting agency, and which does not require that the contractor perform functions belonging properly to the agency or one which attempts to delegate the responsibility of the agency.

5. To answer the question put specifically the following seems clear:

a. A firm of accountants may under no circumstances be employed with .001 funds.

b. A firm of accountants could be employed with .002 funds provided that they were employed to give us some definite statistics and not to exercise administrative or discretionary powers of this agency.

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c. Individual accountants could not be employed with .001 funds for any purpose connected with the "inaugurating of new or changing old methods of transacting the business of" this agency. They could, it would seem, be employed on a civil service basis for purely statistical purposes.

d. A firm of accountants could be employed on .002 funds to render a specific accounting, but not by contract which would give any member of the firm administrative or discretionary duties.

e. Individual accountants could be made regular employees of OSS on .002 funds for any purpose.

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26 September 1945

MEMORANDUM

25X1A9A

TO:

FROM:

SUBJECT: R.S. 291, 31 U.S.C.A. 107

1. (a) The subject act was first passed on the 9th of February 1793 (1 Stat. L. 300) at which time it provided:

> "That in all cases, where any sum or sums of money, have been issued, or shall hereafter issue, from the Treasury for the purpose of intercourse, or Treaty, with foreign nations, in pursuance of any law, the President shall be, and he is hereby authorized to cause the same settled with the accounting officers of the Treasury, in manner following, that is to say, by causing the same to be duly accounted for, specifically in all instances wherein the expenditure thereof may in his judgment be made public, or by making a Certificate or Certificates, or causing the Secretary of State to make a Certificate, or Certificates of the amount of such expenditures as he may think it advisable not to specify and every such Certificate shall be deemed a sufficient voucher for the sum or sums therein expressed to have been expended."

This section in substantially the same form, was incorporated as Section 291 of the Revised Statutes, and is to be found today in 31 U.S.C.A. Section 107 as follows:

> "Settlement of expenses of intercourse with foreign nations. Whenever any sum of money has been or shall be issued, from the Treasury, for the purposes of intercourse or treaty with foreign nations, in pursuance of any law, the President is authorized to cause the same to be duly settled annually with the General Accounting Office, by causing the same to be accounted for,

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specifically, if the expenditure may, in his judgment, be made public; and by making or causing the Secretary of State to make a certificate of the amount of such expenditures as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (Underscoring Supplied)

(b) Compare our own appropriation language with respect to confidential expenditures, as follows:

P. L. 372 - 78th Congress:

25X1A1A

"[redacted] may be expended for objects of a confidential nature, such expenditure to be accounted for solely on the certificate of the Director of the Office of Strategic Services and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

2. (a) This statute has not been subject to court construction, and the only opinion of the Attorney General which might refer to it is in 1 Op. Atty. Gen. 545 where the President is advised that he may freely use funds appropriated, to the extent of one year's salary, for the purchase of an outfit for his foreign minister, John Adams. The opinion does not refer to any specific law or any specific appropriation; but is indexed in the Justice Department's card index as referring to R.S. 291.

(b) In 1802 a committee was appointed in the House of Representatives "to inquire and report whether moneys drawn from the Treasury have been faithfully applied for the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to legislative restrictions, and secure the accountability of persons entrusted with public money." A report written by Mr. Joseph H. Nicholson of Maryland was submitted on April 29th, 1802. This report is contained in American State Papers, Finance, Vol. 1, pp. 752-57, 764, 816,17; and Annals of Congress Vol. 12, 1259-75. The report is reproduced in Control of Federal Expenditures, a book published by the Brookings Institution and compiled by Fred W. Powell. We have a copy of this book in our office. In this report (P. 205-6, Control, supra) certain expenditures were [referred to as having been] made under the above act for secret service activities of

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No. 55

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the War, Navy and State Departments, which were certified by vouchers signed by the President. The committee held this an illegal exercise of the said act as the expenditures were not shown to be for "contingent expenses only of foreign intercourse." Oliver Wolcott in an Address to the People of the United States in reply to the Nicholson Report (P. 271, et seq "Control of Federal Expenditures", supra.) justified his action in general, and specifically, in his 9th point, (Control, P. 325 et seq.), with regard to "the application of money for purposes of a confidential nature." His full reply in this respect, which quotes the applicable portion of the Nicholson report, is attached hereto as Attachment A. In this reply he states:

> "If one of our Naval Commanders, now in the Mediterranean, should expend a few hundred dollars for intelligence, respecting the force of his enemy, or the measures meditated by him, ought the present administration to disallow the charge, or publish the source from which the intelligence was derived?"

(c) The Comptroller General has construed the subject act in two published decisions, and in a few unpublished letters.

(i) The first published Comptroller decision construing the subject act is to be found in 2 C.G. 121. Here there was a voucher for $596.40 which was submitted by the Secretary of State to be paid out of funds appropriated for "emergencies arising in the diplomatic and consular service 1921" and which showed that the money was to be paid because of a deficiency in another appropriation, viz: Act of June 4, 1920, 41 Stat. 741 making an appropriation "For rent of quarters for student interpreters attached to the Embassy to Japan." The Secretary of State, by direction of the President, certified the voucher under the provisions of the subject act, stating that it was an expenditure "the nature and object of which* * * it is deemed inexpedient to make known."

The voucher was disallowed by the Comptroller General on the ground that:

> "The character of the expense having been fully disclosed by the vouchers * * * * neither the letter nor the purpose of the statute and appropriation extends them to after allowance of payments in excess of regularly made specific

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appropriations which have been regularly accounted for on vouchers specifying the exact nature and amount of the expense. * * * * The letter of the law is to the effect that the Secretary may make 'a certificate of the amount of such expenditure as he may think it advisable not to specify.' The certificate in question specifies with particularity the exact expenditures which the certificate is designed to cover, thus conclusively negativing any assumption that the expenses were of the confidential character contemplated by the intent and purpose of the law, which is to protect expenditures which the policy of the State Department requires shall not be made public."

In another part of the opinion (P. 123) the Comptroller General makes the statement:

"Speaking generally and without reference to the facts and certification in the instant case, I may say that this office recognizes to its full extent the discretionary power conferred upon the Secretary of State by Section 291, Revised Statutes, <u>and in no case will a certificate made by the Secretary in conformity with the provisions of that Section and in support of a payment from the supporting appropriation be questioned by this office.</u>" (Underscoring supplied.)

(ii) A more narrow construction of the subject act was made by Comptroller General, J. R. McCarl, in an unpublished letter to the Secretary of State, dated September 15, 1932, and filed with the General Accounting Office in M.S. Vol. 133, page 1068. The Secretary of State certified three vouchers under the provisions of the subject act which showed on their face that they were in payment of passage on a foreign vessel for the Secretary of State and three other individuals in his department. The Comptroller refused to allow the vouchers on the ground that travel on a foreign vessel while on official Government business was in violation of section 601 of the Merchant Marine Act of May 22, 1928, 45 Stat. 697.

The Secretary of State resubmitted the vouchers with a letter stating:

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"You are advised that in view of the special circumstances in connection with the trip the account was paid from the appropriation 'emergencies arising in the Diplomatic and Consular Services, 1932,' and that because of such circumstances connected therewith was accounted for by certificate of the Secretary of State under Section 291 of the Revised Statutes * * *"

To this the Comptroller General replied:

" In view of the fact that the voucher submitted for pre-audit discloses that the return passage of George A. Morlock, Captain Eugene A. Regnies, Allen T. Kotz and yourself, were, upon the SS VULCANIA, a vessel of foreign registry, the certificate as under Section 291, Revised Statutes, that 'the nature and object of which expenditure it is deemed advisable not to specify', is not understood. Certainly the Congress had no intention that Section 291, Revised Statutes, and the appropriation for emergencies arising in the diplomatic and consular service, * * * should be used to avoid or circumvent a statutory prohibition as in Section 601 of the Merchant Marine Act or to avoid the use of a specific appropriation for expenses if properly chargeable thereto."

"While Section 313 of the Budget and Accounting Act of June 10, 1921, 42 Stat. 26, exempts expenditures made under the provisions of Section 291 of the Revised Statutes from the requirements of said Section 313 relative to furnishing information to the Comptroller General, it does not exempt such expenditures from the direction in Section 312(c) of said Act that:

'The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.'

"Accordingly, you are requested to inform this office of any reason you may wish to submit why the expenditures for transportation and expenses upon the foreign vessel should not be reported to the Congress under Section 312(c) of the Budget and Accounting Act as an expenditure in violation of law."

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(iii) In answer to a request from the Secretary of State as to whether, by virtue of R. S 291, an appropriation for "Emergencies arising in the Diplomatic and Consular Service, 1922," could be used to pay the deficiency in another appropriation entitled "Transportation of Diplomatic and Consular Officers, 1921", the Secretary of State was advised by letter from the Comptroller General, dated September 14, 1921 that the requisition would be approved in "this instance" but that "This action is not to be taken as sanctioning a practice of using the emergency appropriation in this way to meet deficiencies in other appropriations."

(iv) In answer to a letter from the Secretary of the Navy as to whether certain naval officers had to render specific accounts in certain instances the Comptroller General stated (M.S. Vol. 74, page 68):

"There are at present two classes of expenditures not required to be supported by details, receipts, etc., and in both classes the omission of such details, receipts, etc. is specifically provided for by Statute. The first class covers expenditures by the Department of State which under the provisions of Section 291, Revised Statutes, are settled by this office upon the certificate of the Secretary of State. The other class covers expenditures from contingencies, Military Intelligence Service, in which the act making the appropriation specifically provides for certain payments to be made upon certification of the Secretary of War. See 44, Stat. 1107."

(v) In a letter to the Secretary of State, dated Jan. 3, 1930, the Comptroller General specified the form of voucher to be used under R.S. 291. After stating certain requirements as to numbering, stating the name of disbursing officer, etc. he said that it would then be in proper form to complete the accounting records in connection with this form of expenditure "<u>and at the same time would not disclose the nature and object thereof</u>." (Underscoring supplied) M. S. Vol. 101, page 74.

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(vi) Attention is directed to the decision of the Comptroller General dated January 20, 1945 (B-46566) Published in 24 C.G. 544 which also construes the subject act. In that case it holds that the disbursing officer may make payment of vouchers under the subject act without such payment having been certified in accordance with the provisions of 31 U.S.C. Supp III, 82b and c. The decision is based on the fact that the subject act was enacted prior to 31 U.S.C. Supp III, 82b and c, and that the general provision of the latter should not be construed as affecting the special provisions of R.S. 291 which requires that "every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended." The Comptroller General states:

"The later act of December 29, 1941, contains no specific provision repealing prior special statutes and its provisions are not so inconsistent with the provisions of section 291, Revised Statutes, as to cause its repeal by implication. On the contrary, it well may be assumed that some expenditures may be authorized by the Secretary of State under conditions so confidential that even the certifying officer may not be informed thereof and, of course, that officer could not be required to accept final responsibility by certifying a voucher as representing a lawful payment when he is not informed of the object or purpose of the expenditure. Accordingly, I have to advise that the special statute as restated in 31 U.S.C. 107 is not affected by the subsequent general statute of December 29, 1941."

Thus, there is a question as to whether disbursements of .003 funds are subject to the provisions of either 31 U.S.C. Supplement III, 82b or 82c. (Sections 1 and 2 of the Act of Dec. 29, 1941, 55 Stat. 875) since the latter act was in force prior to the OSS appropriation.

31 U.S.C. Supplement III 82b provides:

Disbursing officers shall:

a. disburse money in accordance with vouchers certified by heads of departments

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or their delegates.

b. determine that vouchers are correct and certified as above recorded.

c. be held accountable accordingly.

31 U.S.C. Supplement III 82c provides:

Officer certifying voucher shall:

a. be held responsible for existence and correctness of facts recited in the certificate or on the voucher.

(with regard to OSS funds - might be held for existence of true confidential purpose).

b. must give bond.

c. be held accountable for illegal, improper or incorrect payments resulting from misleading certificate made by him, as well as for a payment not a legal obligation under the appropriation involved.

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File

12 October 1945

Delegation of authority

Legal Decisions

MEMORANDUM

TO: Director

FROM: Office of General Counsel

SUBJECT: Certification of Vouchers for the Expenditure of Confidential Funds

1. On 20 September 1945 the President issued Executive Order No. 9621, effective 1 October 1945, in which he terminated the Office of Strategic Services and disposed of its functions.

2. This order reads in part as follows:

"By virtue of the authority vested in me by the Constitution and Statutes, including Title I of the First War Powers Act, 1941, and as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered as follows;

"1. * * *

"2. * * *

"3. All functions of the Office not transferred by paragraph 1 of this order, together with all personnel, records, property, and funds of the Office not so transferred, are transferred to the Department of War; and the Office, including the office of the Director of Strategic Services, is terminated. The functions of the Director of Strategic Services and of the United States Joint Chiefs of Staff, relating to the functions transferred by this paragraph, are transferred to the Secretary of War. * * * *"

3. Public Law 156 of the 79th Congress (National War Agencies Appropriation Act, 1946) in appropriating $20,000,000 for the Office of Strategic Services for the fiscal year, 1946, specifies:

"Provided, That $10,500,000 of this appropriation may be expended without regard to the provisions of law and regulations relating to the expenditure of Govern-

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ment funds or the employment of persons in the Government service, and $10,000,000 of such $10,500,000 may be expended for objects of a confidential nature, such expenditures to be accounted for solely on the certificate of the Director of the Office of Strategic Services and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

Query: May the President by Executive Order transfer to the Secretary of War or the person delegated by the Secretary of War the authority granted by the National War Agencies Appropriation Act, 1946 to the Director of the Office of Strategic Services to account for objects of a confidential nature solely on the certificate of the Director; and would such certificate be deemed a sufficient voucher for the amount therein certified?

4. It is to be noted that the President disposed of the functions of OSS by virtue of the power vested in him by the First War Powers Act. The pertinent sections of that act read as follows:

FIRST WAR POWERS ACT, 1941
ACT DECEMBER 18, 1941, C. 593, 55 STAT. 838

"S 601. Coordination of executive bureaus, offices, etc., by President for national defense and to prosecute the war; issuance of regulations

"For the national security and defense, for the successful prosecution of the war, for the support and maintenance of the Army and Navy, for the better utilization of resources and industries, and for the more effective exercise and more efficient administration by the President of his powers as Commander in Chief of the Army and Navy, the President is hereby authorized to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, governmental corporation, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this title (sections 601-605 of this Appendix), and to this end is authorized to make such regulations and to issue such orders as he may deem necessary, which regulations and orders shall be in writing and shall be published in accordance with the Federal Register Act of 1935 (sections 301-310, 311-314 of Title 44): Provided, That the termination of this title (sections 601-605 of this Appendix), shall not affect any act done or any right or obligation accruing or accrued pursuant to this title (sections 601-605 of this Appendix) and during the time that this title (sections 601-605 of this Appendix),

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is in force: Provided further, That the authority by this title (sections 601-605 of this Appendix), granted shall be exercised only in matters relating to the conduct of the present war: Provided further, That noredistribution of functions shall provide for the transfer, consolidation, or abolition of the whole or any part of the General Accounting Office or of all or any part of its functions." (50 App. USCA 601)

"S 602. Same, consolidation of offices; transfer of duties, personnel, and records

"In carrying out the purposes of this title (sections 601-605 of this appendix) the President is authorized to utilize, coordinate, or consolidate any executive or administrative commissions, bureaus, agencies, governmental corporations, offices, or officers now existing by law, to transfer any duties or powers from one existing department, commission, bureau, agency, governmental corporation, office, or officer to another, to transfer the personnel thereof or any part of it either by detail or assignment, together with the whole or any part of the records and public property belonging thereto." (50 App. USCA 602)

"S 603. Expenditure of appropriations for bureaus, offices, etc.

"For the purpose of carrying out the provisions of this title (sections 601-605 of this Appendix,) any moneys heretofore and hereafter appropriated for the use of any executive department, commission, bureau, agency, governmental corporation, office, or officer shall be expended only for the purposes for which it was appropriated under the direction of such other agency as may be directed by the President hereunder to perform and execute said functions, except to the extent hereafter authorized by the Congress in appropriation Acts or otherwise." (50 App. USCA 603)

"S 604. Presidential recommendation to Congress for elimination of certain bureaus, offices, etc.

"Should the President, in redistributing the functions among the executive agencies as provided in this title (sections 601-605 of this Appendix), conclude that any bureau should be abolished and it or their duties and functions conferred upon some other department or bureau or eliminated entirely, he shall report his conclusions to Congress with such recommendations as he may deem proper." (50 App. USCA 604)

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"S 605. Suspension of conflicting laws; restoration of duties and powers to bureaus, offices, etc., upon termination of sections

"All laws or parts of laws conflicting with the provisions of this title (sections 601-605 of this Appendix) are to the extent of such conflict suspended while this title (sections 601-605 of this Appendix) is in force.

"Upon the termination of this title (sections 601-605 of this Appendix) all executive or administrative agencies, governmental corporations, departments, commissions, bureaus, offices, or officers shall exercise the same functions, duties, and powers as heretofore or as hereafter by law may be provided, any authorization of the President under this title (sections 601-605 of this Appendix) to the contrary notwithstanding." (50 App. USCA 605)

5. We must face therefore the historical position of OSS in relation to this statute in the following manner;

(a) The office of the Coordinator of Information was established by Executive Order of 11 July 1941. Then the President by order dated 13 June 1942 declared that the office of the Coordinator of Information exclusive of the portion transferred to OWI should thereafter be known as the Office of Strategic Services. Therefore, the First War Powers Act is applicable to OSS as an agency whose predecessor was in existence on 18 December 1941.

(b) By the provisions of the First War Powers Act as above quoted, the President does have the authority to transfer a portion of OSS to the War Department and to transfer to the Secretary of War the functions of the Director of the Office of Strategic Services.

(c) The Secretary of War may exercise the powers granted to the Director of OSS in the National War Agencies Appropriation Act, 1946, provided that the funds are expended only for the purposes for which they were appropriated in said act.

6. The exercise of the power to certify vouchers for the expenditure of confidential funds calls for the highest discretion and judgment. It is certainly not a merely administrative function. It is a well recognized principle of the law applying to officers of the Government that where a discretionary power is granted to the head of a department it must be exercised by the head of the department or an assistant or

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other official authorized to act in place of the head of the department. Such a power cannot be delegated to a subordinate official (20 C.G. 27, 20 C.G. 779, 22 C.G. 1079). In the case of the power thus transferred by Executive Order to the Secretary of War, the power can be exercised only by the Secretary of War or Assistant Secretary or Under Secretary. Since OSS is no longer an independent agency, the person who occupies the office of the head of the head of the Strategic Services Unit must be considered for the purposes of this principle of law to be a subordinate official.

7. It is the opinion of this office that Executive Order No. 9621 legally transfers to the Secretary of War the authority granted by the National War Agencies Appropriation Act to the Director of the Office of Strategic Services to account for objects of a confidential nature solely on the certificate of the Director and that such a certificate would be a sufficient voucher for the amount therein certified. And it is our further opinion that this power to certify may be exercised only by the Secretary of War, an Assistant or Under Secretary of War and may not be exercised by the commanding officer of the Strategic Services Unit even if the Secretary of War were to attempt to specifically delegate such power.

25X1A9A

1st Lieutenant, JAGD

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COPY

Delegation of Authority, Reproduction

26 December 1945

MEMORANDUM:

TO: [redacted] 25X1A9A
Room 227 Administration Building

FROM: Office of General Counsel

SUBJECT: Statutory Authority for Printing by the Reproduction Branch

I. GENERAL BACKGROUND

Ordinary Government printing "Shall be done in the Government Printing Office, except such classes of work as shall be deemed by the Joint Committee on Printing to be urgent or necessary to have done elsewhere than in the District of Columbia for the exclusive use of any field service outside of said District." (44 USCA Section 111).

Section 354 of the United States Code specifically exempts the Supreme Court from provisions quoted above and directs it to employ any printer which it sees fit. The Court of Claims has ruled that the Section requires all executive officers of the Government to have all Government Printing done at Government Printing Offices except in cases otherwise provided by law. (Davis vs. U.S.; 59 Court of Claims 19).

The Attorney General has held that this Section does not include illustrations and engravings, maps or charts. (1891) 20 Op. Atty. Gen. 41.

Section 111 a, of Title 44, United States Code, permits the Public Printer to contract for work he is not able to produce at the Government Printing Office.

Section 111 b, authorizes the Veterans Administration to do printing and binding of equipment owned by the hospitals it uses for occupational therapy purposes.

From the above, it is clear that Congress recognizes the necessity for exceptions to the blanket rule in certain cases.

II. SPECIFIC AUTHORIZATION

The Appropriation Acts for the Office of Strategic Services contained the following provisions:

"For all expenses necessary to enable the Office of Strategic Services to carry out its functions and activities, including ...; purchase of, rental and operation of photographic, repro-

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duction, duplicating and printing machines, equipment and devices...; printing and binding; ..." (quoted from the National War Agencies Appropriation Act 1946).

