OPINIONS
OF THE
OFFICE OF GENERAL COUNSEL
CENTRAL INTELLIGENCE AGENCY

VOLUME XIII
1960

OPINIONS

of the

OFFICE OF GENERAL COUNSEL

CENTRAL INTELLIGENCE AGENCY

Volume XIII

(1960)

The volumes in this series contain in chronological order notes, memoranda, and opinions of law (published and unpublished) of the Office of Strategic Services, Strategic Services Unit, Central Intelligence Group, and the Central Intelligence Agency.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: 13 OGC 37.

OGC/B-9798(a)

5 January 1960

MEMORANDUM FOR: IPD/DD/P

ATTENTION : [redacted] 25X1A9A

SUBJECT : [redacted] Personnel - 1959 Federal Income Taxes 25X1A2D1

1. Your memorandum of 29 December 1959 requested the advice of this Office as to which of the [redacted] are entitled to file joint returns and what personal exemptions may be claimed. 25X1A2D1

2. Inasmuch as all of the [redacted] were nonresident aliens for part of 1959 none of them may file joint returns (Section 6013, Internal Revenue Code of 1954). [redacted] will not be able to file a joint return for 1960 income since his wife will not arrive in the United States until after 1 January 1960. On the basis of the information provided it appears that all of the other [redacted] will be eligible to file joint returns in 1961 on their 1960 income. 25X1A2D1 25X1A9A 25X1A2D1

3. Each [redacted] may take a personal exemption for himself and another exemption for his wife without regard to the nonresident alien status of each during part of the year. The [redacted] may take personal exemptions for each dependent child provided that the child was a resident of the United States at some time during the tax year. 25X1A2D1 25X1A2D1

25X1A9A
[redacted]
Assistant General Counsel

OGC/JDM:jcw

Distribution:
Orig. & 1 - Addressee
1 - JDM Chrono
1 - [redacted] File 25X1A2D1
1 - Chrono
1 - East

5 January 1960

MEMORANDUM FOR: The Record

SUBJECT: Procedure for Filing a Will in Arlington County

1. Under the law of Virginia, probate jurisdiction is in the Circuit Court of a county or in the Corporation Court of a city such as Alexandria. The Clerk or Deputy Clerk of the Court may act except in cases of persons presumed dead. Appeal lies from the Clerk to the Court of Right (Code of Virginia, Title 64, ss 72, 73 and 74). Venue is: (a) in the residence of the decedent, (b) if none, where real estate is situated, (c) if none, where the decedent died or where he has an estate (Title 64, ss 72).

2. Where an Arlington County decedent is involved, the will may be presented to and probate forms obtained from the office of the Clerk of the Court, Room 230, Arlington County Courthouse. The two persons who are particularly responsible for such matters are Mrs. Long and Miss White. The courthouse is open between the hours of 8 to 5, Monday through Friday.

[redacted] 25X1A9A
Assistant General Counsel

Distribution:
Orig - OGC Subject
1 - OGC Chrono
1 - [redacted] Chrono 25X1A9A

25X1 OGC:[redacted]/cpod[redacted] 25X1A9A

8 January 1960

MEMORANDUM FOR: 25X1A9A [redacted]

1. The quotations requested are as follows:

Wilson on International Law says:

"As regards relations of insurgents and parent state, it may be said that they must, so far as possible, observe the rules of civilized warfare. This is expedient for the parent state in order that it may maintain the respect of sister states, as well as give no ground for retaliation by the insurgents. . . ."

Mr. Justice Grier in Prize Cases (United States Supreme Court, 67 U.S. 477) quotes Vattel as follows:

"A civil war . . . breaks the bands of society and government, or at least suspends their force and effect. . . .'

'This being the case, it is very evident that the common laws of the war--those maxims of humanity, moderation and honor--ought to be observed by both parties in every civil war. Should the Sovereign conceive he has a right to hang up his prisoners as rebels, the opposite parties will make reprisals, &c., &c.;the war will become cruel, horrible, and every day more destructive to the nation.'

Greenspan in The Modern Law of Land Warfare says [illegible]:

"So far as the provisions of Article 3 [referred to above] do constitute an international code for the regulation of civil war, it is obviously very sketchy, setting forth only a bare minimum of humanitarian requirements. However, it cannot be said that, in matters not covered by these provisions, the manner in which internal warfare is conducted lies within the unrestricted discretion of the parties to the conflict." Page 623

Greenspan says at pages 680 - 681:

"This view has also been taken that recognition of insurgency constitutes an expression of a belief by a foreign power that the insurgents should not be executed as rebels if captured by the legitimate government."

"Indeed, the Soviet delegation to that conference expressed the view that the effect of Article 2 of the Charter of the United Nations had already brought the regulation of colonial and civil wars within the purview of international law."

These quotations really demonstrate only that while the terms of the Geneva Convention, Article 3 prevent only summary execution and permit punishment for any reason after trial the writers concerned feel that in the case of insurrection international law goes somewhat farther than the expression contained in Article 3.

25X1A9A

Distribution:
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OGC/CFB/mmw (8 January 1960)

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OGC 60-0036

11 January 1960

MEMORANDUM FOR: Chief, FE Division

25X1A9A ATTENTION: [redacted], [redacted] 25X1A8A

SUBJECT: Motor Vehicle Accident, [redacted] 25X1A9A
Question of Personal Liability for Repairs

25X1A6C 1. [redacted] dated 27 November 1959 requests advice as to whether provisions of paragraph 4(b)(3) of [redacted] may be applied to an 25X1A6C accident occurring on 10 September 1959. [redacted] was promulgated as 25X1A6
25X1A6C of 2 October 1959. [redacted] dated 9 October 1959 reports action taken
25X1A6A by the Chief of Station, [redacted] in this case. The correctness of this action is also in doubt.

2. The damage occurred when [redacted] to whom the 25X1A9A quasi-personal vehicle had been assigned, drove it off the edge of a road and collided with a tree. Damages amounted approximately to $492.40. The evidence appears to be in conflict as to the circumstances leading to the accident, but the investigating officer found [redacted] 25X1A9 "guilty of negligent driving and therefore responsible for the resultant damage to the Government vehicle." [redacted] has been directed by the 25X1A9A Chief of Station to pay these costs of repair.