The authority granted for the Office of Strategic Services to do any and all kinds of printing and reproduction is clear and unequivocal. It is stated in an Act of Congress and since Congress originally imposed the restrictions, it may make exceptions thereto.

III. CONCLUSION

It is, therefore, the opinion of this office that there is no question of the authorization for the Office of Strategic Services to engage in the printing it performed in the Reproduction Branch. However, in order to comply with all possible regulations, printing equipment was not purchased outright but was requisitioned from the Quartermaster Corps. In turn, the Quartermaster General cleared with the War Production Board. At the same time, General Donovan, then Director of the Office of Strategic Services, wrote to Senator Carl Hayden, Chairman of the Joint Committee on printing, stating the need for printing equipment and requesting only that the cost involved be properly reported.

This office has also been informed that the Senator informally telephoned to inquire of General Donovan whether any union labor question might be involved. The General assured him that as almost all the work was to be done by military personnel, no such question would arise.

Thus, the printing activities of the Reproduction Branch were not only specifically authorized, but were performed with the prior knowledge of all interested Government officials.

25X1A9A

Captain, JAGD
Acting General Counsel

LRH/tah

cc made 23 November 1951 - mw

Legal Decision
Vital Document

67

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CONFIDENTIAL

1 October 1946

MEMORANDUM

TO: 25X1A9A [redacted]
Executive for P&A

FROM: General Counsel

SUBJECT: Use of Motor Vehicles

1. The purchase and use of Government automobiles must have specific authority by statute or appropriation act. Such specific authority is given for purchase of automobiles for the use of the President, his Secretaries and the ten members of his official cabinet by Public Law 600, 79th Congress, 2 August 1946. The use thus authorized is for official purposes only, which the Act says shall not include transportation of officers and employees between their domiciles and places of employment, with certain minor exceptions.

2. The only exception which might be applied to an officer of this organization is the case of one engaged in field work, the character of whose duties make such transportation (i.e. to home and back) necessary, but these cases must be approved by the head of the department. "Field Officer" would not apply to one working regularly in the Washington or other permanent office. A proper assignment under this section might be for the use of an officer whose work required him to make confidential contacts or expeditions so that he might be assigned a cover car for official confidential business with the Director's approval.

3. By virtue of authority contained in War Department appropriations from which funds were made available to the Central Working Fund, there is authority to purchase, maintain, operate and repair vehicles exclusively for official purposes. This is the authority for operation of the regular motor pools. There is no authority for the assignment of cars for the personal use of the Director or any other officer of CIG.

4. As evidenced by the enactment of Public Law 600, close scrutiny has been maintained over the use of Government cars both by Congress and the General Accounting Office, and any violations of the restriction to official purposes would subject the official and agency involved to severe criticism. An official involved in such a violation is to be suspended from duty for not less than one month without compensation by the head of the department. This is a drastic enforcement provision and emphasizes the serious view taken of the problem. For your information, Public Law 600 and prior acts require that all motor vehicles acquired and used for official purposes shall have the full name of the executive department or branch conspicuously printed thereon. Cover cars registered in the name of an individual or corporation would, of course, be exceptions, and further exceptions under Budget Circular A-14 are being investigated.

LAWRENCE R. HOUSTON
General Counsel

LRH/mll 25X1A9A
cc: Mr. [redacted]

CONFIDENTIAL

25X1C4D

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FYI: Legal Decisions

SECRET

4 December 1946

MEMORANDUM TO: Chief, FBV

Subject: PROJECT NO. [ ] 25X1A2G

1. In connection with the financial arrangements proposed for your Project No. [ ] we wish to bring the following points to your attention for discussion with the individual concerned and for possible further consideration by the approving authorities. The project proposes that there be no salary paid, and an L&Q of $3600. In view of the fact that L&Q is defined as a special allowance over and above salary for positions outside the country it is, to say the least, unusual to propose L&Q without establishing a base pay. If, in the future inquiry were made into this arrangement from the income tax point of view, in our opinion, the proposal would be regarded as a subterfuge for camouflaging the reportable compensation as non-reportable allowances. In such case, not only would the individual be liable for tax penalties, but also doubt would be cast upon the proper administration of confidential funds by this unit. If, as suggested above, the L&Q arrangement were regarded as a subterfuge for hiding what was really compensation, the individual might also be faced with the fact that he was receiving dual compensation from the Government in contravention of the provisions of 5 USC 59(a) and 62.

2. There are, in our opinion, two possible ways of overcoming the legal difficulties outlined above. If the circumstances warrant, the ADSO may authorize representation allowances. It is our understanding that the policy has been to restrict these to situations similar to those for which representation allowances are given in other departments. This usually contemplates someone in the position of a chief of mission, or one otherwise placed in such a position that he must carry on a considerable establishment and considerable entertainment to maintain that position. We feel that a representation allowance should not be authorized unless circumstances somewhat as indicated above would justify it.

3. The alternative would be to make the total amount payable from Project [ ] fully accountable operational funds. There is, of course, no legal limit on the amount of

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operational funds that can be authorized for one project so long as the results justify the cost. Consequently, if the project is considered to be worth $4800 per year, it could be advanced entirely as operational funds and the individual would be briefed on the nature and content of the accountings he would have to submit for approval in accordance with Special Funds regulations.

LAWRENCE R. HOUSTON
General Counsel

LRH/mll

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16 December 1946

Legal Decisions

MEMORANDUM FOR: Executive for P&A

Subject: [25X1A5A1]

Real Estate (Acquis. & Disposal)

1. As you have noted, the General Accounting Office will not permit us to enter into the arrangement proposed by [25X1A5A1]. On reading the Comptroller General's opinion, we feel that all of his objections could be met one way or another except the point concerning the disposition of Government property. As the Comptroller notes, Government property cannot be disposed of without clear statutory authority. We were aware that we had no specific authority, but hoped he could read into the Surplus Property or other general acts, authority sufficient to cover this case. This, he states, he was unable to do, and consequently the defect is fatal to the proposition. Therefore, we believe this office could no longer bargain with Mr. [25X1A5A1] on any basis which would include passing of title to him.

2. In his last paragraph, the Comptroller General strongly suggests that acquisition of title to the entire property by the Government would be the proper solution to this problem. It appears most unlikely that Mr. Fowler would be willing to sell, although in view of the Comptroller's attitude, we believe an offer should at least be discussed with the owner. We also believe that condemnation is unlikely of success, and possibly not advisable as a matter of policy. However, the possibilities of condemnation should be explored and, with your approval, this office will discuss the legal aspects of condemnation with the proper officials of the Department of Justice and the Engineers.

3. The Comptroller's decision is being retained in the files of this office.

[25X1A5A1]

LAWRENCE R. HOUSTON
General Counsel

LRH/mll

Approved For Release 2005/03/15 : CIA-RDP67-01657A000100010001-5

Legal Decision (Cig)
Nat. + aliens Employment?

3 January 1947

MEMORANDUM FOR DEPUTY EXECUTIVE FOR PERSONNEL AND ADMINISTRATION

Subject: Appointment of Naturalized Citizens and Aliens

25X1A8A

1. Reference is made to the attached communication from Chief, [redacted] to the Assistant Director for Operations, dated 12 December 1946, concerning the above subject. It is pointed out in this memorandum that it is necessary for [redacted] to rely largely on naturalized citizens for certain languages, and, in a few instances, recruitment of aliens has been unavoidable. Such recruitment is based on the high requirements of [redacted] for linguist positions requiring not only native fluency in English and one or more foreign languages but also familiarity with political, economic and social backgrounds of the countries concerned.

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2. The Chief, [redacted] recommends that a waiver be obtained of restrictions against the appointment of foreign-born applicants to overseas posts, including aliens, with an understanding that alien employees will not have access to information classified above restricted. This matter was referred to this office with a request for an opinion as to the legality of such appointments.

3. The restrictions against employment of aliens by the Federal Government appear in numerous Appropriation Acts. The Independent Offices Appropriation Act of 1947, approved 28 March 1946, (Public Law 334, 79th Congress) provides in substance that, unless otherwise specified and until 1 July 1947, no part of any appropriation in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States whose post of duty is in the continental United States, unless such person (1) Is a citizen of the United States; (2) Is a person in the service of the United States on the date of enactment of this Act who, being eligible for citizenship, had filed a declaration of intention to become a citizen of the United States prior to such date; or (3) Is a person who owes allegiance to the United States. The above provisions are in Section 206 of the Act, and the Section further provides that the restriction shall not apply to citizens of the Commonwealth of the Philippines or to the nationals of those countries allied with the United States in the prosecution of the war. Mr. [redacted] has advised that all aliens whom he proposes to employ will have posts of duty outside the continental limits of the United States. Therefore, it would appear that there is no legal objection to the employment of these persons.

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4. In all cases of employment of aliens, there should be appropriate security investigations. In the cases of non-native-born Americans, i.e., naturalized citizens, there appears no legal obstacle to their employment by the Government. There would seem to be a question of policy involved as to whether CIG will employ either non-native-born Americans or aliens.

5. It is suggested that all appointments in the above categories be cleared with the Personnel Division before any negotiations are conducted with the prospective employees. It is believed that CIG has the necessary appointing authority without prior approval by the Civil Service Commission, in view of its Schedule A authority.

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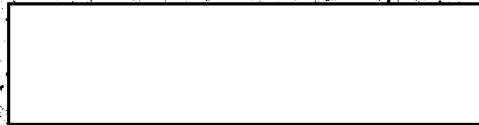

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cc:

JSW:mbt

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(Training) Legal Decision

CONFIDENTIAL

22 January 1947

MEMORANDUM FOR THE EXECUTIVE FOR PERSONNEL AND ADMINISTRATION

Subject: Payment of Tuition Costs

1. Reference is made to your memorandum to this office, dated 20 January 1947, concerning payment from funds available to CIG of the tuition costs of a CIG employee at a language school. It is stated the employee intends to make a career in the field of intelligence and desires to be sent to a language school for the purpose of obtaining instruction in the speaking and writing of the Russian language. You request an opinion whether CIG funds can be used for this purpose (a) when operational necessity exists, and (b) when operational necessity does not exist but where the employee is willing to take such instruction during other than official working hours.

2. You suggest that the War Department is authorized to pay for certain tuition costs from the funds available to that department. In the current Appropriation Act for the Military Establishment (Public Law 515, approved 16 July 1946), funds are appropriated for creating, maintaining and operating at established aviation and related schools courses of instruction for military personnel, including payment of tuition. This is one example of specific statutory authority granted to the War Department to pay such expenses. In addition, Section 7 of Public Law 515 provides, "Appropriations for the Military Establishment for the fiscal year 1947 shall be available for all necessary expenses in connection with the instruction and training, including tuition, not otherwise provided for, of civilian employees in and under the War Department and the Military Establishment."

3. Questions of this nature have been presented to the Comptroller General for rulings. In 23 Comptroller General 651, dated 3 March 1944, it is stated in effect that, while as a general rule appropriated moneys may not be used to send Government employees to schools or to take special courses of training, in view of the specific statutory authority granted by the Appropriation Act in question, there would be no legal objection in the case concerned to the use of the appropriation referred to for all necessary expenses incident to the attendance of designated officers or employees in the school, including tuition. Other rulings of the Comptroller General are consistent with the cited case and rely in each instance upon the granting of specific statutory authority to pay such expenses.

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No 77

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4. In view of the wording of the current War Department Appropriation Act, it is the opinion of this office that funds made available to CIG from the War Department appropriation may not be expended for the payment of tuition of CIG employees upon the authority contained in the Act to pay such expenses for civilian employees in and under the War Department and Military Establishment. Where authority is granted in other provisions of the Appropriation Act to pay tuition expenses, such authority is likewise limited to military personnel or civilian employees in and under the War Department and Military Establishment.

5. Therefore, this office is of the opinion that tuition expenses and other related expenses incident to the sending of a CIG employee to a language school may not be paid from the funds available to CIG where there is no operational necessity. If it administratively is determined that it is necessary to send a particular employee of CIG to a school to acquire certain qualifications or knowledge essential in the performance of his duties for CIG and which are not otherwise available, there would appear to be no legal objection to the payment of tuition costs and other directly related expenses from the unvouchered funds available to CIG. The appropriate use of funds for this purpose would be based on a determination that such expenditures are necessary in the operations of CIG and should be supported by the facts in each particular case.

6. It is the opinion of this office that the approval for the expenditure of unvouchered funds for such a purpose necessarily must come from the Director, since current Special Funds Regulations do not provide for the payment of such expenses.

JOHN S. WARNER
Assistant General Counsel

Del. of Authority dtd. 4 Feb. 1947

cc: ADO
ADSO

JSW:mbt

77

No 78

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Officers & Employees
Training

CONFIDENTIAL

Legal Decisions

27 January 1947

MEMORANDUM FOR EXECUTIVE FOR PERSONNEL & ADMINISTRATION

Subject: Delegation of Authority

1. Attached hereto is proposed Delegation of Authority to the various Assistant Directors for the approval of payment of tuition expenses from unvouchered funds for CIG employees. This Delegation of Authority was prepared by this office at the request of the Assistant Director for Special Operations.

2. The proposed Delegation of Authority is forwarded to your office for comments and suggestions.

JOHN S. WARNER
Assistant General Counsel

CONFIDENTIAL

JSW:mbt

78

No. 79

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Officers & Employees (Training)

27 January 1947

MEMORANDUM FOR ASSISTANT DIRECTOR FOR OPERATIONS
ASSISTANT DIRECTOR FOR SPECIAL OPERATIONS
ASSISTANT DIRECTOR FOR COLLECTION & DISSEMINATION
ASSISTANT DIRECTOR FOR REPORTS & ESTIMATES

Subject: Authority to Approve Payment of Tuition Expenses for CIG Employees from Unvouchered Funds

1. Authority is hereby delegated to the Assistant Director for the office concerned to approve the advance of funds, accountings for funds, and reimbursement of expenses for the payment of tuition costs and other directly related expenses, including necessary travel expenses incurred, where it has been determined by the Assistant Director for the office concerned that for reasons of operational necessity such employee should receive prescribed schooling.

2. Reference is made to the memorandum from the Office of General Counsel to the Executive for Personnel and Administration, dated 22 January 1947, concerning the payment of tuition costs. Determinations of operational necessity will be guided by the principles set forth in this memorandum. There shall be prepared in each case a full recital of the facts upon which the determination is based.

HOYT S. VANDENBERG
Lieutenant General, U.S.A.
Director of Central Intelligence

JSW:mbt

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Legal Decisions

6 February 1947 CONFIDENTIAL

MEMORANDUM FOR CHIEF, SPECIAL FUNDS SECTION Traveling Expenses (Transfer)

Subject: Travel at Government Expense

1. Reference is made to your memorandum to this office, dated 4 February 1947, raising certain questions concerning travel and transportation of family and household effects at Government expense of an individual who was transferred from another Government agency outside of Washington to this agency for duty in Washington.

2. You are advised that Public Law 600, 79th Congress, 2nd Session, approved 2 August 1946, contains the basic authority for the Government to bear the expenses of travel and transportation of the immediate family of an employee, including household goods and personal effects, where the employee is transferred from one official station to another, including transfer from one department to another, for permanent duty. This provision of Public Law 600 became effective 1 November 1946. This Act authorizes the President to issue certain regulations governing the payment of such travel and transportation expenses. Executive Order 9805, issued 25 November 1946, and effective 1 November 1946, prescribes these regulations. Section 4 of this Order deals with the payment of expenses. This Section provides in effect that the travel and transportation expenses allowable under the regulations, when authorized in the Order directing travel by an authorized official, shall be paid in the case of transfer from one official station to another, including transfer from one department to another, for permanent duty, but in no case in which the transfer is made primarily for the convenience or benefit of the employee or at his request. Section 4 further prescribes that, in the case of transfer from one department to another, such expenses shall be paid from the funds of the department to which the employee is transferred.

3. Accordingly, Special Funds is authorized to pay expenses of this nature in accordance with regulations prescribed in Executive Order 9805. It would appear that

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there will be few, if any, cases involving the Office of Special Operations, inasmuch as employees of S.O. on unvouchered funds normally will be dispatched overseas. However, there may be a few cases arising in the Office of Operations. We shall be glad to answer any questions you may have, or questions of your Certifying Officers concerning the propriety of paying such expenses when cases of this nature arise.

JOHN S. WARNER
Assistant General Counsel

JSW:mbt

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CONFIDENTIAL

17 February 1947

MEMORANDUM FOR THE EXECUTIVE FOR PERSONNEL & ADMINISTRATION

Subject: Transportation Expenses of Prospective Employees

1. Returned herewith is a copy of the proposed Project, dated 12 February 1947, which was enclosed in your memorandum to this office dated 13 February 1947. You request an opinion as to the legality of expenditures contemplated under this proposed Project.

2. The unvouchered funds available to this Unit may be expended only in accordance with Special Funds Regulations for necessary official confidential purposes (Section 2.0, 25X1 [redacted]. If it is determined administratively that the proposed expenditures are necessary to carry out the confidential operations of CIG, there would be no legal objection on the part of this office to such expenditures. It is the opinion of this office that under CIG regulations, an approval by the Projects Review Committee constitutes an appropriate determination that the expenditures are necessary for the confidential operations of CIG.

3. Reference is made to Paragraph III of CIG Administrative Order No. 42, dated 5 December 1946, which will be used as a guide by Special Funds Section in reviewing vouchers for expenditures under the proposed Project. The statement in the proposed Project that reimbursement requests will be approved by the Chief, Personnel Division, is in accordance with Special Funds Regulation No. 1 which authorizes the Chief, Personnel Division, to approve vouchers for expenditures within an approved project or allocation of funds.

JOHN S. WARNER
Assistant General Counsel

cc: 25X1A9A [redacted]

CONFIDENTIAL

JSW:mbt

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Legal Decisions

SECRET

25 February 1947

MEMORANDUM FOR ADSO

25X1A9A

Subject: Transportation of [redacted]

1. The attached memo from Acting Chief, FBT, was referred to this office by [redacted] at your direction. We wish to qualify paragraph 3 thereof as to reimbursement which may be authorized. 25X1A9A

2. A recent Comptroller General's decision has given complete rulings on the points involved. It may be administratively determined that travel by privately owned auto is advantageous to the Government (not merely more economical as was formerly the case). On such a determination by you, therefore, [redacted]s orders may authorize payment of mileage not in excess of 5¢ per mile, and per diem not in excess of $6.00 within the continental limits of the U.S. and $7.00 a day outside. The mileage recorded by [redacted] will be prima facie evidence of the mileage to be paid, but this is subject to check by official Government mileage tables and, in case of substantial discrepancy, the latter will govern. Per diem may be paid for the full period of official travel even though that period may be substantially longer than would have been the case in travel by common carrier. Under no circumstances will the total amount allowed be more than would have been allowed for first-class plus pullman (lower berth), plus per diem, if travel were performed by common carrier. 25X1A9A 25X1A9A

Class on Travel E.A.

LAWRENCE R. HOUSTON
General Counsel

LRH/mll

SECRET

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Legal Decisions

25 February 1947

Compensation (Differential)

MEMORANDUM TO CHIEF, FINANCE DIVISION

Subject: Payment of 25% Differential

1. Reference is made to your memorandum to this office, dated 17 February 1947, concerning the above subject. You question the legality of paying non-Americans a 25% differential in addition to a basic salary. You also state that the personnel concerned are located in the vicinity of [redacted] and are assigned to [redacted]

25X1A 25X1A8A

2. Your attention is invited to Departmental Circular No. 394, dated 3 December 1942, issued by the United States Civil Service Commission. Three Supplements have been issued to this Circular. The Circular refers to an Opinion of the Comptroller General, dated 23 November 1942, which was published as 22 Comp. Gen. 491. A summary of the Comptroller General's rulings is contained in the Circular. The main points are as follows:

(a) The heads of departments and independent establishments are required to adjust compensation of civilian positions in the field service to the grades and compensation schedules of the Classification Act of 1923, as Amended, provided such positions are not excepted by Statute from the Classification Act, where such positions are (1) in the territories and insular possessions of the United States, or (2) in foreign countries.

(b) It is permissible for the head of a department or independent establishment to fix administratively salary differentials upon a percentage basis for employees serving at any location outside of the States and the District of Columbia, if it is determined to be otherwise impracticable to recruit personnel for such positions provided the salary rate fixed for such employee does not exceed by more than 25% the salary rate authorized to be fixed for the same or similar position in the States and the District of Columbia.

(c) It is within administrative discretion to fix a salary differential at less than the maximum authorized.

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3. The Supplements to the Circular indicate that a policy agreement was drawn and signed by a number of Government agencies. Generally, the agreement provides that a uniform salary differential of 25% will be adopted where employees are occupying positions subject to the Classification Act of 1923, as Amended. Certain special conditions of application are listed. For example, (a) in Hawaii the differential was to be applied to all employees regardless of where recruited; (b) in Alaska the differential was to be applied only to personnel recruited from the States; and (c) in the Atlantic bases the differential was to be applied only to citizens of the United States. It is to be noted that this policy agreement is not binding on all Government agencies, but only the signatory agencies.

4. The entire question of payment of salary differential was discussed by this office with various members of the Civil Service Commission. It was pointed out by the Commission that, in the absence of specific statutes, the above-cited Decision of the Comptroller General, recognizing the administrative authority for fixing salary differential rates, is the basis upon which Government agencies presently are paying such differentials. It appears that the provisions of Title II of the Act of 26 November 1940, incorporated in the U. S. Code, Annotated, as Section 681 of Title 5, and Executive Order 8955, dated 1 December 1941, are no longer relied upon by the War and Navy Departments as the basis for salary differential since the Decision by the Comptroller General of 23 November 1942. The ruling in 23 Comp. Gen. 319, 1 November 1943, is pertinent, stating that:

> "The long existing administrative practice, recognized as proper by the decisions of this office, of paying a differential in compensation not to exceed 25 percent to employees with posts of duty outside continental limits of the United States - - * * * - - is general in scope and applicable regardless of the law pursuant to which the basic compensation of the employees is paid."

5. In view of the above, it is the opinion of this office that the question of paying salary differential is within the complete administrative discretion of the Director, CIG, provided the differential rate does not exceed 25%. The fact that an employee was residing at the place of employment outside the United States at the time he was hired, would not appear to affect legally the payment or non-payment of the differential. In addition, the fact that the employee may not be a United States citizen would not affect legally such payment or non-payment.

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6. In discussions with the Civil Service Commission, this office was advised that a Tentative Draft of a report, dated April 1946, was prepared by the Civil Service Commission and the Bureau of the Budget entitled "Pay Differentials and Related Compensation Problems in the Federal Service Outside the States". This Draft has been circulated to various agencies for comment. A copy of the draft report is being sent to this office and will be referred to your office for consideration when received.

LAWRENCE R. HOUSTON
General Counsel

25X1A9A

cc:

JSW:mbt

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SECRET

File Legal Decisions

4 March 1947

MEMORANDUM FOR CHIEF, FBX

Subject: Request for Advance of Salary

1. The request from [redacted] for an advance of salary, dated 26 February 1947, was referred to this office by [redacted] for opinion on the propriety of such an advance under Special Funds Regulations. The request had the recommendation of the Chief, Special Operations.

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2. It appears that the basic consideration is the establishment of a mission in a locality where no facilities exist which can be purchased or rented, and consequently the incumbent will have to take from this country complete equipment from food to furniture. This will require the immediate outlay of a considerable sum of money, stated in this case to be $4,000. It is our understanding that [redacted] is unable to afford personal funds in this amount at this time. It is our further understanding that [redacted] was willing to take an ordinary bank loan on his own responsibility from his bank, but that such a loan would have required the furnishing of information considered confidential by this office. Consequently, [redacted] was instructed by this office not to enter into such a transaction. If it is administratively determined that the project involved is a proper one for this office to undertake and it is further administratively determined that the expenditure for equipment is necessary to the project, there would be no legal objection to an operational advance in the amount requested. On the theory that security prevents obtaining the money in any other fashion, such an advance should be supported by the individual's personal note and an accompanying letter acknowledging the whole circumstances of the transaction and stating the manner in which re-payment would be made. Since the advance would be made in the interests of the official operations of this office, it should be considered an "operational" rather than a "personal" advance. The administrative determination in this case in within the discretion of the ADSO.

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Advance of Salary

SECRET

LAWRENCE R. HOUSTON
General Counsel

LRH/mll

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3 April 1947

SECRET

Transportation (Dependents)

MEMORANDUM TO CHIEF, SPECIAL FUNDS SECTION
Attention: [redacted] 25X1A9A

Subject : Travel Expenses

1. Questions have been raised by members of your Section concerning the propriety of reimbursing employees on travel expense vouchers for the cost of items for an employee and his dependents such as visa fees, passport photographs, inoculations, fees in connection with the issuance of passports, cost of birth certificates, and the premiums on bonds required of [redacted] 25X1C4D [redacted] 25X1C4D [redacted] 25X1C4D Paragraph 75 of the Standardized Government Travel Regulations provides for reimbursement to the employee for all of the above items, except for bond premiums, when authorized or approved by the administrative official.

2. Public Law 600, approved 2 August 1946, authorizes the payment of the expenses of travel of an employee and the expenses of transportation of his immediate family when transferred from one official station to another for permanent duty. As prescribed by Public Law 600, regulations have been issued by the President in Executive Order 9805, effective 1 November 1946. Section 2 of this Executive Order provides that travel expenses of the employee shall be allowed in accordance with the Subsistence Expense Act of 1926, as amended, and the Standardized Government Travel Regulations. Section 3 of Executive Order 9805 provides that the transportation expenses of the immediate family of an employee shall be subject to those provisions of the Standardized Government Travel Regulations which relate to transportation. It is to be noted that Public Law 600 authorizes the payment of travel expenses of civilian officers and employees, but limits the payment of expenses incurred by the immediate families to expenses of transportation. The limitation is further recognized in Executive Order 9805 in Section 3, which provides that the provisions of the travel regulations which relate to transportation are to be applicable to the transportation expenses of the immediate families of employees.

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3. A specific case involving the expenses of inoculation of the dependents of an employee was considered by the Comptroller General in 26 Comp. Gen. 157, 6 September 1946. It was held that necessary inoculation charges constitute a travel expense for which an employee is entitled to be reimbursed, provided the charges for inoculation be authorized by the proper official; however, such charges may not be considered as coming within the purview of the term "expenses of transportation". The Opinion goes on to state that the term "transportation" ordinarily connotes the allowance of common carrier fares only, and there is no basis for construing it so as to include inoculation charges. Since reimbursement for fees in connection with issuance of passports, visa fees, cost of photographs for passports, and cost of birth certificates, is allowable only under Paragraph 75 of the Standardized Government Travel Regulations, it is the opinion of this office that the reasoning applied by the Comptroller General to reimbursement for inoculation charges should extend to all of the above-mentioned types of fees. Therefore, under the present Special Funds Regulations, the types of expenses listed above are properly payable as travel expenses in accordance with Paragraph 75 of the Standardized Government Travel Regulations, where such expenses are incurred for the employee but reimbursement is not authorized where the expenses are incurred for the members of the employee's immediate family.

4. It is provided in 36 Stat. 125, 5 August 1909, that "The United States shall not pay any part of the premium or other cost of furnishing a bond required by law or otherwise of any officer or employee of the United States". The question of payment with Government funds of bond premiums of Government employees has been considered by the Comptroller General a number of times. It has been held consistently that such costs may not be paid by the Government.

5. It is stated in 15 Comp. Gen. 923, 21 April 1936, that the Statute quoted above prohibits the payment of premiums of bonds of officers and employees of the United States from public funds, and such prohibition operates directly upon the public agent as well as the public funds. In this particular case, the Government agency involved was authorized to determine its necessary expenditures without regard to the provisions of any other law governing the expenditure of public funds. This Opinion points out, as had the previous Opinions, that the giving of a bond is in the nature of a qualification for the particular position, and the expense of furnishing such bond is personal to the employee.

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6. In view of the above, it is the opinion of this office that payment of bond premiums from the funds available to this organization in the type of case set forth above is not authorized under existing regulations. Accordingly, no such request for reimbursement should be recognized, and, in the event reimbursement has been authorized previously, refunds should be secured from those individuals who have received such reimbursement.

JOHN S. WARNER
Assistant General Counsel

cc: 25X1A9A

JSW:mbt

SECRET

No. 99

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Legal Decision
Travel Expenses
(First Duty Station)

10 April 1947

MEMORANDUM TO ASSISTANT CHIEF, FISCAL SECTION

Subject: GAO Exceptions

1. Reference is made to your memorandum to this office, dated 4 April 1947, transmitting Notices of Exception from the General Accounting Office applicable to the travel accounts of [redacted] together with related papers. You state that you are attempting to reply to the Exceptions, and request assistance of this office in drafting a suggested reply to GAO.

25X1A9A

2. Based on the telephone conversations between you and the undersigned, it is our understanding that one of these cases involves an appointment where the employee had resigned her previous Government employment and returned to her home. She was appointed by this organization, and Travel Vouchers were processed in an attempt to reimburse her travel expenses from home to Washington. In the other case, you indicate that the employee in effect transferred from another Government agency to this organization. The travel involved was from her previous place of Government employment to Washington for employment by OSS. You state, in your opinion the facts are such that, if proper administrative actions had been processed, the travel expense would be payable in accordance with War Manpower Commission Directive No. 10, Paragraph 6, and Civil Service Departmental Circular No. 493, Supplement No. 2.

3. In the first case, it would appear that the employee is not entitled to reimbursement under any general legislation or regulation. As pointed out in our previous memorandum of 11 October 1946, this office concurs in the statement of the General Accounting Office that the language relating to .002 funds does not vest the administrative establishment with unlimited discretion in determining whether certain expenditures ordinarily required by law and regulation to be born by an employee should be allowed. Therefore, it is felt that any payment to the employee, in this particular case, would be in contravention of the general rule that an employee is required to place himself at his first duty station at his own expense. Consequently, it would appear to be the administrative responsibility of the organization to request repayment of the amount from the individual concerned, and not to press the matter further with the General Accounting Office.

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4. In the second case, it would appear appropriate to explain in further detail to the General Accounting Office that the travel expenses involved were in connection with the actual transfer of the employee from one Government agency to another. Since it is your opinion that had the proper papers been prepared at the time of appointment the travel expenses would have been properly payable under the Directive and Circular cited above, the GAO should be advised that .002 funds were used within the administrative discretion of the agency to carry out the purpose for which the funds were appropriated, admittedly using such funds in lieu of compliance with prescribed regulations. As pointed out by GAO in the case of [redacted], a detailed statement of facts was not furnished, and it is suggested that the complete facts be presented in your reply to the Exception concerning the second case.

25X1A9A

5. When the necessary information has been collected, upon which to base a reply to the Notice of Exception, we shall cooperate in drafting such reply upon your request. Your files, attached to the memorandum of 4 April 1947, are returned herewith.

JOHN S. WARNER
Assistant General Counsel

JSW:mbt

№ 101

Approved For Release 2005/03/15 : CIA-RDP67-01057A000100010001-9

Traveling Expenses (First Duty Station

General Counsel 4 April 1947

Assistant Chief, Fiscal Section

Transmitted herewith for your consideration are Notices of Exception,
25X1A9A applicable to the travel accounts of [redacted]
25X1A9A [redacted] together with related papers.

These cases were previously furnished your office for consideration of the holding of the General Accounting Office and were returned by you under date of 11 October 1946 with a statement indicating that you concurred in general with the General Accounting Office.

We are now attempting to make reply to the exceptions and in our search for justification of the expenses we have examined various regulations that apparently do not apply in these cases but which may be used to some extent in drafting replies. Attention is invited to War Manpower Commission Directive No. 10, Para. 6, of which provides as follows:

> "Any employee whose transfer is to be directed pursuant to this directive without the consent of such employee shall be afforded, prior to such transfer, a fair opportunity to present to the Civil Service Commission evidence that the proposed transfer is inequitable or will impose upon him an undue hardship. No employee shall, without his consent, be transferred to a position at a lower salary than he received at the time such transfer is directed, nor shall any employee, without his consent be transferred to a position beyond reasonable commuting distance from his home unless the department or agency concerned shall reimburse the employee for the cost of transporting himself, his immediate family, and his household goods, in accordance with Government regulations."

Attention is also invited to Civil Service Departmental Circular No. 493, Supplement 2, which provides in part: "-----The employee will, therefore, be entitled to payment of the transportation expenses specified whenever the Commission authorizes his transfer to a position beyond a reasonable commuting distance from his home under the provisions of section 2 (a) of War Service Regulation IX. Regulation IX will not serve as authority for payment of transportation expenses in any other case."

While it is true that neither of the employees fall within the categories
25X1A9A set out above, due to the fact that [redacted] was not transferred from

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25X1A9A another position and [redacted] was not transferred under authorization of section 2 (a) of War Service Regulation IX, it is thought that some explanation might be offered to allow payment in view of the fact that OSS .002 funds were charged.

Your aid in drafting a suggested reply to the General Accounting Office will be greatly appreciated.

Please return the complete files to this office with your reply.

25X1A9A
[redacted]
Assistant Chief
Fiscal Section

Enclosures

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SECRET

4 April 1947

MEMORANDUM FOR CHIEF, PLANS

Subject: Audit of Special Funds

1. We return herewith memorandum of 10 March 1947 from the Executive for P&A, and the draft memorandum of 19 March 1947 from the Chief, Special Funds, with our comments. The audit of Special Funds goes to the heart of the whole unvouchered funds problem, and we shall attempt briefly to state our analysis.

2. We cannot state too strongly our opinion that unvouchered funds have a unique status in our Government. All other funds of Executive Agencies are subject to the completely independent audit by the General Accounting Office. Congress has seen fit by law to relieve GAO of this function and place entire responsibility upon the head of the department concerned. Congressional hearings, the Comptroller General's decisions and our own opinions have consistently held that this responsibility cannot be delegated. The Director may establish controls or abolish all controls in his discretion, but he may not divest himself of his responsibility for the proper disbursement of Special Funds. This unique status, therefore, necessarily takes the Special Funds problem out of normal command and administrative channels, and renders the Director's appointee for control of Special Funds directly responsible to the Director. This special channel in turn necessarily separates Special Funds from all vouchered funds and their administration. In our opinion, it is proper that this separation be kept complete, both to avoid confusion as to the funds and the methods of handling, and to preserve the security essential to Special Funds operation. We feel that all control of the Personnel and Administration Branch over unvouchered funds ceases and should cease upon budget allocation from basic appropriations to the Special Funds Branch, in accordance with the decisions of the Projects Review Committee. This cessation of control, of course, in no way affects the routine administration by P&A of personnel within the Special Funds Branch.

3. There is no question as to the desirability of an audit of Special Funds. It is necessary to maintain the trust

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of Congress and GAO in the control of unvouchered expenditures, as a protection for those disbursing officers who might incur personal liability by improper expenditures and, most important, for the protection of the Director. An independent audit is patently impossible, and, since the power to audit necessarily involves the auditing office in the operations of the office audited, we believe that power should not be given to the P&A branch. In our opinion, it is the logical conclusion that the auditors must be specifically made responsible to the Director, must render their routine reports to his office, and must have authority to approach him directly on any point they believe requires his attention. They should not be put under the control of any Assistant Director, or of the Executive for Personnel and Administration, all of whom were given certain authorities to commit Special Funds by CIG regulations. Ideally, the auditors should be a part of the Director's Office, and act in his name. It is our understanding that it is desired not to attach additional personnel to that office. In view of this desire, we believe the same purpose can be achieved by placing the auditors in Special Funds for TO and normal administrative purposes, as members of the staff of the Chief of Special Funds, and with the above-mentioned written authority to have direct access to the Director's Office. We acknowledge that this proposal is an exception to normal administrative channels, but we feel that this is necessary in view of the unique situation created by statute, and that it would fulfill the legal requirements insofar as they can be met without independent outside audit.

LAWRENCE R. HOUSTON
General Counsel

LRH/mll

cc: Director's Office
ADSO
Exec. for P&A
Chief, Special Funds

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Contracts (Labor Stipulation)

Contracts Gen.
Legal Dec.
Chrono

Contracts Labor Stipulation

24 April 1947

MEMORANDUM TO HOWARD PRESTON

Subject: Proposed Inclusion of Eight-Hour Law Provision in General Contract Conditions

1. Reference is made to your memorandum to this office, dated 18 April 1947, concerning the above subject. If your office deems it advisable to include this provision in the "General Contract Conditions", we see no legal objection to such an inclusion.

2. The citation in the proposed provision should be changed to read as follows:

> Eight-Hour Law, 37 Stat. 137, 138 as amended by Act of 9 Sept. 1940, 54 Stat. 884.

JOHN S. WARNER
Assistant General Counsel

JSW:mbt

105

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chrono
Travel Expenses
Legal Dec. ✓

24 April 1947

CONFIDENTIAL

Transportation
(Dependents)

MEMORANDUM TO CHIEF, SPECIAL FUNDS

Subject: Reimbursement of Travel of Dependent of [redacted] 25X1A9A

1. Reference is made to your memorandum to this office, dated 18 April 1947, concerning the above subject. Attached to your memorandum, and returned herewith, is the claim submitted by [redacted] dated 17 April 1947. 25X1A9A

2. It appears that [redacted] marriage to a Foreign National was approved by the organization with the stipulation that his wife was to depart for the United States one month after his marriage. In view of this cable, it would appear that the wife's return to the United States prior to [redacted] return was directed by the organization. Therefore, such travel by the wife could be considered incident to [redacted] eventual return to the United States and for the convenience of the Government. Consequently, this office will have no objection to the payment of the cost of travel of [redacted] wife to the United States, provided it is otherwise in order for payment. 25X1A9A 25X1A9A 25X1A9A 25X1A9A

JOHN S. WARNER
Assistant General Counsel

CONFIDENTIAL

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Unpublished Decision of Comp. Gen., B-76955, 14 July 1948

FACTS:

25X1A6A

Wife returned from [ ] three months before her husband.

RULING:

"In all probability, her travel was performed with the expectation that [ ] assignment in [ ] would be completed at an early date. Hence, her travel to the United States, although performed in advance of the employee's travel for personal reasons, also may be considered as incident to the return of the employee."

25X1A6A
25X1A9A

CONCLUSION:

It was proper to pay for her travel expenses out of Government funds.

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cc: Chrono
Travel Expenses
Legal Dec.

12 May 1947

Traveling Expenses
(Personal Convenience)

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25X1A9A

MEMORANDUM TO MR. [ ]

Subject: Travel Expenses

1. Reference is made to your memorandum to the undersigned, dated 7 May 1947, enclosing rough draft of memorandum to Chief of Station concerning reimbursement of travel expenses for an emergency trip to the United States by an employee due to an illness in his family. The Chief of Station requests that the organization give every consideration to reimbursing the employee for the cost of transportation from his post of duty to the United States and return.

2. As explained to you in our telephone conversation of 7 May, there is no authority for the Government to pay travel expenses of this nature. The travel was not performed at the request of the Government and was not for the convenience of the Government, and, therefore, must be considered a personal expense to the employee.

3. A draft of proposed reply to the Chief of Station is enclosed. Your enclosures in your memorandum of 7 May are returned herewith.

JOHN S. WARNER
Assistant General Counsel

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DRAFT

SECRET

12 May 1947

Traveling Expenses (Personal Convenience)

TO: [redacted] 25X1A9A

FROM: FBT

SUBJECT: Reimbursement of Travel Expenses for [redacted] [redacted] Emergency Trip to the United States 25X1A9A

1. Reference is made to your memorandum of 23 April 1947, concerning the return of [redacted] to the United States because of his Mother's serious illness. You request the organization to give every consideration to reimbursing [redacted] for the cost of transportation from his post of duty to the United States and return. Your request was referred to the appropriate office for decision. 25X1A9A 25X1A9A

2. We are advised that there is no authority for payment of travel expenses of this nature. In order for travel expenses to be borne by the organization, the travel must be performed upon orders and for the convenience of the organization. [redacted] travel was not for the convenience of the organization and, therefore, must be considered personal. All expenses in connection with such travel will be considered personal and must be borne by [redacted] It follows that no per diem will be payable for this period. For your information, we have been informed that the period from the date [redacted] left his post of duty until he returns to his post of duty must be charged to his annual leave, since he cannot be considered in a normal duty status. 25X1A9A 25X1A9A 25X1A9A

3. [redacted] ability and value to our work deserves great consideration in general, and we should like to help him in whatever way possible in his present misfortune. However, there is no alternative to the policy set forth above. 25X1A9A

Personal Travel Ex.

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28 May 1947

MEMORANDUM TO CHIEF, CONTRACT UNIT 25X1A6A

Subject: Proposed Construction at [redacted]

1. Reference is made to your memorandum to this office, dated 26 May 1947, concerning the above subject. You enclosed a copy of the plans of the building, numbered 519-11, which is returned herewith.

2. You state that you are negotiating for a war surplus building now located at [redacted] Apparently, the building is of a temporary type, since you propose to move the building and erect it at [redacted]. You request clearance from this office for the purchase and erection of this building, since it will be placed on leased land. Reference is made to our memorandum to [redacted], dated 28 April 1947, in which various opinions of the Comptroller General were discussed concerning erection of buildings on leased premises.

25X1A6A 25X1A6A 25X1A9A

3. The determination of what type temporary or prefabricated building is to be erected at [redacted] is a matter for administrative determination. Also, the approval of the expenditures in connection with the purchase and erection of such temporary or prefabricated building is a matter for administrative determination. If the purchase, moving, and erecting of the building, proposed in your memorandum of 26 May 1947, is determined by your office in conjunction with the using Branch to be necessary and desirable, this office will have no legal objection to the expenses involved, and, in accordance with the opinions of the Comptroller General, it would not appear that such expenses would be within the purview of the provisions of the Economy Act (40 U.S.C.A. 278a). It is suggested that your office prepare for the record a memorandum substantiating the administrative determination that such building is necessary to carry out the purposes of authorized activities, keeping in mind the possibility of using quonset huts or other types of buildings which possibly could be secured from War Assets Administration or other Government agencies at no cost or with reimbursement.