25X1A6C 3. [redacted] should not be applied in this case because it did not exist as an Agency regulation at the time this accident occurred.
25X1A6C The controlling regulation is [redacted] Since the monetary amount involved is less than $1000.00, paragraph 7(b) of this regulation authorizes the Chief of Station to take final action subject to the right of appeal therefrom to the Director through the Headquarters Board of Survey. A series of cases considered by the Headquarters Board of Survey prior to the publication of [redacted] and involving authorized 25X1A6C personal use of quasi-personal vehicles resulted in either (a) non-assessment of any pecuniary liability if the facts of the case were considered to amount to ordinary negligence or (b) assessment of full pecuniary liability if the facts were considered to amount to gross negligence.

4. Since these two alternatives are open for consideration in the present case and since the money amount places authority with the Chief of Station for making a finding relative to pecuniary liability, it is

SUBJECT: Motor Vehicle Accident, [redacted] 25X1A9A
Question of Personal Liability for Repairs

recommended that the evidence in the case should now be reviewed by the Chief of Station in order to make a determination on the degree of negligence involved. The conclusion of the investigating officer that he "finds [redacted] guilty of negligent driving ..." is not an adequate basis for the Chief of Station to direct [redacted] to pay the full amount of the damages. The Chief of Station himself should make the official finding, and it is advisable that he be explicit in his conclusion that he finds the negligence involved either "ordinary" (with resulting non-assessment of pecuniary liability) or "gross" (with resulting assessment of full pecuniary liability for cost of repairs). 25X1A9A 25X1A9A

5. To assist the Chief of Station in making this decision, he should use the following definitions:

a. Ordinary negligence means a moderate deviation from the prudent, reasonable standard of care and judgment that the circumstances sensibly demand.

b. Gross negligence means a flagrant, wanton, or extreme deviation from the prudent, reasonable standard of care and judgment that the circumstances sensibly demand.

6. Since the possibility of taking disciplinary action is distinct from the assessment or non-assessment of pecuniary liability, cognizant supervisory officials may take or refrain from taking action of this sort as is believed appropriate under the circumstances.

[redacted] 25X1A9A
Assistant General Counsel

cc: Chairman, Hqs Board
of Survey

Distribution:
Orig & 1 - Addressee
1 - Chairman, HBS
1 - OGC Subject Vehicles
1 - OGC Chrono
1 - [redacted] Chrono 25X1A9A

OGC/[redacted] 25X1A9A

OGC/B-9822

12 January 1960

MEMORANDUM FOR: Mr. Houston

SUBJECT : GEHA Tax Exemption Problem

1. The various provisions pertinent to this problem are:

a. The D. C. Charitable Corporations Statute provides:

"Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts, may" etc.

b. The provision of the Internal Revenue Code of 1954 corresponding to the 1939 provision under which GEHA is exempt is Section 501(c)(10), which provides:

"(10) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if--

"(A) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and" etc.

c. The original GEHA charter prescribes objectives as follows:

"Third. The particular business and objects of said corporation shall be an employees' beneficiary association providing for the payment of accident and hospital benefits to members or their dependents."

d. The amended charter:

"The particular purposes and objects of the said corporation shall be to engage in benevolent, educational and scientific activities and for the mutual improvement of its members."

e. The provision of the Internal Revenue Code which substantially corresponds to the D. C. Charitable Corporations Statute, Section 501(c)(3), provides:

"(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

2. Internal Revenue has not yet acted and it may be that they will not disturb our situation. 25X1A9A [redacted] however, informally advises he thinks Revenue will have to take some adverse action, for the reason that the amended charter does not provide for an organization which could be exempt under Section 501(c)(10), and although the charter might qualify for exemption under Section 501(c)(3), GEHA activities in fact do not. If and when Revenue rules against us perhaps we could amend the charter once more. But we may then be found with additional difficulties. For example, although the D. C. Superintendent of Corporations has been helpful and has accepted both our original certificate of incorporation and the amendment, it seems quite likely that the charitable corporations statute really is not designed for purposes such as GEHA and in fact we should not be permitted to incorporate under it. Secondly, even if we are able to amend our charter to omit the specific language to which 25X1A9A [redacted] objects, namely, "benevolent, educational and scientific activities" the remaining language "for the mutual improvement of its members" might be considered as failing to qualify under Section 501(c)(3).

3. Perhaps the ultimate corrective action would be to abandon the corporate form of GEHA and convert to an unincorporated association of CIA employees. This, of course, would require liquidation of the corporation, including disposal of its assets and further would require

negotiations with the Civil Service Commission so as not to endanger health benefits available under the new Act for GEHA members. On this point I see nothing in the Act which would preclude us from proceeding in this manner, but of course it would be necessary that the Civil Service Commission agree on that point.

25X1A9A

Assistant General Counsel

OGC/RHL:jcr
Distribution:
Orig. & 1 - Addressee
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1 - RHL Chrono
1 - Chrono
1 - East

25X1

OGC 60-0008(a)

MEMORANDUM FOR: Comptroller

SUBJECT: Designation of Residence for Purposes of Leave Following Overseas Assignment - [redacted] 25X1A9A

REFERENCE: Memorandum to the General Counsel from the Comptroller, dated 4 January 1960, same subject

1. We have your memorandum of 4 January 1960, in which you note your difficulties with paragraph 7e of [redacted] 25X1 in connection with the above subject. We agree that the wording of this provision should be changed in order that it may more clearly delineate the standards by which approval will be granted for requests for changes in designated places of residence. It is also our feeling that the expression "legitimate and bona fide home" is difficult to define and therefore adds to the confusion. If we can be of assistance in drafting new language for this provision, we should be happy to do so.

2. With respect to the specific request contained in the referenced dispatch, and transmitted with your memorandum, we feel that it is clear that the present regulatory provision contemplates changes in designated places of residence only if based on circumstances which have changed since the prior designation. Further, we perceive, within the meaning of the regulation, no "undue hardship" which would be alleviated by the requested change, nor has it been suggested that the individual is "compelled by necessity to change such residence." Under these circumstances, and based on the justification contained in the referenced dispatch, we feel that a change of designated residence for home leave purposes would, in this instance, be contrary to the regulation.