25X1A6A

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4. This memorandum is not classified, since the basis for classification in our memorandum of 28 April 1947 is not present.

JOHN S. WARNER
Assistant General Counsel

JSW:mbt

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Deputy Executive for Personnel and Administration 16 June 1947

General Counsel

Private Telephone Charges

Attached is Voucher No. 219628 and a copy of memorandum of 18 March 1947 from the Chief, Finance Division to the Executive for Personnel and Administration. As noted in that memorandum payment of these c harges constitutes illegal payment as maintenance of a telephone in a private residence can in no sense be considered a government obligation.

You will note that on Page 9 of the billing which supports the enclosed voucher two charges are stated to be for residence of Colonel Wright and residence of General Vandenberg. These entries speak for themselves as improper charges to the government. This and the previous vouchers are due for audit according to present plans during the week of 23 June 1947.

In view of the fact that payment of these items has been made against expected reimbursement by the persons concerned exception on these items would reflect seriously on the administration of Finance Division unless payment is received prior to audit.

LAWRENCE R. HOUSTON
General Counsel

Attachment

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Legal Dept
Orig
[handwritten initials]

17 June 1947

MEMORANDUM FOR THE CHIEF, SPECIAL FUNDS

Delegation of Authority

Subject: Approvals Required for Disbursements which are not in Accordance with Special Funds Regulations

1. Reference is made to your memorandum to this office, dated 3 June 1947, in which you request clarification of the manner in which expenditures, which are beyond the scope of Special Funds Regulations [redacted] must be approved. It appears that two questions are involved:

(a) Where a proposed expenditure is not in accordance with existing Special Funds Regulations, must the Director, CIG, approve such disbursements?

(b) If the Director's approval is required, must it be in writing and signed personally by the Director, or may such approval be in the form of written memoranda from other individuals who state that the approval of the Director has been granted or who sign "For the Director"?

2. In order to present clearly the situation, it is deemed desirable to outline the manner in which Special Funds are made available to CIG for expenditure. By letter dated 30 July 1946, signed by the members of the National Intelligence Authority, the Secretary of the Treasury and the Comptroller General were requested to establish a Working Fund available to the Director of Central Intelligence. With approval of the Treasury Department and the Comptroller General, a Working Fund, War, General, 1947, was constituted and assigned Symbol No. 2173900. On 5 September 1946, a letter was addressed to the Comptroller General, in which it was stated:

"We now on behalf of the Departments we represent, and in our capacity as members of the National Intelligence Authority, authorize the Director, subject to policies established by the National Intelligence Authority, to control, supervise and administer this

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Working Fund with full powers in respect thereto as would otherwise have been exercised by us over the funds contributed to the Working Fund by our respective Departments, including the powers and authority granted by the Military Appropriation Act, 1947, and the Naval Appropriation Act, 1947, approved July 8, 1946 [Public Law 492 - 79th Congress], pertaining to certificates of expenditures and the determinations of propriety of expenditures."

That letter, granting such powers to the Director of Central Intelligence, was signed by the members of the National Intelligence Authority, including Dean Acheson, Acting Secretary of State; Robert P. Patterson, Secretary of War; James Forrestal, Secretary of the Navy, and William D. Leahy, Personal Representative of the President on N.I.A. No question has been raised by the General Accounting Office, or any other Government Agency, concerning the authorities thus granted to the Director of Central Intelligence.

3. The unvouchered funds made available to CIG for the 1947 fiscal year were taken from the sum appropriated for the military establishment by the Military Appropriation Act of 1947, approved 16 July 1946. A portion of the unvouchered funds was taken from the section "Contingencies of the Army", the language of which provides:

"* * * payments from this Appropriation may, in the discretion of the Secretary of War, be made on his certificate that the expenditures were necessary for confidential military purposes."

The remainder of the unvouchered funds was taken from the Atomic Service Section, which provides in part:

"That the official in charge may expend sums from this Appropriation * * * for objects of a confidential nature and in any such case his certificate as to the amount of the expenditure and that it is deemed inadvisable to specify the nature thereof, shall be deemed a sufficient voucher for the sum therein expressed to have been expended."

4. In view of the authorizations granted to the Director of Central Intelligence by the three Secretaries and the acceptance

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of such grant of authority by the Comptroller General, it is the opinion of this office that the Director of Central Intelligence is in effect constituted a head of an independent agency or executive department, and, with respect to the funds granted under the section "Contingencies of the Army", may execute the certificate required of the Secretary of War. Further, it is the opinion of this office that with respect to the funds made available to CIG from the Section "Atomic Service", the Director of Central Intelligence is authorized to expend sums for objects of a confidential nature, and execute the certificate specified therein and required of "the official in charge".

8. In order to administer the funds granted to the Director of Central Intelligence by the actions of the three Secretaries and the Military Appropriation Act of 1947, the Director of Central Intelligence has prescribed regulations under which unvouchered funds may be expended. Expenditures which are not in accordance with the prescribed regulations may not be made, and the regulations state specifically in Section 2.G:

> "Unvouchered funds may be expended only in accordance with CIG regulations for necessary official confidential purposes."

Therefore, any expenditure of unvouchered funds which is not in accordance with the regulations prescribed by the Director is illegal and improper.

6. To determine whether the Director of Central Intelligence, or an official acting for him, must approve expenditures which are not in accordance with the regulations, we have examined a number of decisions which are pertinent. The opinion of the Assistant Comptroller General, dated 21 May 1941 [20 Comp. Gen. 787], concerns the authority of subordinate officials to approve claims by signing the document evidencing a determination "By Direction" or "By Order" of the Secretary of War. In this case a statute was involved which specifically conferred upon the Secretary of War the authority to examine into, ascertain, and determine the value of lost or damaged property

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and provides that the determination made by the Secretary of War shall be final and conclusive. The opinion goes on to state:

"The action of the Secretary of War is required by the statute to be taken on each claim and the assignment to some subordinate official of the duty of approving or disapproving claims of this character and of signing the document evidencing his determination 'By Direction' of * * * the Secretary of War, * * * is a delegation of a jurisdiction thus reposed in the Secretary of War by the Act."

The mere recitation that such action was done by a subordinate official "By Direction" of the Secretary of War was not considered evidence that the Secretary of War personally exercised the judgment or action required under the statute, and the Assistant Comptroller General stated such a settlement of the claim could not be accepted. In 16 Comp. Gen. 695, 28 January 1937, the general principle was summarized as follows:

"Where, as in this case, the law requires in specific terms the certification by the head of the department, the authority to certify may not be delegated. The action may be only by the Secretary of the Treasury or an Under Secretary or Assistant Secretary authorized by law to perform any duty the Secretary may perform."

In 21 Comp. Gen. 921, 10 April 1942, the Comptroller General states he is not authorized to waive statutory provisions specifically requiring authorizations or approvals by heads of departments. Consequently, the approval by the Adjutant General "By Direction of the Secretary of War" may not be accepted as meeting the statutory requirements, since it is understood that such signing would not be preceded by an actual determination by the Secretary of War in each instance.

7. The propriety of a purported approval and ratification by the head of a department of an action done by a sub-

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ordinate official, which by statute was required to be done in the discretion of the head of the department, is discussed in 22 Comp. Gen. 1083, 10 June 1943. That decision quotes a previous decision [14 Comp. Gen. 698, 18 March 1935]:

"* * *when a statute vests in a board or other Federal agency discretion in the use of appropriated funds, such discretion properly may be exercised only in advance of the incurring of the obligation, as approval after an expenditure has been incurred does not constitute the exercise of discretion in the use but a condoning of what has already been done. This does not meet the requirements of the laws * *."

It is pointed out in the opinion that the decisions have consistently held that, when a statute confers statutory authority upon a given person, the authority must be exercised by that person alone and in advance of the incurring of the obligation. The general rule is stated that ratification of a particular act may be made by anyone in whose behalf such act has been done only if he could have given authority to do the act in the first instance and if he still has power to do so at the time of ratification. In other words, one who lacks authority to delegate the performance of acts which he himself has power to perform cannot ratify such acts when done by another who has no such authority.

8. The authority of the deputy or assistant head of a department or independent establishment to serve as the alter ego and to perform functions which ordinarily require the discretion of the head of the department (and hence not delegable to subordinates) has been considered by the Comptroller General at various times [20 Comp. Gen. 27, 18 July 1940; 20 Comp. Gen. 779, 14 May 1941]. Such a point was presented in McCollum vs U.S., 17 C. Cls. 92 (1881) in which it is stated:

"While I do not find any specific statutory authority for Assistant Secretaries of State to act in lieu of the head of the department in matters of discretion vested in such head, the title and nature of the position have generally been held to authorize assistant secretaries of the various departments to assist the head of the

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department in all matters requiring his personal attention or discretion and to act in lieu of the Secretary of the department when authorized by him so to do."

9. It is the opinion of this office that the manner in which unvouchered funds shall be spent is a responsibility vested in the person of the Director of Central Intelligence. His discretion may not be delegated to a subordinate official. The approval of expenditures which are beyond the scope of the prescribed regulations is in effect the laying down of a new regulation. Consequently, such approval must come from the Director of Central Intelligence, and such expenditure must be authorized in advance. In other words, an expenditure which has been made, or an obligation incurred which is beyond the scope of the regulations, would be a proper disbursement only with the prior approval of the Director of Central Intelligence. The approval of the Director, in view of the above decisions, must be in writing and signed personally by the Director. Therefore, the answer to question (a) of paragraph 1 is yes. The answer to question (b) of paragraph 1 is that the authorization must be in writing and must be signed personally by the Director, or by the Deputy or Assistant Director authorized by the Director to act for him in his absence or incapacity. In the latter event the title "Acting Director" should be used.

10. This office is available at all times to render assistance to you and your staff in the administering of the Special Funds Regulations. Specifically, we shall furnish, upon request, opinions concerning the propriety of particular expenditures, i.e., whether the item in question is a proper disbursement in accordance with the prescribed regulations.

LAWRENCE R. HOUSTON
General Counsel

JSA/mll 25X1A9A

cc: [redacted]
Exec. for P&A

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19 June 1947

Legal Decisions

MEMORANDUM FOR CHIEF, SPECIAL FUNDS

Subject: [ ] 25X1A9A

1. Returned herewith is personnel action request for promotion of the above subject. This request (in three copies) was forwarded by your memorandum to this office, dated 5 June 1947. You state that the Personnel Review Committee disapproved the request, but the minutes of the Personnel Review Committee show the disapproval was overruled by the Assistant Director, CIG. You inquire whether disbursements effected as a result of this personnel action request would constitute legal payment. It is indicated from the papers attached that the action was addressed to the Personnel Review Committee as of 23 May 1947, indicating the effective date of the promotion as 1 March 1947. This office on several occasions has advised members of the Personnel Review Committee concerning the propriety of retroactive personnel action requests, including promotions.

2. The Comptroller General has ruled consistently that a salary increase may not be retroactive and can only be effective upon the date on which administrative action is taken [25 Comp. Gen. 601, 20 Feb. 1946]. That opinion states:

> "It has been held in numerous decisions of this office that administrative changes in salary rates may not be made retroactively effective in the absence of a statute specifically so providing, and that the effective date of salary changes resulting from administrative action exclusively is the date on which the action is taken by the administrative official vested with proper authority." (Underscoring provided).

There are many decisions of the Comptroller General to the same effect which we feel unnecessary to cite or quote here.

3. It is the opinion of this office that in this case the promotion of [ ] from P-4 to P-5, effective 1 March 1947, at this time is not authorized and any payments effected as a result of such promotion would be illegal and 25X1A9A

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(Comp) - Wage Board Employees - Effec. date of Wage Increases
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improper. In your memorandum of 5 June 1945 you inquire further as to what action and/or approvals are necessary to establish the proposed action as a legal one. In view of the decisions, it appears there is no action or approval which could establish a retroactive promotion as authorized or could legalize the disbursements resulting therefrom.

4. Although the Director, CIG, may authorize expenditures for objects of a confidential nature for which no accounting is required, there must first be an obligation in order for the Director to approve the expenditure. However, in this type of case where the disbursement would be, in effect, a mere gratuity, it is believed that the approval of the Director, CIG, for such a disbursement would not be appropriate.

LAWRENCE R. HOUSTON
General Counsel

LRH/mll

cc: Col. Edwards
[ ] 25X1A9A

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25X1

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Legal Decisions
Traveling Expenses (Army officers)

1 July 1947

SECRET

MEMORANDUM FOR [illegible]

Subject: Approval of Commercial Travel for Captain [redacted] 25X1A9A

1. Reference is made to your memorandum to this office dated 29 May 1947, concerning the above subject. Reply to your memorandum was delayed in the hope that you would be able to develop additional facts concerning the situation. Apparently, however, the full facts are set forth in your memorandum of 29 May 1947.

2. Special Funds is authorized to pay travel expenses only in accordance with regulations prescribed by the Director, CIG. Normally, travel expenses of Army personnel may not be paid from Special Funds. In specific cases where preservation of security or operational necessity requires travel by military personnel via commercial facilities, Special Funds may pay such expenses provided ADSO has approved reimbursement of such expenses from Special Funds in advance.

3. It does not appear that the expenses of commercial travel were authorized in advance by ADSO on the basis of security or operational necessity. Further, the cable traffic concerning the matter indicates the question of such expenses was considered, and approval for payment by this Unit was not granted. Consequently, there is no authority for Special Funds to reimburse Captain [redacted] 25X1A9A [redacted] 25X1A9A for the expenses of his travel via commercial facilities.

4. The voucher and duplicate signed by [redacted] 25X1A9A [redacted] 25X1A9A, together with travel order dated 29 April 1947, transmitted with your memorandum of 29 May 1947, are returned herewith.

JOHN S. WARNER
Assistant General Counsel

cc: [redacted] 25X1A9A

SECRET

JSW:mbt

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Legal Dec.

8 July 1947

MEMORANDUM FOR THE EXECUTIVE OFFICER, OSO

Subject: Telegram to [redacted] 25X1A9A

1. This is in answer to your memorandum of 7 July on the above subject. We find that we are unable to agree fully with your arguments for charging this expense to the Government. Particularly, in paragraph 3, you argue that it was necessary for us to serve as "cut-out" from time to time. We maintain that where we merely act as intermediary for personal messages, whether for security reasons or otherwise, the expenses should be borne by the individual concerned.

2. In the absence of obvious subterfuge or misuse this office will never question an administrative ruling on security aspects of operations. Consequently, we accept your statement that the subject telegram was not part of correspondence between the persons involved, but was a separate operational message, intermediate to ~~their corres-~~pondence, which was required in order to have [redacted] 25X1A9A cease her efforts to get in touch with her husband. On this ground, and this ground only, there is no legal objection to transferring this charge for payment by unvouchered funds. As noted above, this in no way sets a precedent for passing of personal messages.

3. We wish to point out that an item of this sort tends to cast doubt on the administration of our unvouchered funds. The message was, on its face, purely personal, and even on the grounds given in paragraph 2 above, we consider it a border line case. If a message is truly operational, we believe it can normally be phrased as such, in which case it can be paid from vouchered funds when, as here, the message itself did not contain classified information.

LAWRENCE R. HOUSTON
General Counsel

LRH:emj

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Legal
16 July 1947

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cc: Traveling Expenses (Transfer)

MEMORANDUM FOR CHIEF, PERSONNEL DIVISION, OSO

Subject: [redacted] 25X1A9A

1. Reference is made to your memorandum dated 9 July 1947 concerning the above subjects. The memoranda from Chief, FBT, dated 8 July 1947, are returned herewith. You request information whether per diem payments to the subjects pending departure to their overseas stations would be appropriate under existing regulations.

2. It appears that both subjects were scheduled to depart for their overseas posts on 7 July 1947, and, due to circumstances beyond control of the individuals, it has been necessary to assign them to duties here in Washington on a temporary basis. The Chief, FBT requests that [redacted] [redacted] be placed on per diem effective 8 July 1947 and that [redacted] be placed on per diem effective 1 July 1947, both per diems to be terminated upon departure from Washington. 25X1A9A 25X1A9A 25X1A9A

3. Although it does not appear from the attached memoranda or your memorandum, we have been informed that both subjects were employed by CIG on 30 December 1946 by vouchered funds on a departmental appointment. Subsequently, both individuals resigned on 3 May 1947, apparently to accept an unvouchered position in CIG. Therefore, from 30 December 1946 until 3 May 1947, the permanent official duty station of both individuals was Washington, D. C. In view of this fact, Washington, D. C. may not be designated as the temporary duty station for the purpose of paying them per diem where, as in this case, there has been no physical departure from Washington.

4. Payment of per diem to the subjects under these circumstances is not authorized under existing regulations. While it may be true that both individuals have been subjected to additional financial burdens due to the change of circumstances, special funds may not be used where the payments are not appropriate under the regulations.

JOHN S. WARNER
Assistant General Counsel

SECRET

cc: [redacted]
JSW:mbt

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Legislation (CIA)

29 July 1947

MEMORANDUM TO THE DIRECTOR

Thru: ICAPS

Subject: Memorandum on IAB Procedures - 25 July 1947

1. This office has been requested to give its opinion on the legality of the provisions of Paragraph 2 and 3 of the subject memorandum. Paragraph 2 provides for distribution of recommendations by an IAB member and that a vote be taken thereon. Paragraph 3 provides that recommendations, originating by any IAB member in which at least one other IAB member concurs, will be forwarded by the Director of Central Intelligence to the National Intelligence Authority, with his comments and those of other IAB members.

2. On Paragraph 2 alone, there is no question, as the IAB could not perform properly its advisory functions without the full opportunity to consider recommendations of its individual members. Paragraph 2 and 3 taken together, if followed literally, would compel the Director to submit recommendations with which he might disagree, to the NIA, if two or more members of the IAB concurred. Proposal of such compulsion requires a review of the responsibilities of the Director, and of the functions of the Advisory Board. At present these are set forth in the Presidential Directive of January 22, 1946, a document which does not have statutory authority, but has, upon the Executive Departments, the force and effect of law, and is therefore, subject to the normal rules of statutory interpretation. Without going in detail into the legal doctrines of such interpretation, it may generally be said that a law, or similar directive, is taken to mean exactly what it says, and only in the case of complete ambiguity, or of facts on which a distorted construction is proposed, is there need to go behind the final document in an attempt to determine whether the intent of the law given was other than appears on the fact of the document.

3. It appears to us that the language of the present Presidential Directive is clear and non-controversial, and it is assumed that the wording was well considered when written. Thus, Paragraph 2, states that a Central Intelligence Group shall, under the direction of a Director of Central Intelligence, assist the NIA, and that the Director shall be responsible to the NIA. Paragraph 3 /a and b/

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provides that subject to the direction and control of NIA, the Director shall accomplish the correlation and evaluation of intelligence relating to the national security, shall plan for the coordination of the activities of the Departments relating to national security and shall recommend to the National Intelligence Authority the establishment of policies and objectives to assure the most effective accomplishment of the national intelligence mission.

4. It seems clear that these paragraphs place in the Director, sole responsibility for correlation of intelligence, coordination of activities and recommendations to the NIA. It is obvious that departmental members of NIA act in a dual capacity, and in their capacity of Department Heads, must give heed to the recommendations and wants of their respective departments. It seems equally obvious however, that when they sit as the NIA, their attention focuses on the Director alone, for his recommendations on central intelligence matters. Any other concept would appear to be incompatible with the theory of central intelligence developed in the last few years, and which Congress has recently approved. The heart of this theory is placing on one point the responsibility for foreign intelligence affecting the national security, in such a way that responsibility could not be shifted from that spot to any other agency or group. To give a Board authority to compel recommendations over the Director's objection, would provide a basis for shifting responsibility from the Director to the Board. Since, as General Marshall pointed out recently, action by a Board is generally the action of compromise, the responsibility for such action falls nowhere.

5. It appears that this situation was clearly recognized by the President in establishing and assigning functions to the IAB. Paragraph 7, of the Presidential Directive, provides for the membership of the Board and states only that the Director shall be advised by such Board. We find some legal interpretation of the word "advise." Black's Law Dictionary, Third Edition 1933, definition of "advise", is "To give an opinion or counsel, or recommend a plan or course of action." It further cites the following court interpretations:

> "This term is not synonymous with "persuade" /Wilson v. State, 38 Ala. 411/ or with "direct" or "instruct." Where a statute authorizes the trial court to advise the jury to acquit, the court has no power to instruct the jury to acquit. The court can only counsel, and the jury are not bound by

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> the advice. People v. Horn, 70 Cal. 17, 11 P. 470. "Advise" imports that it is discretionary or optional with the person addressed whether he will act on such advice or not. State v. Downing, 23 Idaho, 540, 130 P. 461, 462; Brown v. Brown, 180 N.C. 433, 104 S.E. 889, 890."

It seems clear therefore, that the IAB was to have no direct relationship, as a body, to the NIA, nor is the Director, in any way bound by their advice. He will, however, of course give due consideration to the merit of its content. Our conclusion is that establishment of the procedures in Paragraphs 2 and 3 of the IAB procedures, dated 25 July 1947, would be an unauthorized assumption by the IAB of responsibility vested in the Director by law. Conversely, agreement by the Director to exercise by the IAB of his recommending functions, would be an unwarranted divesting of assigned responsibility and, moreover, would not relieve him of accountability for results. He might, in such case, be the channel for policy recommendations with which he disagreed, but for which he would be held responsible.

6. Our opinion is not changed, and on the contrary, is confirmed by consideration of the Merger Bill, known as the National Security Act, of 1947. The sections pertaining to Central Intelligence provide [Sections 105 (d)] that it shall be the duty of the agency to advise the N.S.C. on intelligence activities of departments and agencies relative to the national security, to make recommendations to the President through the N.S.C., for coordination of intelligence activities relating to the national security and to correlate, evaluate, and provide dissemination of such intelligence. As emphasized by underlining, Congress uses a more positive word than "responsibility" and states it shall be the "duty" of the Agency to perform the functions outlined. The Head of the Agency is of course solely responsible for the performance of the Agency's duties. This is completely in accord with the intent of Congress, expressed so often in hearings and on the floor, that the Executive Branch, the Legislature, and through them the country, have one place to go for intelligence related to the National security, with no chance for evasion or excuse by the responsible officer.

7. There is no provision for the IAB in the Act and it is apparent that the protection of departmental intelligence called for in the proviso of sub-paragraph 105 (d) (3) is the responsibility of the N.S.C. By Paragraph 105 (f), the NIA and CIG cease to exist, and in effect the

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Presidential Directive of January 22, 1946, is superseded and voided by the expression of the will of Congress. This, too, was repeatedly affirmed in hearings and debate on the Merger Bill, i.e. that functions of the Executive Branch should be established by Congress, not by Executive order. It would appear that presently the IAB has no legal status, and if it is to continue to function, it should do so only on direction from the N.S.C. as a result of a request from, and recommendations by, the Director of Central Intelligence.

LAWRENCE R. HOUSTON
General Counsel

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25 July 1947

IAB PROCEDURES

1. All recommendations envisaged by paragraph 3 of the President's letter of 22 January 1946 will be submitted by the Director of Central Intelligence to the Intelligence Advisory Board in writing, accompanied by copies of such papers or statements with which the Director of Central Intelligence may contemplate accompanying the recommendations upon presentation to the NIA. These recommendations will have attached a voting slip providing opportunity for:

a. concurrence or non-concurrence;

b. comment;

c. request for an IAB meeting to express oral advisory opinion.

Voting slips will be returned to the Secretary, NIA, within seven working days after receipt. If any Intelligence Advisory Board member so requests, an Intelligence Advisory Board meeting shall be called promptly by the Director of Central Intelligence. If the IAB proposes to refer the recommendation to a special study group, or otherwise to delay the submission of the recommendation to the NIA, and if the Director of Central Intelligence considers such delay inadvisable, he shall give the IAB members seven working days for the submission of any desired statement of non-concurrence. The basis of which will accompany the recommendation to the NIA.

2. The Secretary, NIA, shall circulate to IAB members any recommendations, proposed directives, papers, etc. which an IAB member may originate for consideration by the Director of Central Intelligence and the Intelligence Advisory Board. Each shall be accompanied by a voting slip providing opportunity for:

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a. concurrence or non-concurrence;

b. comment;

c. request for an IAB meeting.

3. Recommendations which any IAB member may originate and in which at least one other IAB member concurs will be forwarded by the Director of Central Intelligence to the NIA, together with the comments of the Director of Central Intelligence and the other IAB members. Opportunities for comment will be in accord with the procedures set forth in paragraph 1 above.

4. All implementations envisaged by paragraph 3 of NIA Directive No. 1 will be submitted by the Director of Central Intelligence to the Intelligence Advisory Board in writing, accompanied by a voting slip providing opportunity for:

a. concurrence or non-concurrence;

b. comment;

c. request for an IAB meeting to express oral advisory opinion.

Written comment by any IAB member, after consideration by the Director of Central Intelligence, will be filed by the Secretary, NIA with the file copy of the related implementation. Oral comments will be fully spread on the minutes of the IAB meeting, if held. Any implementation modified by the Director of Central Intelligence as the result of IAB advisory opinion will be distributed by the Secretary, NIA to the IAB. The decision to hold subsequent IAB meetings, or otherwise to delay the issuance of any proposed implementation, rests with the Director of Central Intelligence.

5. Unless otherwise directed by the NIA, the Secretary, NIA shall circulate to the IAB copies of all agendas, minutes, decisions, and directives approved or issued by, or in the name of, the NIA.

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Legal Dec

31 July 1947

Contracts
(Construction of)

SECRET

Contracts (Construction of)

MEMORANDUM TO FBV

Subject: FBV Project No. 51

1. Attached hereto is memorandum from Special Funds Section to FBV, dated 15 July 1947, through this office, concerning the above subject. Attached to that memorandum are pertinent vouchers and papers. It is pointed out that subject Project was activated during a period in which project procedures were not clearly defined. Consequently, it is not entirely clear what the complete terms of the Project were and what obligations were assumed by the organization.

2. The questions involved are itemized by [redacted] in his memorandum of 15 July, and we shall comment on them in that order. 25X1A9A

(a) In view of the letter of appointment issued [redacted] dated 28 August 1946, and accepted by him, there appears to be no question concerning salary rate. Further, the letter of appointment provides for annual and sick leave in accordance with regulations. 25X1A9A

(b) L&Q is specified in the excerpts of Projects furnished Special Funds as $1,200.00 (yearly -- approximately). However, there is a further notation that L&Q was to be in accordance with regulations for that area. Also, the letter of appointment provides for such monetary allowances as are prescribed by the regulations of SSU if [redacted] is stationed outside the continental limits of the United States. Therefore, it appears there is a clear legal obligation to pay living and quarters allowance in accordance with provisions of Budget Circular A-8. 25X1A9A

(c) Although there is no mention of a task fund or operational fund in the letter of appointment issued [redacted] the excerpts of Projects approved by Col. [redacted] indicate $1,800.00 would be available for the first year of the Project and, specifically, $100.00 for the first six months and $200.00 per month thereafter. It appears clear that [redacted] understood those restrictions and the amounts available, although they are not spelled out in the letter of appointment. [redacted] indicates that on a strict accrual basis the maximum available for expenditure 25X1A9A 25X1A9A 25X1A9A 25X1A9A

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under such provisions would be $928.73. It is pointed out that there is no specific mention of whether or not the task funds are to be accounted for in accordance with SSU regulations or whether a flat allowance was authorized. It is obvious that any expenditure of Special Funds must be in accordance with Special Funds Regulations in existence at the time. The amount of detail required in a particular accounting is, of course, varied to fit the circumstances of each individual case. It is within the province of the Special Funds Section to accept a certificate that receipts were not obtainable and that the amount being accounted for was expended by the individual signing the certificate. Such a certificate would require the approval of the branch chief. This procedure is provided for in the Special Funds Regulations. It is appropriate where an accounting cannot be furnished in complete detail that a general itemization be made and the necessary certificate attached to such an accounting for approval by the branch chief. There would appear no reason why such a procedure could not be followed in this case. In any event, there must be compliance with the Special Funds Regulations, and there must be an accounting furnished for operational funds expended, whether it be a detailed accounting with receipts, a general itemization with necessary certificates, or a certificate alone as provided for in the Special Funds Regulations.

(d) On the question of transportation, the excerpts of the Project provide for $600.00 from the United States to [25X1A6A] and, in one copy the word "estimated" is added. There is no mention of return expenses from [25X1A6A] to the United States. The letter of appointment provides that [25X1A9A] will be reimbursed for travel expenses in accordance with the Standardized Government Travel Regulations. Therefore, it is clear that there exists a legal obligation to reimburse [25X1A9A] for expenses of transportation in accordance with such regulations. There remains the question of approval of an increased budget for this Project to cover the additional expenses involved, since it appears it was not originally contemplated that [25X1A9A] would be returned to the States in the first year. In addition, there should be a statement in the files that [25X1A9A] was directed to return to the United States, in order to establish the fact that travel was at the convenience of the Government. We see no question concerning

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FBV -3- 31 July 1947

the payment of per diem to [ ] while in travel status, since such expenses are in accordance with the Travel Regulations. 25X1A9A

(c) The original Project apparently was amended to provide for the cost of shipping [ ] personal car to [ ], and, therefore, such expenses are appropriate in accordance with regulations. 25X1A6A 25X1A9A

Upon compliance with the above, we see no legal objection to approval by ADSO of reimbursement of the listed expenses. It is assumed, of course, that the accountings for travel expenses and transportation of automobile are in proper order.

JOHN S. WARNER
Assistant General Counsel

JSW:mbt

cc: [ ] 25X1A9A

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Legal Dig
Compensation (Foreign Service)

7 August 1947

MEMORANDUM TO ASSISTANT CHIEF, PERSONNEL BRANCH

Subject: [redacted] Employment of 25X1A9A

1. We refer to your memorandum of 4 August requesting a ruling on employment of [redacted]. 25X1A9A

2. Until recently, we considered the [redacted] case, 25X1A9A discussed in the attached file, authority for permitting employment of a retired Foreign Service Officer and continuing payment of his annuity. We are now informed that recently the General Accounting Office has suspended the payment of annuities under similar circumstances, and in response to inquiries from the State Department has refused to accept the [redacted] ruling as precedent for subsequent 25X1A9A cases.

3. It will be necessary to inform [redacted] there- 25X1A9A fore, that if he accepts employment by this office he may expect to have his annuity pay suspended so long as he is so employed unless he is willing, as was [redacted], to 25X1A9A carry his case to the Court of Claims. Such a suit would, we believe, have a fair chance of success. It would be entirely a personal matter for [redacted] decision. 25X1A9A

LAWRENCE R. HOUSTON
General Counsel

(SEE ATTACHED MEMORANDUM)

LRH:mbt

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Legal

15 August 1947 CONFIDENTIAL

MEMORANDUM FOR ASSISTANT DIRECTOR FOR SPECIAL OPERATIONS

Subject: Attached File

Also under Tort Claims

1. The attached file indicates that there is a misunderstanding of an individual's right to recover from the Government for injuries and damage, both among individuals overseas and to some extent, in the administrative offices in Washington. For a long period employees going overseas have been informed that they must get their belongings over themselves, and take out insurance on them and that there is therefore, no recourse against the Government. This is a correct statement so far as it goes. However, until recently, some of the employees have been told that their belongings would be picked up, packed and shipped by the Government warehouse. They were also told that insurance could not be obtained as the Government warehouse could not be identified to the insurer. It appears that much of the belongings of these employees was damaged prior to arrival overseas, and it is claimed that the damage was due to negligence on the part of the warehouse. This creates a circumstance outside of the general rule cited above, since the Government has not permitted them to proceed on their own, and has prevented insurance. Prior to August 2, 1946, there was no general provision which permitted the Government to accept and settle Tort claims, i.e. claims arising out of negligence or misconduct of Government employees. The Tort Claims Act of that date, however, provides for administrative settlement of such claims against any agency up to $1,000, and for judicial settlement of claims over that amount, in situations where the Government, were it an individual, would be liable under local law. Obviously, an individual, if he had been damaged by the act of a CIG employee, could make claim against CIG under the Act. In the specific cases herein involved, security would prevent open consideration of the claims and the facts should not go outside of OSO.

2. We suggest, as a solution to the problem, that we prepare a short explanation of the Tort Claims Act, as it is new and not widely known, and distribute it to all stations, pointing out that it is obvious, for security reasons, that any claims made under the Act, be addressed securely to OSO for consideration.

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3. The law authorizes settlement of such claims by the head of the department, or his designee, and we believe it will be appropriate to have you so designated. The Act is retroactive to 1 January 1945, but a time limitation requires that a claim be presented within one (1) year after it accrues.

4. The above proposal, we believe, will serve to clear up these past warehouse cases and to establish a proper method for handling future cases.

LAWRENCE R. HOUSTON
General Counsel

CONCURRENCE:

25X1A9A

Attachments

LRH:emj

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SECRET

Contracts Termination

25X1A6A Chief of Mission [redacted]

15 August 1947

Office of General Counsel

Administrative - Termination Procedures.
Termination of [redacted] 25X1A9A

1. Reference is made to the exchange of cables concerning the above subject [redacted] in- 25X1A6C structed you to have [redacted] leave on 1 August and pay him on 25X1A9A such date three months pay in lieu of estimated accrued leave. You advised he left 1 August and would be paid one month's pay from date of notice, which apparently was approximately 15 July, plus accumulated leave of about ninety days. You further state that this was in accordance with recently executed employment contracts. After discussing this case with those concerned here, it was decided that we should write you this memorandum to make sure there was no misunderstanding of the proper procedure in normal cases.

2. To review a bit, you will recall that [redacted] 25X1A9A wrote you on 9 May about Letters of Appointment and indicated that it would be proper for you to follow in detail the State Department procedure and forms for employment of local personnel. We assume that the recently executed employment contracts referred to above are similar to State's. We do not know the exact provisions of these contracts and would appreciate a blank form at your convenience for future reference. The one point we want to raise concerns the payment of any salary after notice of termination in the ordinary case. If the contract provides for a 30-day bonus upon termination, but does not provide for notice, the employee may, of course, be terminated at any time and the 30 days pay given to him.

3. If, however, the contract provides merely for 30 days notice, the ordinary interpretation would be that such a provision is solely for the protection of the employee so that he may look for another position while continuing to work to the end of the period. If, for any reason, he stops work during the 30-day period, he should be put on leave status immediately.

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Chief of Mission   15 August 1947

25X1A6A [redacted]

Under these conditions if notice were given on, say, the 15th of July and the individual performed no work after 1 August, he would be paid salary only for the period 15 July through 1 August. For the period 1 August to 15 August, he would be in leave status, thus reducing the amount of accrued leave payable on termination. We have of course, been informed of the operational factors involved in the [redacted] case and acknowledge the need for special handling. We have no wish to alter your settlement of that case, but we should appreciate it if you would have the record in his case conform, as nearly as possible, to normal duty status requirements. 25X1A9A

4. As [redacted] pointed out, if you still have any settlements to make with individuals on the basis of old contracts or written commitments, you may of course, settle them in accordance with the promises made therein. However, we assume you have now adapted your procedure to that of State and can follow their example in all normal cases. If you have any questions or want more information, please let us know. 25X1A9A

GENERAL COUNSEL

L.R.H.

R.H.

KPP
ADMIN

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Legal Dec
Contracts
(Overseas Agreements)

15 August 1947

CONFIDENTIAL

MEMORANDUM TO CHIEF PERSONNEL DIVISION, OSO

Subject: [redacted], papers pertaining to 25X1A9A

1. We are forwarding to you papers pertaining to [redacted] a recent overseas returnee. Included 25X1A9A are a letter dated August 11, 1947, from [redacted] and 25X1A9A a report of physical examination also dated August 11.

2. The circumstances of this case are known to your office but pertinent points are reviewed here:

25X1A9A (a) [redacted] went overseas with a physical defect of which he knew, but which he did not call to the attention of the Government. He was assigned to [redacted] 25X1A6A which is well known as one of the least healthful posts in the world, particularly in connection with digestive 25X1A9A ills. [redacted] soon reported sick and was ordered to 25X1A6A [redacted] for examination. The doctor in [redacted] reported 25X1A6A that he observed physical defects in the digestive tract but nothing pathological which would affect normal functions. 25X1A9A [redacted] was then given the choice of returning to his post, or of returning to the States at his own expense and was informed that in the case of return here he would be required by the provisions of Public Law 600 to refund to the Government, the cost of his transportation to his overseas post. He was also told that the question of his illness would be reviewed for possible reference to the Employees' Compensation Bureau. 25X1A9A Upon his return, [redacted] accepted the charges for his return as personal, but requested a review of his case to relieve him of repayment for the costs to [redacted] 25X1A6A

(b) Accordingly, he was directed to report for a physical examination to the Medical Section. You will note that in [redacted] interpretation he states 25X1A9A the case should not be dismissed as being normal or as psychosomatic in origin. He then states that it is possible that the diarrhea could be psychosomatic, but that this would remain to be proved. [redacted] 25X1A9A did not know where [redacted] had been stationed or about 25X1A9A the living conditions at his post. I discussed this with 25X1A9A [redacted] and he agreed that if the living conditions 25X1A6A at [redacted] are as difficult as reported, the chances of the diarrhea being psychosomatic in origin were reduced in proportion to hardship. All circumstances taken together therefore, indicate that the illness at post was caused by living conditions imposed on a physical defect which would not normally impair the health of the individual.

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 13 August 1947

(c) The point thus raised is important in considering the application under Public Law 600, which provides that in the event an employee violates the 12-months agreement, his expenses both ways will be a debt due to the United States. The agreement, as set forth in the law, is to remain in the Government service for 12 months, unless separated for reasons beyond his control. An effort has been made to discover an authoritative interpretation of the language "separated for reasons beyond his control." It is believed that no such interpretation has been made. We are unable, for security reasons, to process this case to the officials who would normally rule on such a matter and must handle it internally.

25X1A9A

3. [redacted] was at fault in concealing his defect, which if known, should have prevented his assignment to such a post as [redacted] 25X1A6A. It would not, necessarily however, have prevented his assignment to some other overseas post. When the condition became critical, he was put on notice of alternatives and made his choice to come home at his own expense. There can, therefore, be no question of the return costs. In our opinion, however, this was not the type of case contemplated by Congress in enacting Public Law 600. That Act apparently was designed to prevent individuals applying for Government employment to an overseas post at Government expense, and then leaving within a short time to undertake private interests or otherwise requesting transportation or transfer for personal reasons. In view of the lack of clear authority on this point, we believe it will not be appropriate in this case to apply the language of Public Law 600 to the extent that the expenses to the overseas post must be considered a debt due to the Government. It would be in order therefore, for you to write [redacted] in answer to his letter of August 11, and inform 25X1A9A him that he will not be required to reimburse the Government for the expenses paid on his travel to his post overseas.

LAWRENCE R. HOUSTON
General Counsel

LRH:emj

cc: [redacted] 25X1A9A

CONFIDENTIAL

/2 [illegible]

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CONFIDENTIAL

20 August 1947

MEMORANDUM FOR THE ASS'T CHIEF BUDGET AND FINANCE BRANCH

Subject: Salary Payments and Retirement Refunds in Loyalty Cases

1. We have only minor comment to make on the proposed letter requesting the Comptroller General for a ruling on payment of terminal leave and retirement refunds to employees terminated on the ground of reasonable doubt as to loyalty.

(a) In paragraph 1, we suggest a change in the third sentence on the ground that the security involved is not our normal concept of security, but is rather for the protection of the individual. We think it might be well also to point out that this case raises a general question which will control a number of prospective cases on which the Director desires guidance. We suggest the sentence read somewhat as follows:

"The name of the employee is omitted from this letter and the attachment, not only for the protection of the individual, but also because the issue here raised is expected to be of general and continuing interest in actual or contemplated similar cases."

(b) In the first sentence of paragraph 3, we believe the word "pro-communist" is preferable to "pro-communistic." Also in that sentence, unless you use the word "subversive" because of its use in some law or regulation, we believe it is an inexact term which might be confusing in future rulings. We suggest that the sentence read as follows:

"While it would appear that the subject employee may be pro-communist, and that her loyalty is subject to reasonable doubt, her views and such reasonable doubt do not seem to constitute proof of any illegal act or of any act in contravention of the laws and regulations controlling payment of salaries and retirement refunds."

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(c) In the second sentence starting on page 2, we again believe "pro-communist" is preferable to "pro-communistic," and in the next line we suggest changing the wording "within such category" to "within the category of a suspect only."

2. These suggestions are for your consideration only and no objection is made to the legal issue raised in your proposed letter.

LAWRENCE R. HOUSTON
General Counsel

Attachments

LRH:ecmj

CONFIDENTIAL

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20 August 1947

Signatures

MEMORANDUM FOR 25X1A9A

Subject: Signature by Branch Chiefs

CONFIDENTIAL

1. I discussed with [25X1A9A] yesterday the problem we raised concerning signatures on vouchers and other papers pertaining to your office which, according to regulations, are to be signed by Branch Chiefs. Col. [25X1A9A] views are very clear in this matter and are, we believe, accurately set forth below:

(a) Whenever regulations require the signature or certification of a Branch Chief, he will himself sign the document when he is present or available within a reasonable time.

(b) If there is a regularly appointed Deputy Chief in the Branch, he may act for the Chief when the latter is not reasonably available for the actions required. Normally, only temporary duty away from Washington, out of town leave for a considerable period of time, or severe illness, will permit action by the Deputy on behalf of the Chief. At such time, the Deputy shall sign as Acting Chief and the use of this title will constitute his certification that the Chief is not reasonably available.