Attachment
Dispatch [redacted] 25X1A6C
same subject

LAWRENCE R. HOUSTON
General Counsel

Distribution:
Orig. and 1 - Addressee
1 - Subject
1 - Signer
1 - Chrono
OGC/HRC/mmw (12 January 1960)

Next 1 Page(s) In Document Exempt

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

OGC/B-9829

14 January 1960

MEMORANDUM FOR: Mr. Houston

SUBJECT : GEHA-CIA Meeting of January 15

25X1A9A 1. I have talked to [redacted] concerning the meeting for Friday, which is scheduled for 2:00 in the Director's Conference Room. As I understand it, he wants agreement from GEHA and the Agency on two propositions, one of which would follow from the other:

a. CIA employees stationed overseas will not be allowed to elect a health program other than the GEHA program.

b. Civil Service literature on the Government-wide program will not be furnished overseas.

2. The Act provides that any employee may enroll in an approved health benefits plan and that a "transfer of enrollment from one health benefits plan described in Section 4 to another such plan may be made by an employee or annuitant at such times and under such conditions as may be prescribed by regulations of the Commission." The draft CSC regulations submitted several weeks ago have a similar provision. When 25X1A9A [redacted] and I met with CSC representatives, Mr. 25X1A9A [redacted] advised that we would probably require our people not to enroll in any plan other than the GEHA plan. Although possibly neither we nor Civil Service Commission as a matter of law could deny one of our employees the opportunity to elect the Government-wide program if he so desires, I would think there is no reason why we could not use administrative measures to do so and 25X1A9A [redacted] suggested language strikes me as a practical approach, namely, overseas employees would be required, "as a condition of assignment," to enroll only in the GEHA plan.

3. Beyond the agreement, the meeting as I understand it, is designed mainly to be informative and to bring both the Board and the Agency representatives up to date on progress.

4. I gather developments under the Health Act are substantially as follows:

a. GEHA plans to negotiate with [redacted] to improve its contract, that is, now that a portion of premiums will be paid by the Government, more benefits will be sought with no increase in premium paid by the employee. [redacted] says the Civil Service Commission wants to deal with us on our new plan, rather than our existing plan, and he is directing his efforts to this end. However, it should be possible to abandon this approach and first qualify our existing plan, leaving to the future negotiation of an approved plan. 25X1A5A1 25X1A9A

b. In early December, CSC addressed a letter to GEHA (presumably also to all other interested parties) transmitting a Report of Progress and draft CSC regulations. This was followed by a memorandum of Minimum Standards for Employer Organizations and Employee Organizations Health Plans, January 5, 1960. Several dates and deadlines, pertinent to GEHA, were set forth.

i. Draft regulations were submitted on December 4 and written comment requested by December 14. GEHA, without OGC or CIA participation, submitted comments on December 14. Draft regulations are to be submitted to the Commissioners by January 15 for tentative approval and published in the Federal Register "in the form of proposed rule-making" by February 1 and as approved regulations in final form by March 15.

ii. In October a CSC letter went to GEHA and other employee organizations inviting them to submit, by December 31, prima facie evidence of eligibility. GEHA replied in November and on December 16 the CSC advised GEHA that the CSC had made a finding that GEHA qualifies as an employee organization under the Act. The CSC further indicated that it is hoped to approve the GEHA plan (and those of all other employee organizations), or advise that the plan is not approved, by March 1. For this purpose, GEHA is to submit, by February 15, the constitution and by-laws (amended as necessary), the contract and all riders and endorsements, "the official requirements for enrollment in the health plan," a statement from GEHA that [redacted] is lawfully engaged in the business of supplying health benefits "with citations to appropriate statutes," a copy of [redacted] last annual report, a breakdown of premium charges and a Memorandum 25X1A5A1 25X1

of Agreement (CSC/GEHA to be prepared by CSC) that the approved plan will continue in effect until November 1, 1961, and will be renewed annually, and that GEHA will advise CSC of changes in the constitution and by-laws.

25X1A9A [redacted] is collecting this material.

25X1A9A [redacted]
Assistant General Counsel

OGC/RHL:jcr
Distribution:
Orig. & 1 - Addressee
1 - [redacted]
25X1
1 - RHL Chrono
1 - East

OGC 60-0046(a)

14 January 1960

MEMORANDUM FOR: Commanding Officer, [redacted] 25X1A6A

SUBJECT: Personal Property Claim - [redacted] 25X1A9A

1. Returned herewith are your memorandum of 12 January 1960 and its attached claim with our endorsement on the claim.

2. By informal agreement between this Office and the Claims Board, claims payable on the basis of the Agency's legal liability are not required to be processed through the Board. Our approval of the claim represents a determination that such liability exists. Consequently, the claim may be paid without further review.

3. May we express our thanks for the clear and concise manner in which this claim and your covering memorandum were presented.

SIGNED
25X1A9A
[redacted]
Office of General Counsel

cc: 25X1A9A [redacted]

Attachments

OGC:HRC:jem

Orig & 1 - Addressee
1 - Subject
1 - Signer
✓1 - Chrono

OGC/B-9736(a)

18 January 1960

MEMORANDUM FOR: Chief, Finance Division

SUBJECT : Withdrawal of Agent's Insurance Proceeds from CIA Trust Account

STAT 1. A check from the [redacted] payable to "CIA as trustee. . ." has been cashed on the endorsement of an agent cashier and the funds deposited in a CIA trust account maintained for contract agents. This trust account was established under procedures
STAT set forth in [redacted] Normally the funds in such an account represent amounts withheld from payments to an agent, amounts accrued as incentive or resettlement payments or deposits accepted from an agent for his withdrawal in certain circumstances. In this case the deposit represents the proceeds of an insurance policy issued through WAEPA. Security factors did not permit revealing the agent's name to the insurance company and the company agreed to make the check payable to CIA as trustee.

STAT 2. Although [redacted] does not specifically provide for the receipt and withdrawal of insurance proceeds of this nature, it is the opinion of this Office that the procedures of that instruction are the proper ones to be followed for handling such funds. The Agency holds the funds as trustee for a specific purpose and by placing them in such a trust
STAT account it is following proper legal procedure. Withdrawal of the funds from the trust account for payment in accordance with the terms of the trust should be in accordance with the provisions of paragraph 5.c. of [redacted]

3. In this case the beneficiary of the insurance policy is a non-resident alien and presumably is unwitting of the insured's connection with the Agency. The Office of General Counsel is working out a means to pay the proceeds of the policy and other assets of the insured to his beneficiary without creating a security hazard. When a satisfactory means of payment has been established, this Office will advise the operating division to request withdrawal of the funds in accordance with the pro-
STAT cedures of paragraph 5.c. of [redacted]

25X1A9A
[redacted]
Assistant General Counsel

OGC/JDM:jcr
Distribution:
Orig. & 1 - Addressee
25X1 [redacted]
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1 - East

17

Next 2 Page(s) In Document Exempt

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

25 January 1960

MEMORANDUM FOR: Chief, Industrial Contract Audit Division

SUBJECT: Responsibility of Certifying Officer

1. You have asked me to advise you as to whether or not a certifying officer was responsible for ascertaining in each case that the contracting officer who signed a contract was legally authorized to do so. In particular, there was a doubt about whether the certifying officer must assure himself that the contracting officer executing the contract had not exceeded any monetary limitation attached to his authority as contracting officer.

STAT

2. After discussion of this matter with [redacted] the GAO representative in this Agency, I have reached a conclusion that the certifying officer is not required to inquire into this matter. It is my understanding that his responsibility is to satisfy himself that the requisitioning component possessed the funds to enter into the contract and obligated them for that purpose. He should further satisfy himself that the bills which he is considering are within the funds available and are for items for which the Government is liable under the terms of the contract.

STAT

[redacted]
Assistant General Counsel

Distribution:
Orig & 1 - Addressee
1 - OGC Subject
1 - OGC Chrono
1 - [redacted] Chrono

STAT

STAT OGC/[redacted]

25 January 1960

MEMORANDUM FOR: The Record

SUBJECT: Propriety of Agency Payment for Shipment of Household Effects of Resigning Employee

1. Attached is a memorandum dated 10 September 1959 from [redacted] 25X1A9A Chief, Administration Staff/OC, to me in connection with [redacted] 25X1A9A This memorandum sets forth the question I was asked with respect to the legality of the Agency paying, on a commuted basis, for the shipment of [redacted] 25X1A9A HHE to his home in Kentucky. [redacted] 25X1A9A was transferred PCS to [redacted] 25X1A6A and three days after arrival there he submitted his resignation from the Agency. At that time, his HHE had not been shipped from Cameron Station and the question asked me was whether the Government had any further responsibility in connection with the shipment of his HHE.

2. I contacted Mr. Henry Barclay in GAO (Code 129, ext. 5882) and gave him these facts as a hypothetical problem. Mr. Barclay informed me that the intent of the Government employee was the controlling factor and that if his intent, when accepting PCS transfer to [redacted] 25X1A6A was to accept that job rather than merely to go there in order to resign, the Government would be responsible for paying for the movement of his HHE.

3. I discussed this question further with [redacted] Commo/ 25X1A9A Administration, and advised him that Commo would have to make a finding of fact with respect to [redacted] 25X1A9A intent. The attached memorandum contains their finding on this point and since the employee's intent was not fraudulent, it appears that the employee is entitled to be paid the commuted rate for shipment of HHE to [redacted] 25X1A6A or to any other point where the actual cost is less than for shipment to [redacted] 25X1A6A

[redacted] 25X1A9A
Assistant General Counsel

Distribution:
Orig - OGC Subject
1 - OGC Chrono
1 - OGC/[redacted] Chrono 25X1A9A

Next 1 Page(s) In Document Exempt

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

OGC 60-0115

27 January 1960

MEMORANDUM FOR: Executive Assistant to the DD/S

STAT SUBJECT: [redacted] Section V: Settlement of Compensation Differences

1. Questions have been raised with respect to certain points
STAT in Regulation [redacted] Section V. The conclusions reached by this office as a result of its review of these points follow:

STAT a. Regulation [redacted] Section V, signed by the Deputy Director (Support), purports to rescind portions of three Confidential Funds Regulations. Since the latter were signed by the Director of Central Intelligence, his signature is also required on the rescinding document.

b. Compensation differences are defined in paragraph 1. as differences between compensation and other emoluments which an employee is entitled to receive from the Agency and compensation and other emoluments" received by him from a cover organization. But paragraph 2. speaks of cover "emoluments" in excess of Agency "compensation" as the difference (to be remitted to the Agency). Yet again, in paragraph 5.c. differences are said to be computed on the "basic annual rate of compensation" plus "allowances." The result of these inconsistencies is that the intended meaning of the quoted words cannot be determined nor does the history of the Regulation appear to clarify this. Since this language goes to the heart of the Regulation, its immediate clarification is indicated.

c. Paragraph 5.c. provides in part, 'Retirement and Federal insurance deductions, made by other Government agencies, which are in excess of amounts applicable to Agency compensation . . . shall not be refunded to the individual because of the additional indirect benefits that accrued or will accrue to the benefit of the individual. Retirement credit reported to Civil Service by an integrating agency has no effect on the annuity granted a CIA staff individual. He, therefore, receives no benefit, indirect or otherwise, from excessive deductions. As to insurance, we indicated in our memorandum to SA/DDS, dated 10 February 1958, regarding proposed Regulation [redacted] that the FEGLI coverage to which an employee is entitled is based on the amount of the CIA salary. Therefore, charging to the employee deductions based on a greater salary paid by the integrating agency would be improper.

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2. Revision of Regulation [redacted] Section V, consistent with the above opinion is required.

LAWRENCE R. HOUSTON
General Counsel

OGC:HRC:jeb
O&I -addressee
1-OGC chrono
1-OGC subject-O&M 1
1-OGC-[redacted] 25X1A9A

STAT

MEMORANDUM FOR: Executive Assistant to the DD/S

SUBJECT: Proposed Revision of Paragraph 3d, [redacted]

STAT

1. On 6 November 1959 a proposed revision to paragraph 3d of [redacted] was transmitted to this office by you with a request for a determination as to its legality.

2. On 20 November 1959, before reply to the inquiry had been made, the proposed revision was published.

STAT 3. We have reviewed this regulatory provision, in accordance with paragraph 3b(3) of [redacted] and find it legally objectionable for the following reasons:

a. The proposal was authenticated by the DD/S. We have repeatedly advised that regulations setting standards by which confidential funds are to be spent must be signed by the DCI.

b. The proposal states in part:

> Official travel of Agency personnel integrated into other U. S. Government departments or establishments, commercial enterprises, or Agency proprietary projects, shall be performed in accordance with the travel customs and policies of the cover facility concerned. Whenever travel entitlements of the cover facility are less than those of the Agency, the deficiency shall be adjusted in accordance

2 8

with Agency travel regulations; any excess allowances over Agency travel entitlements shall be retained by the integree without regard to Agency travel regulations.