(c) If there is no regularly appointed Deputy Chief, action cannot be taken on behalf of the Chief, until the Chief of Operations appoints an Acting Chief for the Branch. Normally, when any Chief of Branch leaves for an extended period, he will notify COPS who will appoint an Acting Chief for the specific period of absence. All such appointments will be in writing and individual appointed will sign all necessary documents as Acting Chief.

(d) In all cases where the regulations require the signature or approval of the Branch Chief on documents pertaining to fiscal matters, the individual signing as Branch Chief or Acting Chief, will sign his name in full. Clearance on above by initialling will not be acceptable.

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25X1A9A

CONFIDENTIAL

2. This Office is in full agreement with Colonel [redacted] on these points and we believe that only such provisions properly fulfill the legal requirements for the authorities delegated to Branch Chiefs. We discussed with [redacted] whether a special OSO order was needed and it was agreed that if these provisions fitted themselves to the manual now being prepared by your office, there would be no need for the special order. Unless we hear from you to the contrary, we shall leave these for inclusion in the manual

25X1A9A

25X1A9A

LAWRENCE R. HOUSTON
General Counsel

LRH:amj

CONFIDENTIAL

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Legal Doc.
Traveling Expenses
(Leaves of Absence)

21 August 1947

25X1A9A

MEMORANDUM FOR [ ]

Subject: Temporary Duty Travel While on Leave

1. Forwarded herewith are two copies of the unpublished Decision of the Comptroller General, A-66481, which I discussed with you on the telephone.

2. This appears to be in direct opposition to a ruling in 2 C.G. 424, which involved an Army officer. Although no distinction between the cases is drawn in the opinion, it appears that the determining factor may be the Act of March 4, 1936, which made leave a legal right of an employee, rather than a privilege. This change is discussed in 16 C.G. 481, but in connection with a set of facts different from those in the instant case. Thus, while 2 C.G. 424 is not specifically overruled, in effect, the same result is accomplished by this unpublished decision.

3. The only published decision which has come to our attention, that touches on this point, is 25 C.G. 347, which applies 16 C.G. 481, to a different set of facts but mentions the unpublished Decision A-6-481 with approval. The current rule therefore, seems clear that a person on leave, called back for temporary duty on proper authority, and returned to leave at the end thereof, may be reimbursed for traveling expenses both ways.

LAWRENCE R. HOUSTON
General Counsel

LRH:emj

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Legal Sec.

21 August 1947

MEMORANDUM FOR 25X1A9A [redacted]

Subject: Travel Expenses of 25X1A9A [redacted]

Traveling Expenses (Leave of Absence)

1. From your telephone inquiry, we understand that while [redacted] 25X1A9A was on proper annual leave, he was ordered to return to Washington, his official station, for temporary duty, and allowed to return to his place of leave on four different occasions. A study of the published Decisions by the Comptroller General indicated that no reimbursement could be made for the travel expenses involved. In certain of the later cases, however, particularly 16 C.G. 481, and 25 C.G. 347, some aspects of the earlier rulings were qualified in view of the provisions of the Act of March 4, 1936, which transformed leave of Government employees from a privilege to a legal right. The cited cases, however, involve temporary duty while on leave to places other than the official station and did not indicate that travel between place of leave and the official duty station would be paid for by the Government.

2. The unpublished Decision of the Comptroller General A-36431 does however, clearly overrule the earlier decisions concerning circumstances similar to those in [redacted] 25X1A9A case. Since this unpublished decision is mentioned with approval in 25 C.G. 347, we believe it constitutes the current ruling of the Comptroller General on this point. The ruling, as stated in the opinion, is

> "However, where the leave is not terminated, the employee is only required to return to headquarters for temporary official business, and then permitted to resume his leave status at the place where the leave was interrupted, he may be reimbursed for the expenses of the round-trip to and from headquarters, not in excess of the lowest first class fare by rail."

3. We believe, that where properly authorized in advance for the convenience of the Government, air travel might now be included in the above ruling. If these facts fit the circumstances of [redacted] 25X1A9A travel, he may be reimbursed accordingly. We feel however, that it should be brought to the attention of the administrative officer concerned, that such recalls, particularly when repeated, as in [redacted] 25X1A9A case, put the Government to considerable additional expense and should be fully justified by showing that the results required could not be accomplished by telephone, or correspondence, or by delaying action until the expiration of leave.

LAWRENCE R. HOUSTON
General Counsel

LRH:cmj
attachment

No. 163

Approved For Release 2005/03/15 : CIA-RDP67-01057A000100010001-9

29 August 1947

25X1A9A

MEMORANDUM FOR [redacted]
Acting Chief, Advisory Council

Subject: Protection of Communications Intelligence [S.1019]

1. In the proposed version of the Bill for the protection of cryptograph systems and communications intelligence, it is provided that "whoever having obtained or having had custody of, access to, or knowledge of (1) any classified information * * * and who divulges it, etc. shall be punished." We feel that this makes the word "classified" a critical point in the proposed Bill. In defining the term "classified information", the Bill proposes construing the phrase to mean information segregated for purposes of National security and marked to designate such segregation.

2. We have tried to forsee the attitude of the Courts towards language of this type and believe that clear indication has been given by the Supreme Court in the case of Gorin v. United States, 312 U.S. 713, 61 S.Ct. 429, at 433. The Gorin case was a criminal prosecution under the Espionage Act, which uses the words "information respecting the national defense" and "information relating to the national defense." The defense attempted to obtain a narrow ruling of the statute which would specify that relating to the "national defense" meant just places and materials specified in the Act and contended that any extension of this meaning would make the Act un-Constitutional as violative of due process because of indefiniteness. The Court rejected this contention and ruled that it was the intent of Congress to place a broad restriction on the wording of the Act. The Court went on to rule as follows:

"[8] In each of these sections of the Act the document or other thing protected is required also to be 'connected with' or 'relating to' the national defense. The sections are not simple prohibitions against obtaining or delivering to foreign powers information which a jury may consider relating to national defense. If this were the language, it would need to be tested by the inquiry as to whether it had double meaning or forced anyone, at his peril, to speculate as to whether certain actions violated the statute. This Court has

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frequently held criminal laws deemed to violate those tests invalid. United States v. Cohen Grocery Company, urged as a precedent by petitioners, points out that the statute there under consideration forbade no specific act, that it really punished acts 'detrimental to the public interest when unjust and unreasonable' in a jury's view. In Lanzetta v. New Jersey the statute was equally vague. 'Any person not engaged in any lawful occupation, known to be a member of any gang * * *, who has been convicted at least three times of being a disorderly person or who has been convicted of any crime in this or in any other State, is declared to be a gangster * * *.' We there said that the statute 'condemns no act or omission'; that the vagueness is such as to violate due process.

"[3 - 5] But we find no uncertainty in this statute which deprives a person of the ability to predetermine whether a contemplated action is criminal under the provisions of this law. The obvious delimiting words in the statute are those requiring 'intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation.' This requires those prosecuted to have acted in bad faith. The sanctions apply only when scienter is established. Where there is no occasion for secrecy, as with reports relating to national defense, published by authority of Congress or the military departments, there can, of course, in all likelihood be no reasonable intent to give an advantage to a foreign government. Finally, we are of the view that the use of the words 'national defense' has given them, as here employed, a well understood connotation. They were used in the Defense Secrets Act of 1911. The traditional concept of war as a struggle between nations is not changed by the intensity of support given to the armed forces by civilians or the extension of the combat area. National defense, the Government maintains, 'is a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness.' We agree that the words 'national defense' in the Espionage Act carry that meaning. Whether a document or report is covered by section 1 (b) or 2 (a) depends upon their relation to the national defense, as so defined, not upon their connection with places specified in section 1 (a). The language employed appears sufficiently definite to apprise the public of prohibited activities and is consonant with due process."

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3. You will note that the Court appears to make the essential element "scienter" or "intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation." (Incidentally, the Court specifically points out that no distinction is made between friend or enemy.) This leads us to suggest that you reconsider the wording of your proposed Bill which now provides in effect that "whoever shall communicate, furnish, transmit, or allow to be communicated to a person not authorized" shall be punished, etc. Perhaps language similar to that in the Espionage Act concerning "intent or reason to believe" should be used. In any case, we believe that the use of "classified information" might invalidate the whole Bill on the reasoning used in the Gorin case, that since the classification was an administrative act it would force a person, at his peril, to speculate as to whether certain actions violated the statute.

LAWRENCE R. HOUSTON
General Counsel

LRH:emj

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CONFIDENTIAL

Legal

9 September 1947

Subsistence (Temp. Duty)

MEMORANDUM FOR ADSO

Subject: Claim of [25X1A9A]

1. The above claim has been referred to this office for consideration of the legality of payment. We are requesting your comments in view of the fact that two members of your office are personally affected. [25X1A9A], an officer of Special Funds Division, OSO, but legally responsible as a certifying officer to the Director, has been presented with an approved voucher in the amount of $670.70. According to the written record before him, there is no legal basis for the major portion of this payment. If he made payment under these circumstances, he would be personally liable for any portion not supported by the record. [25X1A9A], an officer of FBZ, originated a memorandum of 4 September, which is the turning point of the case as stated in the record. If [25X1A9A] report is accurate, there is no basis whatever for payment of per diem to [25X1A9A] after July 3, 1947.

2. The facts as presented by the record, are briefly as follows: [25X1A9A] was properly authorized to come to Washington from [25X1A9A], California, by telegrams from the Chief, Personnel Procurement Section, dated 13 June and 17 July 1947. He arrived in Washington on 29 June and was interviewed and given an introduction course on 30 June and 1 July. On 3 July, Chief, Personnel Division, OSO, recommended that rather than return [25X1A9A] to California, he be allowed to remain in Washington on a per diem basis. On that same day, the Executive Officer, OSO, advised the Personnel Division to send him home to California. FBZ now states in its memorandum of 4 September, that [25X1A9A] was told by telephone from the Personnel Division that the request for per diem had been disallowed. [25X1A9A] then telephoned [25X1A9A] and told him he could not remain in Washington at Government expense. This was repeated in a personal interview on either the 3rd or 7th of July. [25X1A9A] states that [25X1A9A] understood he would not get any per diem and that [25X1A9A] proposed to stay in Washington at his own expense.

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3. If the facts drawn from the record, and set forth above, are accurate, any payment to [redacted] for time spent in Washington after 3 July, would be a mere gratuity, and consequently illegal, no matter what Government funds would be used. The voucher now presented to [redacted] for certification, provides for 77 days per diem from 22 June to 6 September. This voucher, approved by the appropriate officer, is therefore, in direct contravention of the record. It is our understanding that the voucher was approved in response to oral direction from the Executive for A & M. It is reported to be based on an earlier commitment made by an officer of FBZ in a personal letter to [redacted], which commitment, the Director wishes to honor. We have not had any such commitment brought to our attention, nor are we aware that the individual purported to have made the commitment was authorized to do so. On the information now at hand, it appears that the later official notifications to [redacted], would supersede the alleged commitment.

25X1A9A
25X1A9A
25X1A9A
25X1A9A

4. Unless, therefore, evidence not now appearing in the record is produced, which clearly controverts the facts stated by FBZ, the proposed payments from July 4 to September 6, of per diem, are illegal and beyond the authority, even of the Director, to approve. Under the present circumstances, it is our duty to bring our opinion in this matter to the Director's attention.

LAWRENCE R. HOUSTON
General Counsel

LRH:emj

CONFIDENTIAL

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Property (2a)

15 September 1947

Legal Dec

MEMORANDUM FOR EXECUTIVE FOR ADMINISTRATION & MANAGEMENT

Subject: CIG Property Regulations

1. Reference is made to CIG Memorandum No. 4 dated 11 February 1947 and CIG Memorandum No. 61 dated 4 September 1947. Memorandum No. 4 is concerned with accountability and responsibility for property, and Memorandum No. 61 concerns the Property Survey Board.

2. At the time the above-mentioned memoranda were being drafted, this office discussed their provisions with persons concerned, namely, Procedures Unit, Property Control Section, and the Executive for Personnel and Administration. We then pointed out that in establishing a Property Survey Board a delegation of authority by the Director to the Board would be necessary to empower the Board to take final action for the determination of pecuniary liability, or relief from responsibility, of individuals concerned with the loss, damage, destruction, and theft of Government property. Also, it was pointed out that it would be necessary for the then Executive for P&A to be authorized by the Director, CIG to prescribe rules and regulations concerning property accountability and responsibility. The above is based in part on the provisions of 31 U.S.C.A. 89-92. Those Sections prescribe, in general, for property returns, and certificates as to lost property, and specifically empower the heads of the several departments of the Government to make and enforce regulations concerning Government property in order to carry out the provisions of Sections 89-92.

3. The matter of including such delegations in an appropriate Order was discussed with [redacted], then Executive for P&A, by this office. He concurred in such views. Accordingly, a draft of a proposed Order establishing the Property Survey Board was prepared by the Procedures Unit, and after concurrences were obtained, including this office, it was forwarded to the Executive for P&A for publishing. For some reason, the Order, as prepared, was never issued.

25X1A9A

4. It is the opinion of this office that the Property Survey Board, as established by CIG Memorandum No. 61, legally does not have final authority to determine pecuniary liability, or relief from responsibility, of employees of CIG for loss, damage, destruction, or theft of Government property. It is felt that if an employee were charged with pecuniary liability and contested such charge, there would be no legal basis on which such a charge could be enforced. Further, it is quite

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possible that if the Board relieved an individual from responsibility, the General Accounting Office could take exception to such relief on the ground that authority so to relieve rests with the Director and until properly delegated by the Director rests only with him. The establishment of a Board with the above-mentioned authorities over the signature of the Executive for A & M although signing "For the Director of Central Intelligence" does not constitute a valid delegation of authority to the Board.

5. It is recommended that an appropriate Order be prepared for signature by the Director, CIG delegating necessary authorities to the Executive for A & M and to the Property Survey Board. There is enclosed, for your consideration, a draft of a proposed memorandum which we feel will satisfy the legal requirements.

6. We feel that this office could better perform its function of forestalling legal difficulties of the type here involved by being given an opportunity to review final drafts of documents presenting possible legal questions, before publication. We shall be pleased to help devise a procedure for obtaining the concurrence of this office on all publications before signature without undue delay.

7. To clarify one other point, it is our understanding that the Director has authorized the ADSO to exercise complete control over all OSO operations overseas, including personnel, property, and finances. We feel that under this authorization there is in effect a delegation of authority to ADSO to establish property regulations to cover all OSO property overseas. This is in accordance with the specific exceptions in CIG Memo No. 4, and would relieve your staff of responsibility and accountability for such property. Consequently, OSO need not report any overseas inventories to the CIG property officer and may authorize its own survey procedures. After discussion with the ADSO, it is suggested that OSO issue an order establishing its Property Survey Board to consist of a representative from the office of the Executive for I & S, the Assistant General Counsel, and the OSO Property Officer. Such a Board would provide two disinterested members without violating security.

LAWRENCE R. HOUSTON
General Counsel

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_____________ September 1947

By virtue of the authority vested in me as Director of Central Intelligence, it is directed that:

a. The authority to prescribe rules and regulations governing (1) control of Government property in possession of CIG employees, (2) property accountability, and (3) property responsibility, is hereby delegated to the Executive for Administration and Management.

b. The authority is hereby delegated to the Property Survey Board to take final action to:

(1) Determine the pecuniary liability, or relief from responsibility, of any employee of CIG for the loss, damage, destruction, or theft of Government property for which CIG is responsible;

(2) Direct disposition or destruction of unserviceable and obsolete property in the custody of CIG; and

(3) Direct ultimate disposition of property worn out through fair wear and tear or otherwise rendered unserviceable or obsolete in the service of the Government without fault or neglect on the part of any individual and relieve the individual concerned of responsibility and/or accountability therefor, or where there is evidence that such property may have been rendered unserviceable through fault or neglect on the part of any CIG employee, determine pecuniary responsibility of such employee.

H. R. HILLENKOETTER
Rear Admiral, USN
Director of Central Intelligence

25X1

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Legal Dec.

25 September 1947

MEMORANDUM FOR THE CHIEF, BUDGET AND FINANCE BRANCH
Through: The Executive for Administration and Management

Subject: CIA Medical Services

The medical services of CIA as presently constituted appear to serve in a dual capacity. The authority and nature of duties of each are discussed separately below:

(1) The clinic is staffed with Army medical officers and enlisted men assigned to CIA by the War Department. Such assignment appears to be authorized by 10 U.S.C.A. 94, permitting assignment to "such duties as the interests of the service may demand". Section 96 of the same Title provides that medical officers shall attend the families of officers and soldiers free of charge "whenever practicable". It would appear to be clearly within the administrative authority of this Agency to determine that Army personnel and their families be treated at the clinic. This, however, is purely under War Department authorization, and the free service and attendance is an obligation imposed on the War Department by law. Consequently, in our opinion, there should be no obligation on the part of CIA to furnish services, supplies, or equipment to treat military personnel and their families.

(2) Public Law 658, 79th Congress, 2nd Session, approved 8 August 1946, authorizes agencies to establish health service programs which shall be limited to the treatment of on-the-job-illness and dental conditions requiring emergency attention, physical examinations, referral to private practitioners, and preventive programs. Such health programs are for the benefit of civilian employees of the agency concerned only and must have the approval of the Public Health Service. On 28 July 1947, the Public Health Service approved the existing temporary emergency health program for the fiscal year 1948 for budgetary purposes only. The two medical officers on duty have been designated as Public Health Officers for certain purposes. We have, therefore, a tentative and temporary approval for furnishing services, equipment, and supplies for civilian employees within the restrictions applied by Public Law 658. Of course, where facilities and services available under the civilian

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program can be used at no cost to CIA for the military program, they may be so used, but equipment or supplies designed solely for the military program may not legally be charged to the appropriations for the civilian program.

It is felt that administrative action should be taken to ensure a clear division of functions in the medical services to provide for proper procurement of supplies -- the one from the War Department and the other through purchase or other acquisition by CIA. Of course, there may be certain supplies or equipment of a medical nature required for the specialized operations of CIA which may be properly chargeable to its funds. These should be considered on an independent basis as they arise.

LAWRENCE R. HOUSTON
General Counsel

LRH:mbt

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Legal Dec
Legislation
(CIA)

25 September 1947

SECRET

MEMORANDUM FOR THE DIRECTOR

Subject: CIA Authority to Perform Propaganda and Commando Type Functions

1. Attached is a detailed opinion which reaches the conclusion that CIA has no statutory authority to enter into M.O. or S.O. work or to expend funds in support of such work. It is pointed out, however, that as part of its authorized functions CIA acquires much information concerning . . .

25X6B

2. Under present authority, therefore, the CIA function would be to supply such information to the NSC or other policy-making group and to assist intelligence wise the implementation of the policy of whatever policy should be established.

LAWRENCE R. HOUSTON
General Counsel

LRH:mbt

SECRET

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1 October 1947

SECRET

MEMORANDUM FOR EXECUTIVE FOR I&S

Subject: Release or Disclosure of Classified or Unclassified CIA Intelligence or Information to the Congress of the United States

1. Concur as to legal aspects but have a couple of suggestions for possible consideration, even though it may not be my place to make them:

(a) An attempt should be made to have inquiries from Congress put in writing, where possible. This discourages casual and unnecessary inquiry, gives time to consider the information, and prevents inadvertent disclosure which often occurs in oral discussion.

(b) Paragraph 3a provides for all requests to go to OCD. Paragraph 3b provides for coordination of requests for intelligence information with the LLO. I have no objection but am merely somewhat confused as to what is intended, but expect that OCD and the LLO can clarify it.

(c) In paragraph 5a, I should prefer to see the addition of the word "written" between "prior" and "authorization". There are several reasons. Oral clearance might be claimed where there was no intention to give it, but the words were misunderstood. It might be necessary to qualify an authorization, and the precise qualification could be set down in writing to restrict the employee or, if necessary, to aid him stall off pressure during an interrogation. Also, if the employee exceeded or varied the terms of his authorization, the written record would be available for administrative action. In most cases, it would be easy to submit a written authorization along with the LLO's recommendation

SECRET

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to the Director. In emergencies, of course, the Director could waive this requirement.

SECRET

LAWRENCE R. HOUSTON
General Counsel

LRH:mbt

SECRET

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Leg

Subsistence (Temp. Duty)

3 October 1947

MEMORANDUM FOR EXECUTIVE FOR ADMINISTRATION & MANAGEMENT

Subject: [redacted] 25X1A9A

1. We have gone over this case carefully and find there is little discrepancy in the facts stated by [redacted] 25X1A9A and the record obtained within the office. It is clear that he was notified of the decision not to allow any per diem after 3 July.

2. I attempted to find justification in the facts for allowance of any payments after that time. I was unable to discover any circumstances which would support the legality of further per diem payments. I brought these conclusions to the Director's attention and was instructed to write [redacted] that only those payments 25X1A9A arising out of the original commitment would be made. I, therefore, drafted the attached letter, which I feel sets forth the basis for final settlement with [redacted] 25X1A9A

3. Unless you have further comment or suggestion, would you please arrange for the preparation of an appropriate voucher to accompany this letter to [redacted] 25X1A9A If he signs and returns it, we can arrange for an immediate payment and the travel advance, if necessary. It is quite possible, of course, that there will be further outside repercussions, and I shall be pleased to accept any inquiries you may wish to refer to this office.

LAWRENCE R. HOUSTON
General Counsel

LRH:mbt

cc: [redacted] 25X1A9A
Special Funds
[redacted] 25X1A9A

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Subsistence (Temp. Duty)

3 October 1947

25X9A5

Since our discussion of your case on 13 September 1947, we have investigated further the circumstances within the organization. The results are substantially in accordance with the facts presented by you. Based on such facts, we have reviewed the circumstances in an effort to determine what may properly be allowed you for the cost of transportation and allowances.

We can find no provision of law or regulation which would permit the legal expenditure of Government funds to pay allowances for any of the period after 3 July, when you were notified that further per diem was not authorized. You are, therefore, at present entitled to the cost of transportation from [redacted] California to Washington, D. C. and for per diem from 10:30 p.m. 22 June through the entire day of 3 July.

25X1

The voucher has been prepared to cover this payment, and if you will sign this voucher in the proper place and return it to this office, you will be reimbursed immediately. If, on this termination of your relations with CIG, you return to California, you will be entitled to the cost of transportation and per diem for such a journey. If this is your intention, you may at the time you return the enclosed voucher apply for a travel advance to cover your expenses and the per diem for the days of travel. It is our understanding, however, that you are now employed in Washington, and if you intend to continue in such occupation, you would thereby waive any claim for reimbursement for the return trip to your home at the expense of this Agency. Please notify us of your decision in this matter at the time you return the reimbursement voucher.

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25X9A5

 3 October 1947

Most careful consideration has been given to your contentions in this case, but the legal conclusion is clear that no further compensation can be allowed.

FOR THE DIRECTOR:

LAWRENCE R. HOUSTON
General Counsel

LRH:mbt

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3 October 1947

Leg. a/Dec. 67. Subsistence. (Temporary Duty)

MEMORANDUM FOR THE EXECUTIVE FOR A & M

Subject: [redacted] 25X9A5

The case of [redacted] is being satisfactorily settled, and final payments are being arranged. A side problem has arisen from the following facts: 25X9A5

> While waiting for word from CIG, Mr. [redacted] applied for unemployment compensation and actually received some checks. Upon the understanding that he would be paid per diem for the period he was waiting here, he returned these checks to Social Security. He will now apply for reissue on the basis of his mistaken understanding. 25X9A5

He may call this office for assistance. If such a request comes to your attention, I feel we should do whatever we can to assist him in obtaining reissuance of the unemployment compensation checks.

LAWRENCE R. HOUSTON
General Counsel

cc: Chief, Personnel

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7 October 1947.

MEMORANDUM OF LAW

I. Congressional immunity for statements made in Congress.

Article 1, §6 of the Constitution states in regard to Senators and Representatives that:

> "...for any Speech or Debate in either House, they shall not be questioned in any other Place."

In the case of Cochran v. Cousens, 42 F (2d) 783 (Court of Appeals, District of Columbia, 1930; cert. den. 282 U.S. 874) it was held that this provision was grounded on public policy and should be liberally construed. In this case, the plaintiff charged Senator Cousens of Michigan with uttering defamatory words in a speech on the Senate floor. Inasmuch as the speech was made on the Senate floor, it was held to be absolutely privileged and not subject to "be questioned in any other place." The averment that the words were not spoken in the discharge of the Senator's official duties was held to be entirely qualified by the averment that they were uttered in the course of a speech on the Senate floor. In this connection, the court stated (Robb, J, at p. 784):

> "It is manifest that the framers of the Constitution were of the view that it would best serve the interests of all the people if members of the House and Senate were permitted unlimited freedom in speeches or debates. The provision to that end is, therefore, grounded on public policy, and should be liberally construed."

The court in the Couzens case, supra, held that the case of Kilbourn v. Thompson, 103 U.S. 168 (1880) was controlling. In this case, the question at issue was whether a resolution offered by a Member of Congress is a speech or debate within the meaning of Article 1, §6, and whether the report made to the House and the vote in favor of a resolution are within its protection. In this connection, the Court (per Mr. Justice Miller) stated:

> "It would be a narrow view of the Constitutional provision to limit it to words spoken in debate. The reason of the rule is as forcible in its application to written reports presented in that body by its committees, to resolutions offered, which, though in writing, must be reproduced in speech, and to the act of voting...In short, to things generally done in a session of the House by one of its members in relation to the business before it." (at p. 204).

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From the above, together with the positive phrasing of Article 1, §6 of the Constitution, it would appear incontrovertible that any Member may make any statement he desires on the floor of the Congress or in one of its committees. Such statement shall be absolutely privileged, notwithstanding that it was based on information secured from classified Central Intelligence Agency material either furnished the Member in confidence or containing any restrictive notice as to use or dissemination. This privilege would operate if the Member were to read the information verbatim into the record on the floor or into the record of hearings before a Congressional Committee. It would still be privileged when it appeared, verbatim, in the Congressional Record or in the published hearings of a Congressional Committee.

From the above, it is apparent that, while phrases calling attention to sections of the espionage laws might serve as a warning to conscientious legislators, they have no force and effect in the above connection.

Scant comfort can be gained from dicta in the Cousens case, supra, which states:

> "Presumably legislators will be restrained in the exercise of such a privilege by the responsibilities of their office. Moreover, in the event of their failure in that regard, they will be subject to discipline by their colleagues. Article 1 §5." (at p. 784).

II. Congressional immunity for statements made outside of Congress.

While the privileges and immunities outlined in Point I, above, extend "to things generally done in a session of the House by one of its Members in relation to the business before it," they do not appear to extend to the activities of the Members of both Houses when not in session. Thus, it would not be proper for a Member to circulate CIA documents to his constituents, to the press, or by reading to a meeting or over a radio — providing the proposed notices or limitations had been brought home to the Member by printing on the copies. Failure to observe the limitation in this connection would well make the Member liable for prosecution under the espionage laws.

This point was touched upon in the celebrated case of Long v. Ansell, 69 F (2d) 386 (Court of Appeals of the District of Columbia, 1934) which was an action by Senator Huey Long of Louisiana, to quash a service of process upon him in a libel suit. Senator Long uttered the libel in a speech on the floor. Following this, however, he sent the defamatory matter to Louisiana in the form of reprints of the Congressional Record. In dicta, (which was not referred to by the Supreme Court in affirming the decision, 293 U.S. 76 (1934)), Van Orsdel, J., stated:

> "While the published articles were in part reproductions of the speech, the offense consists not in what was said in the Senate, but in the publication and circularizing of the libelous documents." (at p. 389).

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III. Immunity of Members of Congress from arrest or service Of process.

Article 1, §6 of the Constitution states in regard to Senators and Representatives that:

> "They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same."

It is apparent that the expression "treason, felony...." excepts from the operation of the privilege all criminal offenses; the privilege applies only to arrests in civil suits. It does not include immunity from service of process in civil or criminal cases.

This is supported by the case of Long v. Ansell, 293 U.S. 76 (1934), which was brought by Senator Huey Long to quash service of summons upon him in a libel action. Senator Long contended that the Constitution confers upon every Member of Congress, while in attendance within the District, immunity in civil cases not only from arrest, but also from service of process. Mr. Justice Brandeis stated that:

> "Neither the Senate, nor the House of Representatives, has ever asserted such a claim in behalf of its members. Clause 1 defines the extent of the immunity. Its language is exact and leaves no room for a construction which would extend the privilege beyond the terms of the grant.... History confirms the conclusion that the immunity is limited to arrest .... When the Constitution was adopted, arrests in civil suits were still common in America. It is only to such arrests that the provision applies." (at p. 82).

In support of this, the Court in the Long case cited Williamson v. United States, 207 U.S. 425 (1908). This case involved an objection taken by a Member of Congress that he cannot be sentenced during his term of office on the ground that it would interfere with his Constitutional privilege from arrest. Mr. Justice White stated:

> "... It follows that the terms treason, felony and breach of the peace, as used in the Constitutional privision relied upon, excepts from the operation of the privilege all criminal offenses, the conclusion results that the claim of privilege of exemption from arrest and sentence was without merit." (at p. 446).

From this it would appear that should a Member commit a crime under the conditions set forth in Point II, above, he would be liable to service of process, arrest, and prosecution. This would certainly make him liable under the espionage laws. For this reason, therefore, it is felt that a Member should be put on notice when in receipt of CIA material, that unauthorized disclosure would make him liable to prosecution under the espionage law.

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7 October 1947

MEMORANDUM FOR THE GENERAL COUNSEL

Subject: Congressional Privilege and Immunity.

1. The Executive for Inspection and Security (in draft memorandum, dated 30 September 1947, subject: Release or Disclosure of Classified or Unclassified CIA Intelligence or Information to the Congress of the United States) has suggested (par. 4(f) of reference memorandum) that all classified material released to a Member of Congress carry appropriate cautionary notices to preclude unauthorized dissemination. Phrases suggested in reference memorandum include:

(a) "This document is furnished for use of the recipient only. Reproduction, quotation, or further dissemination is not authorized without specific authority of the Director of Central Intelligence."

(b) "This document contains information affecting the national defense of the United States within the meaning of the Espionage Act, 50 USC 31 and 32, as amended. Its transmission or the revelation of its contents in any manner to an unauthorized person is prohibited by law."

2. The following conclusions are reached:

(a) Any Member of Congress may make any statement he desires on the floor of the Congress or in one of its committees. This statement may be reprinted in the Congressional Record or in committee hearings.

(b) Such a statement is absolutely privileged, regardless of whether the statement includes classified CIA material or not, and regardless of any words of limitation which may accompany the material.

(c) Use of classified CIA material for speeches or writings outside of Congress (press, radio, public addresses, etc.) is not a privileged use, and would subject Member to prosecution under the espionage laws.

(d) Constitutional immunity will not protect a Member from prosecution for commission of a felony, provided it does not come within the terms of paragraph 2 (a), above.

(e) That prosecution of a Member for unauthorized disclosure of classified CIA material is very unlikely.

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3. The following recommendations are made:

(a) The proposed phraseology in paragraph 1 (b), is preferable and should accompany all documents classified higher than RESTRICTED when transmitted to the Congress.

(b) Whenever possible, when CIA intelligence material of classification higher than RESTRICTED is transmitted to a Member, it should be explained to the Member that the material is classified and that unauthorized disclosure would be unfortunate in the interests of national security.

[illegible]r L. Pforzheimer

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Legal Dec

13 October 1947

MEMORANDUM FOR THE EXECUTIVE FOR I & S

Subject: Congressional Inquiries

1. We refer to your memorandum dated 30 September on Release of Information to Congress. Paragraph 4(f) of that memorandum suggests that classified material carry an appropriate precautionary notice to preclude further unauthorized dissemination. The two phrases suggested were:

(a) This document is furnished for use of the recipient only. Reproduction, quotation, or further dissemination is not authorized without specific authority of the Director of Central Intelligence.

(b) This document contains information affecting the national defense of the United States within the meaning of the Espionage Act, 50 USC 31 and 32, as amended. Its transmission or the revelation of its contents in any manner to an unauthorized person is prohibited by law.

The question has now arisen whether either of these warnings would have any effect in view of the Congressman's constitutional immunity from responsibility for his statements. A review of the law indicates that this immunity is absolute when the statements are made on the floor of the House or Senate and extends to publication of the Congressional Record or the published hearings of the Congressional Committee. Under such circumstances, any warning would merely put the legislator on notice with the nature of the information, but in no way binding. In such cases, disciplinary action could be taken only by his fellow Congressmen.

2. In the case of disclosures made by Congressmen outside of Congress, the immunity would not apply. Members of Congress are subject to prosecution in the same manner as other private citizens. Consequently, a warning would be of real weight in precluding unauthorized disclosures outside of Congress.

3. Under the circumstances, it is our feeling that the form set forth in (b) above is preferable and more effective.

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In any case, we have in our experience in the past found that such a statement printed or stamped noticeably on documents going outside the Agency was noticeably effective in the careful handling of information by the recipient.

LAWRENCE R. HOUSTON
General Counsel

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Legal Opinions

20 October 1947

Naturalization (Residence Requirements)

MEMORANDUM FOR FBR
Attention: [redacted] 25X1A9A

Subject : Naturalization of Aliens

1. The alien wife of an American citizen, where the wedding or naturalization of the husband is after 13 January 1941, must normally complete two years residence in the United States before filing a petition for naturalization. The only exception provided for by law to shorten this period is in Section 312 of the Nationality Act of 1940, which is quoted as follows:

> "Alien whose citizen spouse is in the employment of the United States Government, or of an American institution of research, or an American firm or corporation engaged in the development of foreign trade and commerce of the United States. An alien whose citizen spouse is in the employment of the United States Government, or of an American institution of research recognized as such by the Attorney General, or an American firm or corporation engaged in the development of the foreign trade and commerce of the United States, and whose citizen spouse is regularly stationed abroad in such employment, may be naturalized upon full compliance with all requirements of the naturalization laws, with the following exceptions: (1) no declaration of intention shall be required; and (2) no prior residence within the United States or within the jurisdiction of the naturalization court shall be required. Such an alien shall declare in good faith an intention to take up permanent residence within the United States immediately upon the termination of such employment abroad of the citizen spouse."

It will be noted that the husband of an alien wife under that Section must be an actual employee and must be regularly stationed abroad in such employment. "Regularly stationed abroad" means that he has been serving abroad at the post to which he is now assigned or a similar one and is returning to that post or a similar one for an indefinite tour of duty. If the husband fulfills these conditions, the wife must be physically present in this country to file her petition before an American court. If the husband fulfills the conditions overseas by becoming an employee of an American firm or corporation engaging

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 20 October 1947

in the development of foreign trade and commerce of the United States, the wife would have to return to this country for naturalization. It should be noted that the alien wife must intend in good faith to return to the United States for permanent residence upon the termination of the husband's employment abroad. If the conditions of that Section are not met, it should be pointed out that absence of the alien wife for periods of less than a year will not break the continuity of her residence in the United States for naturalization purposes.

LAWRENCE R. HOUSTON
General Counsel

LRH:mbt

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21 October 1947

MEMORANDUM FOR THE EXECUTIVE FOR A & M

Subject: Claim of [redacted] 25X9A6

1. Forwarded herewith is a memorandum for CIG dated 30 September 1947 signed by [redacted] constituting a claim against the United States Government arising out of an accident which occurred on 15 September 1947. [redacted] 25X9A6 submitted a Report of Accident dated 19 September 1947 and attached three estimates from various Motor Companies. This Report is attached; also, statements attached from [redacted] 25X1A9A [redacted] driver of the CIG car involved in the accident with [redacted] 25X9A6 car, together with a statement by [redacted] 25X1A9A [redacted] a passenger in the Government vehicle.

2. [redacted] 25X1A9A was assigned as Investigating Officer, and his report is attached. [redacted] 25X1A9A states that in his opinion, after investigation, the driver of the Government vehicle was at fault in the accident. [redacted] 25X1A9A points out, however, that after personal inspection of the vehicle owned by [redacted] 25X9A6 that the damage to the right front bumper, bumper guard, and lower bar of the grill does not warrant replacement with new parts and, consequently, recommends the payment of $28.00 as adjustment for a reasonable amount in settlement of this claim.

3. It is the opinion of this office that this claim is an appropriate matter for determination by CIA under the provisions of the Federal Tort Claims Act, Title 28 U.S.C.A., Chapter 20. Further, it is the opinion of this office that damage to the personal property of the claimant was caused by the negligent act of an employee of the Government while acting within the scope of his employment under circumstances where the Government if a private person would be liable to the claimant for such damage in accordance with the laws of the District of Columbia where the negligent act occurred.

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The matter is referred to your office for final action as the designee of the Director to determine and settle claims of this nature against the U. S.

LAWRENCE R. HOUSTON
General Counsel

JSW:mbt

25X1A9A

cc

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Legal Dec (Leg) Chrono of Travelling Expenses (Fares)

SECRET

23 October 1947

MEMORANDUM FOR THE ADSO

Subject: Reimbursement of First-Class Reservations [redacted] Expended from Personal Funds by [redacted] 25X1A9A 25X1A9A

1. Attached is a memorandum to ADSO from Special Funds concerning reimbursement to [redacted] for expenditures made by [redacted] for a first-class cabin for his wife and himself from [redacted] to the United States. It is pointed out that originally second-class passage was secured for [redacted] since no first-class was available. Upon first-class becoming available, [redacted] secured it with the expenditure of personal funds amounting to $467.00. 25X1A9A 25X1A9A 25X1A6A 25X1A9A 25X1A9A

2. The facts as presented appear to satisfy the requirements of the Standardized Government Travel Regulations. Consequently, there is no legal objection to payment of the amount of $467.00 to [redacted] if you approve. 25X1A9A

JOHN S. WARNER
Assistant General Counsel

SECRET

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Legal Decisions
Copyright

MEMORANDUM FOR THE FILES

SUBJECT: ~~Suit Against the United States.~~

54 American Jurisprudence, Literary Property and Copyright, § 21.

"For Protection of Information and News. Relief is granted to one who has property in information or news on the principle of unfair competition rather than on the principles of literary property. Thus, where rival news agencies or rival telegraph companies attempt to appropriate news or information which one or the other has gathered before it has become public property and in such a manner as to interfere with the business of the owner, protection will be granted against such interference. News gathered by a press agency and distributed to newspapers for publication is entitled to protection against its being pirated or appropriated verbatim by a radio station in broadcasting such news, even though this would necessarily be done without charge. In the exercise of its right to obtain relief to prevent the bodily appropriation of its news matter by another agency, either in its original form or after rewriting and without independent investigation and verification, the fact that the complaining agency is itself in the practice of taking the news of its rival as a "tip" to be investigated does not debar it from equitable relief, such practice being a common one among news agencies. Equitable relief is usually granted in the form of an injunction. Where a party has not only obtained knowledge of the secret code or system of another, but has wrongfully made a copy of such system, a court of equity, to prevent the former from fraudulently making a disclosure of the secret, will ~~xxxxxxxxxxxxxx~~ not only enjoin him, but will also take into its possession, by means of a receiver, such wrongfully made copy to prevent fraud; and if, on the trial, the facts alleged are established, the court will be justified in placing such copy in the hands of the plaintiff, or at least in seeing that the plaintiff's secret marks therein are erased or canceled.

"A broker's customer does not have such a property right in the broker's records of his account as will permit him to enjoin the broker's compliance with a subpoena duces tecum requiring the production of such records."

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3 November 1947

MEMORANDUM FOR THE EXECUTIVE FOR A & M

Subject: Property Accountability

1. In addition to concurring generally in the memorandum of 28 October from the Chief, Services Branch on the above subject, I should like to comment on a more strictly legal aspect of the situation.

2. The Agency rules setting the property controls are promulgated under a Section (31 U.S.C. 92) authorizing the heads of departments to make and enforce regulations to carry out the provisions of Sections 89-92 of Title 31. This reference to the earlier Sections forces such agency regulations to serve certain purposes. The basic purpose is to insure enforcement of pecuniary liability for loss accruing by fault of an employee. This liability was formerly determined by GAO. Section 89 authorizes administrative officers of the departments to certify to GAO, for debiting on the proper account, charges determined by the department. By Section 90, such a certificate shall state that the charges were found upon fair hearing, and a certificate then would be effective as if found by GAO in accounting. These certificates in lieu of property returns do not affect other property returns, such as those required by GAO Reg. 100 (31 U.S.C. 91). Finally, Section 93 of Title 31 provides that GAO shall superintend the recovery of all debts finally certified by it to be due to the United States.

3. The Sections discussed above emphasize the basic fact that ultimate control over property is acquired only by the ability to inflict liability for negligent or willful loss. They further emphasize that although the administrative determinations, such as surveys, are performed by the agencies, GAO has final review and makes final certification. Therefore, in effect, the administrative processes must satisfy GAO requirements. These requirements appear to be based on a balancing of interest.

4. From a property control point of view, the perfect system would be to have each individual accountable and responsible for property under his control. Obviously, such a

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system would be so cumbersome and expensive as to outweigh any saving to the Government. On the other hand, complete centralization of accountability and the resulting separation of accounting from the physical control of property leads to inevitable looseness of control and difficulty in proving the chain of responsibility necessary to impose pecuniary liability. The present system is in the nature of a middle ground where the accountable records are maintained closely enough in location and staff organization to maintain a reasonably accurate control and to furnish a ready record for use as evidence in cases of loss or damage.

5. As I believe you have been informed, GAO is surveying the different systems now used by Government agencies and is leaning towards a tightening up of the controls. On an informal review of the system now used by this Agency, they expressed their approval as the type of system they hope to have adopted by the Government as a whole.