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Paragraph 2b of Section V of [redacted] states as follows:

> If the compensation and other emoluments received by Agency personnel from or through their cover are less than those to which they are entitled as appointed personnel of the Agency, they will be reimbursed by the Agency for the difference. Conversely, if such cover emoluments exceed the compensation due personnel from the Agency, they shall remit to the Agency the excess in such manner as will be determined by the appropriate Operating Official.

The inconsistency is readily apparent. Although each of these provisions is, in itself, legally permissible, their simultaneous existence in the regulatory system is not.

4. If it is intended to exclude travel allowances and benefits from the Agency's express policy on settlement of compensation differences, appropriate revision of Section V of [redacted] should be instituted. (A discussion of other questions raised concerning

STAT [redacted] is contained in a separate memorandum of this date.)

STAT

LAWRENCE R. HOUSTON
General Counsel

OGC:HRC:mmw
Retyped: OGC:jeb
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1-OGC [redacted] 25X1A9A

Next 8 Page(s) In Document Exempt

2 February 1960

MEMORANDUM FOR: Mr. Houston

SUBJECT: Maryland State Income Tax Reporting

With regard to the question of liability of a hospital patient in the State of Maryland, I called the office of the Income Tax Division, State of Maryland, 1319 F Street, N. W., ST 3-6680 and talked to a Mr. Archer. I cited the case of an individual, legal resident of the State of New York, who was a patient in a mental hospital in the city of Baltimore during the entire tax year. After checking with his supervisor, Mr. Archer advised that if such an individual reports and pays taxes to the State of New York he would be exempt from reporting to the State of Maryland under a reciprocal agreement between the two states.

25X1A8A

[redacted]
Assistant General Counsel

OGC:JGO:jem

Subject
Signer
√ Chrono

8 February 1960

MEMORANDUM FOR: The Record

SUBJECT: Inquiry by SSA/DDS regarding Additional Parking Spaces Behind "I" Building

25X1A9A

1. [redacted], Chief, Real Estate and Construction Division, OL, asked me to discuss with Mr. Houston the possibility of obtaining legal approval for making additional parking spaces to the east of "I" Building at Agency expense. This matter apparently came to the attention of [redacted] when it was noticed that additional spaces were being created by GSA workmen across the street near Temporary 4 Building. An inquiry was made of the GSA superintendent, who said his agency had no funds presently available to do similar work for us. Accordingly, an inquiry was made by SSA/DDS through channels to determine whether Agency funds could be spent for this purpose. 25X1A9A

2. Mr. Houston and I discussed this matter on Friday, 5 February, and we reviewed a number of prior decisions by OGC which had consistently stated that unvouchered funds should not be used and vouchered funds had not been appropriated for this purpose. In view of the uncertainty regarding the length of time we will continue to occupy "I" Building, it was our opinion that approval of such a proposal was even less justified than heretofore.

3. Mr. Houston telephoned [redacted] and explained the legal background to him and our reasons for believing this suggestion should not be carried out. I reported to Chief, RECD, and Chief, Space Maintenance and Facilities Branch, RECD, stating that I understood the suggestion that Agency funds might be spent would not be pressed. Chief, SM&FB/RECD will continue to negotiate with GSA in an attempt to persuade them to make funds available for this work. Since the space contemplated for use is within the fence surrounding our building, we believe no approval by the National Park Service for such a project would be necessary. 25X1A9A

[redacted] 25X1A9A

Assistant General Counsel

Distribution:
Orig - OGC Subject B+b-c
1 - C/RECD/OL
1 - C/SM&FB/RECD/OL
1 - OGC Chrono
1 - OGC Legal
1 - [redacted] Chrono 25X1A9A

OGC/WC [redacted] 25X1A9A

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25X1C4B

Next 4 Page(s) In Document Exempt

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

16 February 1960

MEMORANDUM FOR THE RECORD

SUBJECT: Executive Privilege

1. After two days of testimony before the House Committee on Space and Aeronautics by members of the General Accounting Office (GAO) and the National Aeronautics and Space Administration (NASA) on January 27 and 29, 1960, it remained clear that the Congressmen and officials of an executive agency were poles apart in determining what was executive privilege and, more important, what constituted a good reason for denying access to certain documents to a congressional committee and to the General Accounting Office. While the Administrator of NASA was adamant in his refusal to turn over certain documents to the Committee and GAO, certain comments made by the participants shed some light on the problem of an executive agency withholding information from the Congress and also on the value of a realistic cooperation between an agency and Congress.

2. On 27 January, Robert F. Keller, General Counsel of the General Accounting Office, testified on the problem of access to records of NASA before the House Committee on Science and Astronautics. Mr. Keller appeared at the request of the Committee to discuss the refusal of NASA to make available to GAO some documents pertinent to the selection of North American Aviation, Inc., and McDonnell Aircraft Corporation over competitors in the awarding of two contracts. The basis for NASA's refusal was that the documents contained personal evaluations and recommendations of subordinates and disclosure would not serve the interests of efficient and effective administration of NASA. GAO's fundamental objective in reviewing the contracts, according to Mr. Keller, was to ascertain whether the contracting officer sought advice from appropriate sources and whether consideration was given to that advice. Mr. Keller claimed that the refusal interfered with GAO's statutory responsibilities under section 313 of the Budget and Accounting Act of 1921 (31 USC 53) which provides that all departments and establishments shall furnish to the Comptroller General information which he requests regarding the powers, duties, activities, organization, financial transactions, and methods of business of all departments and establishments of the Government.

3. After his formal presentation, Mr. Keller said that he did not believe the doctrine of executive privilege could be invoked to frustrate the purposes of the functions of the General Accounting Office. He did not discuss the constitutional argument as the basis for executive privilege, but he indicated that he felt the information withheld was not covered by executive privilege in the constitutional sense of separation of powers. Mr. Keller pointed out

that GAO was not precluded by statute or security considerations from looking into the requested information because NASA had no statute protecting information from normal accounting procedures as did CIA, for example. Security was not a factor, Mr. Keller said because GAO people were cleared for Top Secret and GAO had satisfactorily worked out systems of access to classified documents with other agencies.

4. Mr. Keller conceded, however, that GAO has no power to deny payment on a contract, for example, if there is a suspicion that additional information which the agency refuses to hand over may indicate mismanagement or bad judgment.