LAWRENCE R. HOUSTON
General Counsel

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Cia
Legal Dec
(Memo of Law)
Nat & Citizen

Chief of Mission
[ ] 25X1A6A

4 November 1947

[ ] 25X1A9A

Citizenship and Nationality
Foreign Born Children

1. We refer to your memorandum of 26 September 1947, which forwarded a copy of [ ] and of an opinion submitted by the Vice Consul in [ ] 25X1A6C 25X1A6A

2. We have had the situation reviewed here and discussed the problem generally with the Immigration and Naturalization authorities. We feel it is unlikely that the position taken by the Vice Consul and the ingenious arguments used to support it will be accepted by the Department of State or the Immigration and Naturalization authorities. The Department will, however, no doubt answer the Vice Consul, stating its views. The legal people here feel that the statute involved is clear on its face and not subject to re-interpretation, although they are persuaded by the Vice Consul to think that the fault may be in bad draftsmanship rather than any intent of Congress to have an unfair rule apply to such cases as the one presented.

3. We imagine the Vice Consul has already informed the parent involved, but, for your information, we believe there is a satisfactory solution under a provision of law which will permit the citizen father on return to this country to bring his wife and child in on a non-quota basis. He may then immediately petition for naturalization of the child, and no declaration of intention or period of residence in the United States is required. This procedure would effect naturalization in short order at any time prior to the child's eighteenth birthday. The only alternative is the most uncertain hope of an amendment to the law, which would cover the facts as stated in your correspondence.

KPP LRH ______________________ HH

ADMIN

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MEMORANDUM FOR THE GENERAL COUNSEL

Legal Decisions (Law) Opinions of

Subject: Disposition of Captured Japanese Documents.

The Joint Chiefs of Staff paper 950/15, dated 13 August 1946, subject: "Distribution of Records of Combined and Joint Operations," as approved 28 August 1946, deals with the problem of determining the groups of records which do not properly belong in the archives of the War or Navy Departments, and recommends to the Joint Chiefs of Staff, on the basis of major interest, the department which should be designated custodian thereof.

JCS 950/15 provides for the disposition of captured German and Japanese documents as follows:

"e. Captured German records presently held by either the War or Navy Department will be retained in the files of the Department now having custody of them, and any additional captured German records which may come into the custody of the United States will be filed in the archives of the Department which has a major interest in the records involved.

"f. Captured Japanese records will be filed in the archives of the Department having a major interest in the records involved. However, these records will not be filed in the archives until after they have been exploited for intelligence purposes."

(Note should be made of the distinction made as to their handling between German and Japanese documents.)

In connection with the disposition of captured Japanese records, the Director of Intelligence, War Department General Staff, and the Chief of Naval Intelligence determined that the Central Intelligence Group was best equipped to handle the records involved. In a memorandum, the Director of Intelligence, W.D.G.S., and the Chief of Naval Intelligence requested that the Director of Central Intelligence

"in accordance with paragraph 3. c. of the President's letter of 22 January 1946, perform for the benefit of all the intelligence agencies the processing, dissemination and housing of all captured Japanese documents, and that he furnish a final repository for same."

In a memorandum dated 2 November 1946, the Director of Central Intelligence accepted

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"in principle the proposal for the transfer of the Washington Document Center, in order to perform for the benefit of all the intelligence agencies the processing, dissemination and housing of all captured Japanese documents . . ."

The approval of the War and Navy Departments of this action was implied in letters from the Secretaries of War and the Navy. Under date of 26 November 1946, Mr. Forrestal, as Secretary of the Navy, addressed a memorandum to the Director of Central Intelligence, making naval personnel available "to permit continuation of the Washington Document Center under the operational control of the Central Intelligence Group."

Similarly, on 14 November 1946, Mr. Patterson, the Secretary of War, in a memorandum to the Director of Central Intelligence concerning the transfer of the Washington Document Center to the control of Central Intelligence Group, in effect, gave approval to the transfer of the Document Center to the Central Intelligence Group by approving certain personnel transfers to implement handling by CIG.

In view of the above commitments, it is apparent that full operational control of the Washington Document Center, and of the Japanese documents contained therein, has been transferred to the Central Intelligence Agency for the purpose of processing, disseminating and housing all captured Japanese documents and furnishing a final repository for same. In furnishing such a final repository, it is felt that the Central Intelligence Agency can select the appropriate repository, and that it need not be within the confines of the Central Intelligence Agency itself. It can properly be the National Archives, the Library of Congress, or such other department or agency as appropriate. This would also appear to be within the intent of JCS 950/15 which provides that these records will be "filed in the archives of the department having a major interest in the records involved." Present procedures also come within the intent of paragraph f. of JCS 950/15 which further provides that the Japanese records will not be filed in the archives until exploitation for intelligence purposes has been completed.

In view of the above, it is our opinion that, title to the documents having passed to the Central Intelligence Agency, it is within the jurisdiction of this Agency to make the final determination, in accordance with appropriate provisions of law, as to the ultimate disposition of these captured Japanese documents, and that this is in accordance with Joint Chiefs of Staff's intent. Certain of these Japanese documents will, in all probability, be deposited in the National Archives as a permanent transfer. The intention of forwarding these documents to National Archives should be expressed in a letter from the Director of Central Intelligence to the Archivist of the United States, Honorable Solon J. Buck. It is the request of the Office of the Archivist that this letter, a form for which has been supplied to CIA, should include a specific statement transferring

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title to such documents as are transferred to the National Archives.

In a Memorandum to the General Counsel, dated 19 August 1947, Subject: Captured Documents, disposition of, the Assistant Director for Collection and Dissemination propounded certain questions which he desired to be answered for his guidance in this matter. These questions, and the answers thereto, are considered herewith.

1. Are captured documents and other material of a documentary nature considered as government records within the meaning of the Act governing the destruction of government records?

The law regarding disposition of records defines records (44 USCA 366) to include

> ". . . all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency . . . because of the informational value of data contained therein."

This indicates that captured documents would be considered as records received by an agency of the United States Government "in connection with the transaction of public business" which might be appropriate for preservation "because of the informational value of data contained therein." This opinion has been concurred in by the Office of Archivist.

However, note should be taken of the additional clause in the section of the law cited above, which states that:

> "Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference . . . are not included within the definition of the word 'records' . . ."

Care should be exercised in that the material transferred to Archives should be record material - basically government records. It is at that point that the line between Archives and the Library of Congress appears to be drawn. If the material consists of books, periodicals, or general printed material, it does not always fall within the legal definition of "records" and, therefore, is not within the provisions of the Federal Disposal Act; rather this material would be considered "library and museum material" and would be transferred to the Library of Congress. However, in the last analysis, it is not a question of physical form or characteristics but rather whether it is a record in the material sense. For

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example, certain rules and regulations of a Japanese Ministry may be printed up in book form, but these would be considered records pertaining to the Ministry and, therefore, would be transferred to the Archives. Similarly, published maps of the Japanese War Ministry are considered to be pertinent to the War Ministry Records, and, therefore, would be transferred to the Archives.

2. Should any distinction be made in the disposition of official records of the enemy government, smaller political subdivision records, business records, or private records of individuals, particularly personal records of enemy military personnel?

The answer to this question is in the negative. The statute covering records, (cited in the answer to question 1, above), speaks of records "regardless of physical form or characteristics . . . received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business . . ." Certainly the prosecution of the war was "transaction of public business."

While it is noted that some of these records are of private individuals or business concerns, it is the feeling of the office of the Archivist that no attempt should be made to distinguish between them and Japanese Governmental records. It is felt that no serious attempt to break them down should be made, and that the majority of them should be considered as Governmental records, as they are United States records by capture. (This does not change the thought expressed in the answer to question 1, as to the type of material to be forwarded to the Library of Congress, but merely distinguishes between governmental records on the one hand, and private and business records of the Japanese on the other.)

It should be noted that the records, to fall within the purview of the statute, must be captured or seized officially by our armed forces, and should not consist of personal loot.

Care should be taken, however, in connection with their destruction, that documents which are of value to agencies other than CIA should not be destroyed. They should be disposed of in accordance with principles discussed below. Special care should be taken, in scheduling documents for final disposition or destruction, that no record should be destroyed which would be of future value to the United States either as a defense against possible future suits for claims against this government, or material which might be figured in some final reparations bill. Particular care should be exercised in connection with captured patents and similar documents. It is for this reason, that the office of the Archivist feels that CIA should not attempt to distinguish between military, governmental and business records, but rather should keep them all together in Archives when intelligence exploitation has been completed.

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3. The authority of CIA to destroy such captured documents as are deemed to be of no intelligence value.

CIA has no authority to destroy captured documents except under the terms of the Federal Disposal Act. It is necessary, when CIA desires to destroy documents, to request permission of the National Archives, which in turn, requests permission of Congress. Congress then informs the Archives of its decision. The request from CIA to the Archives is set forth in schedules for destruction of documents and is a fixed form. These requests -- and the whole problem of CIA relations with the Archivist -- are handled by the Central Records Division, Services Branch, under the Executive for Administration and Management. When the Foreign Documents Branch has documents for disposal which they deem of no intelligence value, and of no value for inter-agency transfer, they should make arrangements for their scheduling. It should be noted that once it has been determined that a certain class of documents may be destroyed, recurring permission need not be obtained from the Archivist for the destruction of this class of document.

4. The authority or responsibility of CIA to transfer to other agencies of the Federal Government such of subject documents as are no longer desired to be retained by this agency.

This authority for inter-agency transfer is provided in Executive Order 9784, dated 25 September 1946. This order provides that:

> "No records shall be transferred by one agency to the custody of another agency without the approval of the Director of the Bureau of the Budget except for their retirement to the National Archives, as a temporary loan for official use, or as may be otherwise required by statute or Executive order."

The regulations governing inter-agency transfer through the Bureau of the Budget should be ascertained and placed in operation. Where it has been established that certain records should be the subject of inter-agency transfer, CIA should request the Director of the Bureau of the Budget for a recurring and continuing right to transfer this particular type of record to the specific agency.

5. The authority of CIA to release or distribute to private interests such of subject documents (or copies thereof) which are no longer desired for retention by CIA.

Such documents as CIA wishes to dispose of in this manner must be scheduled for disposal to the Archivist who in turn will request Congress for permission to dispose of them. Once permission for their destruction has been secured, a further request

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should then be addressed to the Archivist requesting permission for special disposal of the documents by dissemination to private interests.

Assistant General Counsel

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(2a)

19 November 1947

MEMORANDUM FOR THE CHIEF, MANAGEMENT BRANCH, A & M

Subject: Property Records for OSO Operations

1. The proposed directive attached hereto was drafted in this office after discussions with CAS, OSO, the Chief, Budget and Finance, and the Chief, Services. It had prior oral approval in principle from the Director, the Deputy Director, and the ADSO. The Chief, Services' comments of 13 November have been discussed with CAS, OSO who agrees with the statements made therein. The approval of the Acting ADSO to publication of this directive, as drafted, is expressed below.

2. In our opinion, particularly because of the final surveying authority granted, this directive will require the signature of the Director. In view of the many offices with a technical interest in this problem and the peculiar nature of some of the problems presented, it is requested that you discuss with this office any changes in form or content you may wish to make.

LAWRENCE R. HOUSTON
General Counsel

APPROVED:

25X1A9A

Acting ADSO

LRH:mbt

Legal Dec.

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OKW

CIA Legal Dec. Chemung Law

4 December 1947

MEMORANDUM FOR THE CHIEF, SUPPLY DIVISION 25X1A6A

Subject: Cooling System at [ ] [ ] Station 25X1A8A

1. We return herewith your file on the above subject and confirm our previous oral opinion that there is no legal objection to installation of the proposed system. This is based on the understanding that the equipment to be installed is temporary in nature and remains the property of the Government, which can be removed upon termination of the lease. It, therefore, is not subject to the restriction on the amount which can be expended for permanent improvements on leased property.

2. As we noted informally before, we feel the inspection provisions of the lease on this property should be carried out prior to the making of any alterations, in order that restoration rights be clearly defined.

LAWRENCE R. HOUSTON
General Counsel

LRH:mbt

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Legal Decision

5 December 1947 CONFIDENTIAL

MEMORANDUM FOR THE CHIEF, SECURITY BRANCH, OSO

Subject: Automobile Accidents

1. We have reviewed your memorandum of 27 August 1947 and have discussed informally the problems posed therein with the ADSO. It is our view that all contingencies cannot be specifically provided for, but certain rules may be laid down for the guidance of your men, and authorities obtained, which will enable them to handle certain situations to protect security.

2. There will be two general situations — minor incidents such as brushed fenders and bent bumpers, and major accidents. The distinction is a matter of degree, without a clear-cut dividing line, and the circumstances will determine each case. In major accidents, it is almost certain that a demand to see registration and license will be made, and it would be safe to assume that the state police will be involved. While the other party to a major accident may have a right to the information contained in registration, driving permits, and insurance papers, we do not believe he need actually see the documents. Under no circumstances should your man produce Treasury or other Government credentials to identify themselves. If possible, they should try to satisfy the other party with the information on their personal driving licenses and await the arrival of the police. They should then attempt to have the police officers examine the CIA registration separately, without revealing the ownership of the car to the other party. They could then inform the police that they were acting in a confidential capacity and request that, if possible, the ownership of the car by CIA not be made a matter of record. In case the police doubt their story and wish confirmation, your man should be instructed then to call you collect. They would also explain to the police that being Government owned, the car carried no insurance. Your man should, of course, obtain all possible information pertaining to the accident, including, where possible, statements of witnesses, copies of police reports, and photographs for forwarding to this office at the earliest opportunity. Major accidents normally will involve a claim, and any claims against your man should be immediately forwarded to this office for action. Similarly, if there appears

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to be negligence on the part of the other person or persons concerned which might give rise to the claim on behalf of the Government, a full report should be forwarded to this office for consideration of the amount involved and whether to refer the case to the proper claims officials. In many cases, it may be possible to handle claims by or against the Government as personal claims by or against the employee to the point of final settlement.

Minor accidents may or may not involve a claim. Again, every effort should be made to have claims processed through this office. It may be that, in certain cases, where the Government employee feels he was clearly at fault to the extent that the Government would be liable for damages, circumstances may be such as to justify an immediate settlement for a small amount of cash. If this is done, the employee would have to demonstrate the circumstances as follows:

(a) He would have to cite the facts establishing his negligence or fault;

(b) He would have to show that failure to make immediate settlement would tend to disclose his CIA employment, or the CIA ownership of the car;

(c) He would have to establish that damage was such as to require an expenditure for repair;

(d) He would have to demonstrate that the amount of settlement was reasonable with reference to the cost of the repairs to be made.

The important item in the above, of course, is the requirement that relationship with CIA be protected. If such protection is not involved, no on the spot settlement could be reimbursed by the Government. We feel a limit should be set on the amount of such settlements and believe $25.00 would be reasonable. We suggest that your proper move would be to draw up a project providing for reimbursement not to exceed $25.00 for any one accident to take care of cases which meet the requirements set forth above. We believe the ADSO has the authority to approve such a project and to authorize the allocation of funds to support it. If he agrees with your view that the security of your operations requires this protection and approves the project, you should brief your men carefully, so that they will not pay out money improperly and find that they are denied reimbursement.

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In connection with the specific case presented by [redacted] you will note that all the requirements outlined by us above were not met, in that he stated that, in his opinion, the other driver was at fault. If this were true, there was no obligation on the part of the Government, and [redacted] paid through intimidation, rather than liability. There seems, however, to be some doubt as to the degree of negligence of the drivers involved, and, possibly, [redacted] merely wished to justify himself by throwing the blame on the other driver. Of course, if the Government driver is grossly or willfully at fault through reckless driving, drunken driving, etc., he would be personally liable and would not be reimbursed.

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LAWRENCE R. HOUSTON
General Counsel

LRH:mbt

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9 December 1947

Cia Legal Dec Law Memo 2

MEMORANDUM FOR THE CHIEF, SERVICES BRANCH, A&M

Subject: Employees Uniforms -- [ ] [ ] 25X1A7B 25X1A6A

1. We refer to your memorandum of 8 December 1947, requesting a legal opinion concerning the purchase from CIA funds of uniforms for native chauffeurs and messengers in the [ ] office of [ ] 25X1A6A 25X1A7B

2. You are aware of the general rule requiring specific authority for the purchase of uniforms, and you are also aware that, in certain circumstances, the Comptroller General has permitted the purchase of uniforms overseas without specific authority. These Decisions of the Comptroller General appear to be based on administrative determinations of the necessity of the purchase in connection with the official work of the office concerned.

3. We feel that as this Agency is organized the proper officer to make an administrative determination of this type would be the Executive for Administration and Management. In submitting his request, the Administrative Officer, [ ], has 25X1A7B presented no facts which would enable the Executive for A&M to make a considered determination. [ ] should, therefore 25X1A9A submit information tending to support the following points:

(a) That for good and sufficient reason, uniforms cannot, or will not, be supplied by the employees concerned;

(b) That the uniforms remain the property of the United States Government;

(c) That the support of United States prestige overseas, and conformity with established practice, requires the purchase of uniforms; or

(d) That the use of uniforms is necessary to conduct official business of the Branch.

4. If I may supply personal knowledge for your information and guidance, the following may be helpful in connection with the above points:

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(a) [redacted] servants of a messenger and chauffeur type are paid such low wages, and Western clothing is so high in cost, that it would be out of the question for them to supply their own uniforms. This is common knowledge and needs a little supporting evidence.

(b) There is, of course, no difficulty about ownership remaining in the Government.

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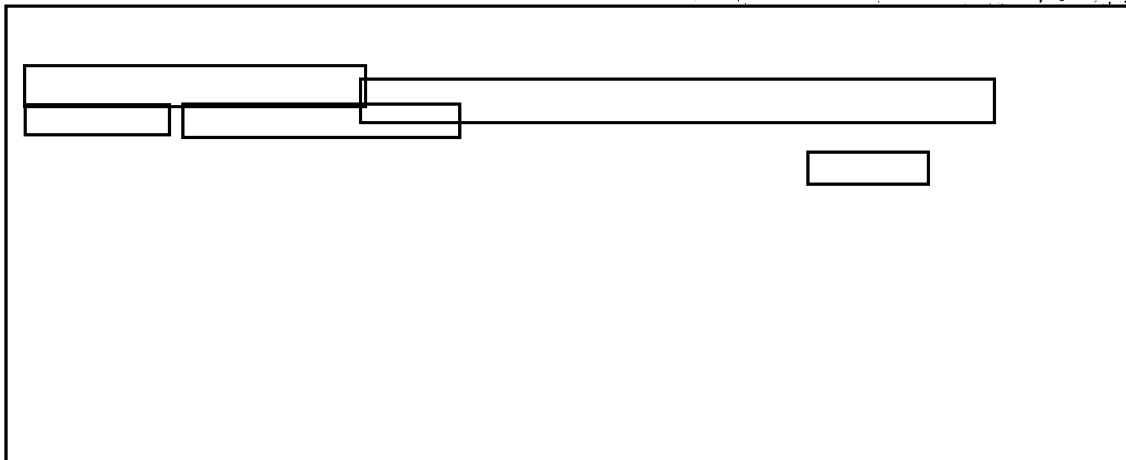

(d) As to the necessity for uniforms in connection with official business, I think it can be safely said that uniforms will assist office business in two ways. First, it will be an inducement to the best native employees to come to that office for work, and, secondly, it will increase their ease of access to other official offices and buildings. These are largely points of convenience, not necessity, and we feel there should be a stronger showing to the effect that failure to get the uniforms will measurably decrease the efficiency of operations.

5. If the Branch can satisfy the Executive for A&M on the above points, we feel that a considered administrative determination that the expenditure is necessary would not be questioned. This would be on the understanding, of course, that operations in the area concerned, for which the expenditure was justified, would be continued at that place for a

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reasonable length of time and were not merely being carried on in that particular place for a temporary period.

LAWRENCE R. HOUSTON
General Counsel

LRH:mbt

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26 December 1947

MEMORANDUM FOR THE EXECUTIVE OFFICER, CONTACT BRANCH

Subject: Employment of Retired Officers

1. On 29 August 1947, you wrote a memorandum to the Chief, Personnel Branch, requesting information on the effect of Section 303 of the National Security Act of 1947 on the hiring of retired Navy and Army officers. The Personnel Branch referred the question to our office on 9 September. Since that time, we have been attempting to obtain a satisfactory answer to your question but without success.

2. Since the Office for the Secretary of Defense has the same problem, we discussed it with them, and they in turn discussed it with the experts in that field at the General Accounting Office. The final result was advice from the General Accounting Office that the various statutes, rules and decisions regarding the hiring of retired officers were so confused, and often contradictory, that no general rules could be set forth (this applies not to officers retired for combat injuries, or illness in line of duty, but to those retired in the normal longevity laws). In effect, this means that each case would have to be transmitted for a separate ruling in order to protect both the retired officer and the certifying officers of the agency. Such a procedure is so cumbersome that the Office of the Secretary of Defense has informally determined not to consider retired officers for employment. Legislation has been prepared to simplify and clarify the situation, but the General Accounting Office could not estimate when such legislation might be presented, or in what form it might be passed.

LAWRENCE R. HOUSTON
General Counsel

cc: Personnel