5. Dr. T. Keith Glennan, Director of NASA, on 29 January, explained the reasons for withholding the requested documents from examination by the General Accounting Office and the Committee. The document sought contained the personal evaluations and recommendations of certain officials of NASA which were submitted to Dr. Glennan to aid him in reaching a decision on the selection of a contractor. Dr. Glennan emphasized over and over again that the documents contained the judgments of subordinates made in the course of preparing recommendations to him. Dr. Glennan claimed these documents came under the privilege of the executive to withhold which has a constitutional rather than a statutory basis and, accordingly, cannot be affected by section 313 of the Budget and Accounting Act of 1921. Dr. Glennan quoted the following passage from a letter to the Comptroller General, dated 15 December 1959, from the President:

> "'It is essential to effective administration that employees of the Executive Branch be in a position to be fully candid in advising with each other on official matters, and that the broadest range of individual opinions and advice be available in the formulation of decisions and policy. It is similarly essential that those who have the responsibility for making decisions be able to act with the knowledge that a decision or action will be judged on its merits and not on whether it happened to conform to or differ from the opinions or advice of subordinates. The disclosure of conversations, communications, or documents embodying or concerning such opinions and advice can accordingly tend to impair or inhibit essential reporting and decision-making processes, and such disclosure has therefore been forbidden in the past, as contrary to the national interest, where that was deemed necessary for the protection of orderly and effective operation of the Executive Branch.'"

6. In the questioning which followed the prepared statement, Dr. Glennan's position was criticized by members of both parties. He was subjected to several hours of questions, lectures and legal advice on how contracts should be awarded and threats of withdrawal of support of NASA's appropriation request. There was no indication that any member of the Committee agreed with or was sympathetic to Dr. Glennan's reliance on executive privilege.

7. After his prepared statement, Dr. Glennan, in reply to an observation by Chairman Brooks, commented that he had no objection to subordinates testifying to the Committee on the reasons for awarding the contracts in question, but they could not release the documents on the advice which these subordinates gave. This, of course, immediately led to the observation that the Committee could get what was in the documents simply by calling the subordinates to testify. Dr. Glennan appeared surprised about this possibility and replied rather ineffectively that he didn't think the Committee would do that and upset the morale of NASA in such a way. Later Dr. Glennan stated that his subordinates would not be allowed to testify as to the contents of the documents, but it was obvious to the Committee that at least some information it sought could be obtained by testimony. Dr. Glennan's sole reason for withholding was that he wanted to maintain candor among his staff personnel and this he considered to be covered by executive privilege.

8. Mr. McCormack seemed to voice the sentiments of all the Committee members when he told Dr. Glennan that he believed that the question was not one of executive privilege and separation of powers which he recognized as existing in certain cases. Here there was involved a contract which was let at $14 million and might cost the Government as much as $125 million and the Committee which had worked very closely with NASA was concerned over whether the contracting system that Congress had set up was adequate and satisfactory. The documents they felt gave the answer. Furthermore, where the discretion of the Administrator was so great there was a matter of public confidence about which the Committee was aware. Mr. McCormack noted that the Committee was not sympathetic to a loss of any jurisdiction over NASA based on executive privilege. Dr. Glennan continued adamant on the issue and said that he had had the advice of the White House on the point.

9. Generally the Committee appeared to look at the question responsibly. Because of the Committee's desire that there should be as few difficulties as possible in the space program, Mr. McCormack suggested that Dr. Glennan seek an informal meeting with the Comptroller General "over lunch" and attempt to work out a satisfactory compromise. As a result of these hearings, it seemed obvious that NASA unnecessarily suffered a loss of prestige before the Committee and opened the door to criticism about its operations. After two days it was obvious that the issue was one which should have been resolved informally to the credit of NASA without the invoking of executive privilege.

25X1A9A [redacted]

Office of General Counsel

Attachments

OGC:MCM:jem

Subject Sec. 3
Signer
Chrono

OGC 60-0103(a)

19 February 1960

MEMORANDUM FOR: Chief, Finance Division

SUBJECT: Travel Voucher of [redacted] 25X1A9A

REFERENCE: Memorandum from Assistant General Counsel to the Director of Logistics, dated 24 December 1957; subject: Request of [redacted] 25X1A9A for Relief from Liability for Payment of Charges related to Transportation Overseas of Effects.

1. You have referred to us the claim of [redacted] 25X1A9A in the amount of $42.35. [redacted] 25X1A9A transported 77 pounds of excess accompanied baggage on a flight from [redacted] 25X1A6A to Washington. His travel order did not authorize accompanied baggage but did authorize unaccompanied baggage in an amount sufficient to cover the 77 pounds in question, and [redacted] 25X1A9A claims that he should be reimbursed at the unaccompanied rate. We agree.

2. This situation is distinguished from that covered by the referenced opinion, which held that excess household effects shipment expenses were not constructively chargeable to unused baggage allowances because effects and baggage were "wholly distinct from each other." In the instant situation there is no such distinction to be made. Here, items designated "baggage" were transported by accommodations superior to those authorized for the same class of items. This is analagous to many situations in which travelers avail themselves of accommodations superior to those authorized and must pay for the extra expense involved. However, reimbursement is allowed not to exceed the cost of the authorized facilities. We think this the guiding principle in the case at hand. The amount claimed, if otherwise appropriate, may be allowed.

Attachment- [redacted] Claim dtd 1/12/60 25X1A9A

OGC:HRC:jem

[redacted] 25X1A9A
Office of General Counsel

Orig & 1 - Addressee
cc: TSS/BS

[redacted] 25X1A9A
Subject w/cc/att - Travel
Signer
Legal
Vital
Chrono

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OGC 60-0218(a)

23 February 1960

MEMORANDUM FOR: Chief, Finance Division

SUBJECT: Reclaim Voucher, [redacted] 25X1A9A

1. We have your inquiry on the subject voucher together with the background papers. You have asked the correct basis for reimbursing expenses for travel by personally owned automobile in view of certain difficulties with the supporting documents.

2. Travel Order SR 55-60 orders [redacted] 25X1A9A from [redacted] 25X1A6A to Puyallop, Washington, for home leave, and thence to Washington, PCS. In the space marked "Allowance for Privately Owned Automobile as Follows If Applicable" there appear two alternatives: (1) So much per mile "not to exceed cost by common carrier" and (2) So much per mile "as being more advantageous to the Government". In any situation in which the authorized mileage rate exceeds that charged by common carrier (which is nearly always true) these two alternatives are mutually exclusive. Nevertheless, on the Travel Order at hand both are checked and the rate of ten cents per mile is inserted in both. There is a further notation in the box, "see provisions". This apparently refers to the space on the Travel Order marked "Special Provisions (include appropriate justification)". This section contains the notation, "Travel via POA from [redacted] 25X1A6A to H/L point not to exceed cost of common carrier 1st class; home leave point to 25X1A6A Washington not to exceed mileage [redacted] to Washington at ten cents per mile."

3. Amendment Number 1 to SR 55-60, dated 4 February 1960, purports to "delete provisions of original T/O SR 55-60 and correct Administrative Error." This amendment deals with travel by automobile as follows: "Authorize travel via POV at maximum mileage rate as consistent with cover."

4. This Office has ruled repeatedly that Travel Orders may not be amended retroactively so as to increase or diminish rights vested in the employee by virtue of travel already performed. Therefore, for the purposes at hand, Amendment 1 to SR 55-60 has no validity.

5. Turning to the original Travel Order, we find that the stated limitation on the reimbursement for that portion of the journey between the home leave point and the prospective post of duty to be meaningless in context.

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the traveler is as fully entitled to reimbursement for the trip from the home leave point to the new PCS post as she is from the old PCS post to the home leave point. This is not indirect travel, and the mileage from the old duty post to the new duty post has no bearing on the matter at all. Having thus removed the unwarranted provision from our consideration, we find nothing in the Travel Order which would imply that reimbursement for the second leg of the trip was to be on a basis different from that of the first leg. Such a provision would be most extraordinary and we will not infer it in the absence of convincing indicia on the face of the Travel Order that it was intended.

6. For the reasons above, we consider that the proper basis for reimbursement, both as to travel from the old duty station to the home leave point and from the home leave point to the new duty station, is ten cents per mile, not to exceed the cost of common carrier first class.

SIGNED

[redacted] 25X1A9A

Office of General Counsel

Attachment

cc: SSA/DD/S

OGC:HRC:jem

Orig & 1 - Addressee
1 - Subject Travel 7
1 - Signer
1 - Chrono

25X1C4C

Next 1 Page(s) In Document Exempt

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

26 February 1960

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT: Inspector General's Survey of the Career Service

1. This memorandum is for information only.

2. I have spent considerable time on the Inspector General's Survey of the Career Service as it poses fundamental questions for the Agency. I do not propose to deal in detail with some of the arguments and conclusions with which I may disagree, as I believe generally it is a thoughtful and thorough piece. I am in agreement that the present Career Service could be abolished with little impact on the Agency. I also agree that the Career Boards have performed useful services in several ways and are a mechanism which should have been set up in some form for personnel management whether or not we installed a Career Service.

3. The specific recommendations, however, give me pause, and I think their adoption might be detrimental to the Agency. My first concern is in the relationship between support and intelligence, particularly in the Deputy Director (Plans) area. I feel we have made considerable strides in the last ten years from the situation where intelligence officers were in the main antagonistic to support personnel to a situation where support's function is not only well understood and accepted but to some extent and in some areas the distinction is almost forgotten. This is extremely healthy and it is essential to maintain and improve this atmosphere.

4. I am all for putting the greatest of emphasis on developing the career intelligence officers of real competence we must have to do our job but not at the cost of a divisive influence between support and intelligence. This I think would be the effect of creating a Career Service for intelligence officers ". . . for which long promised additional benefits can be justified." I do not entirely agree "It is the group that is readily distinguishable from Agency employees whose jobs differ in no significant respect from those found in non-intelligence agencies of the government . . . . " We have just staffed out a termination pay paper which recognizes that there are people in the support area who have been so heavily involved in operations that their experience is unique and not readily salable outside the Agency. This seems to me inconsistent with the last quoted statement. To give additional benefits to the intelligence group and not to others intimately engaged in supporting and helping them perform their duties seems to me the surest way of building a wall between the two groups.

5. I have no simple alternative solutions, but it seems to me that either we abandon the concept of Career Service and attempt to achieve our aim, including many of the actions proposed in the Survey for the recommended Career Development Board, through the best possible personnel management or we go back to the original concept of those who first formulated the present Career Service. This would be to select most carefully from any and all components highly qualified employees who intend and are able to meet the requirements of a Career Service and who are determined by the Selection Board to merit special career development attention. If this were applied fairly to all components you would create an elite group or groups, as you might want to distinguish between an overseas oriented group and a departmental group, but you would not create resentment between components as I feel the Inspector General's recommendations would do.

6. Let the emphasis by all means be on the intelligence side but let it be one of degree not a caste system. If everyone knew he had a chance for acceptance into the Career Service there would be ambition to join rather than envy of the incumbents. The Selection Board (or Career Development Board) could, in coordination with the Office of Personnel, carry out for such a Career Service the worthwhile recommendations in the Inspector General's report for career development. Such a Career Service would probably number in the thousands, but if carefully and strictly selected and competently administered it would provide a better justification for such benefits

as we may find necessary to attract and retain the type of people of which it should be composed. In effect we have attempted this concept to some extent in the selection for the executive salary group and for the supergrade group generally. Due to the problems inherent in creating and administering a select Career Service, my personal preference is for concentration on improvement of personnel management. If it is determined, however, that a Career Service is necessary, it must be designed to be cohesive rather than disrupting in effect.

LAWRENCE R. HOUSTON
General Counsel

OGC:LRH:jeb
cc: OGC chrono
subject Personnel 7

OGC/B-9904(a)

26 February 1960

25X1A8A

MEMORANDUM FOR: Chief, [redacted]

SUBJECT : Supplementary Post Allowances

1. On 25 February 1960 I discussed the matter of Supplementary Post Allowances with a representative of the Comptroller General. He advised that they had no precedent involving the granting of a Supplementary Post Allowance for only a portion of a period during which an employee was determined to have met the qualifications set forth in Section 247.3 of Standardized Regulations, Government Civilians, Foreign Areas. In the opinion of the Comptroller General, Section 247.4 of those regulations requires the payment of such an allowance from the date of occupancy of temporary quarters once a determination has been made that an allowance should be paid in accordance with Section 247.3. The regulations are inflexible and do not permit an agency to grant less than the stated daily amount nor to grant the allowance for only part of a period.

2. In view of the opinion of the Comptroller General it is apparent that you may not grant partial allowances as proposed in the memorandum forwarded to this Office on 8 February 1960. If a determination is made that the employees concerned were qualified for an allowance under the Standardized Regulations, the full allowance must be paid for the whole period in which they occupied temporary quarters. In addition, it is obvious that other employees occupying temporary quarters under virtually identical circumstances would have valid claims for supplementary allowances.

25X1A9A

[redacted]
Assistant General Counsel

OGC/JDM:jcw
Distribution:
Orig. & 1 - Addressee
1 - JDM Chrono
1 - PAY & [redacted]
1 - East

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25X1C4A

Next 1 Page(s) In Document Exempt

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

OGC 60-0329

STAT STAT

7 March 1960

MEMORANDUM FOR: Chief, Medical Staff

SUBJECT: Status of [redacted] 25X1A9A

STAT 1. I understand that [redacted], a psychiatrist, is a GS-15 staff 25X1A9A employee of the Agency. Under an informal, unwritten arrangement with the Chief of Psychiatry of the [redacted] and the Dean of the [redacted] of Medicine, [redacted] is serving 25X1A9A as a resident in psychiatry at the [redacted] Hospital. STAT I further understand that his position is in all respects comparable to the other residents at the hospital except that he receives no compensation from the [redacted] is assigned by us to his position as 25X1A9A resident for external training under PL 85-507 and performs no services for the Agency.

STAT 2. It is our opinion that, despite the fact that [redacted] does not 25X1A9A receive compensation from the [redacted] Hospital, he is, nevertheless, an employee of that hospital both apparent and actual. It follows, therefore, that ordinary rules of the Agency would apply and any action for any negligent act committed by [redacted] would lie against the 25X1A9A hospital or against him personally, or both. In any event, the Government would not be liable for his tortious acts while serving as a resident at the hospital (Malisfski v Ins. Indemnity Co. of North America, 135 F 2d 910).

3. As between [redacted] and the hospital, attribution of responsibility 25X1A for a tort would depend on the facts involved. In this regard, the hospital's "Precedent Book for House Officers, 1959-1960" gives some guidance. It specifies certain responsibilities and when fulfilling these responsibilities 25X1A in the absence of gross negligence, the hospital as well as [redacted] would 25X1A9A be liable for [redacted] acts. Where the Precedent Book is silent or Dr. 25X1A9A [redacted] is acting outside his prescribed responsibilities, the legal question would be whether or not he was, nevertheless, acting within the scope of his employment.

25X1A9A

4. In all the circumstances, it is our opinion that [redacted] is running some risk of a malpractice action and that it is his responsibility to protect himself by securing appropriate insurance or by any other means that may be customary among residents at hospitals.

Attachment: Precedent Book

25X1A9A

[redacted]

OGC:CFB:jem

Assistant General Counsel

Orig & 1 - Addressee Medical
1 - Subject
1 - Signer
✓1 - Chrono

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25X1A13C

Next 5 Page(s) In Document Exempt

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

OGC/B-9956(a)

9 March 1960

MEMORANDUM FOR: DD/P-DPD

ATTENTION : [redacted] 25X1A9A

SUBJECT : Federal Income Tax on [redacted] Escrow Payments 25X1A2D1

25X1A6C
25X1A2D1

1. Your memorandum of 4 March 1960 and dispatch, [redacted] dated 1 March 1960 request advice on the taxability under the Federal Income Tax Law of payments made in escrow to [redacted]
25X1A2D1

2. Under the terms of the contract signed by each [redacted] compensation in the amount of $60.00 monthly accrues to the credit of each. It is payable only upon termination of services or death and only if the [redacted] services have not been terminated for refusal to carry out a proper order or for a violation of the secrecy provisions of the contract. Escrow payments have been accruing to the credit of the [redacted] for periods of three to nine years.
25X1A2D1 25X1A2D1

25X1A2D1

3. Under the Federal Income Tax Law compensation for services performed outside the United States by a non-resident alien is not taxable regardless of the time or place of payment. Accordingly, none of the [redacted] who were non-resident aliens will have to pay a tax on the escrow payments accruing to their credit for services performed up until the time of their arrival in the United States as immigrants. You should note that a person may be a resident alien as a matter of law although physically residing outside the United States. If any [redacted] had previously attained the status of resident alien, escrow payments credited to him will be taxable regardless of the fact that his services may have been performed outside the United States. You should check the legal residence status of each of the [redacted] before advising them of their tax liabilities.
25X1A2D1 25X1A2D1

4. Since their recent arrival in the United States, the [redacted] have become subject to Federal income taxation to the same extent as citizens of the United States. However, the contract terms under which the escrow payments are made are such that the [redacted] do not gain an absolute right to the payments until their services have terminated in a satisfactory manner as set forth in the agreement. Therefore, under the Federal Income Tax Law the escrow payments are not taxable when credited. They will be taxable at the time each [redacted] gains an
25X1A2D1

25X1A2D1

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absolute right to payment on demand. Since the escrow credits will become payable in a lump sum, the [redacted] probably will pay a higher rate of tax than if they were able to receive the payments monthly as earned. The difference in tax should not become significant until credits have been accruing for several years. However, they should be made aware of their potential liability. You should also call to their attention the fact that since the escrow payments are for services performed in the United States while they are resident aliens, there will be no way for them to avoid the tax. Even if the [redacted] should choose to leave the United States and give up their legal residence status, they will be taxed on the compensation earned and credited for services performed while resident aliens.

25X1A2D1

25X1A2D

25X1A9A

[redacted]

Assistant General Counsel

OGC/JDM:jcr
Distribution:
Orig. & 1 - Addressee
1 - [redacted] File 25X1A2D1
1 - JDM Chrono
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OOC 60-0345(a)

14 March 1960

MEMORANDUM FOR: Chief, Section 2, O&L Branch, Finance Division

SUBJECT: Audit Report of SR Division as of 30 September 1959

1. You have referred to us the subject report with a request of our consideration of item 10 which is an exception to the reimbursement of an employee for storage of household effects for a period in excess of 60 days in conjunction with his PCS transfer from [redacted] to Washington, D. C. 25X1A6A You have asked if the 60 day limit is the appropriate one for application.

2. Travel of Agency employees assigned to territories and possessions is based on the authorities contained in PL 79-600, which reads in part:

> "(a) under such regulations as the President may prescribe, any civilian officer or employee of the Government who, in the interest of the Government, is transferred from one official station to another, including transfer from one department to another, for permanent duty, shall, except as otherwise provided herein, when authorized, in the order directing the travel, by such subordinate official or officials of the department concerned as the head thereof may designate for the purpose, be allowed and paid from Government funds the expenses of travel of himself and the expenses of transportation of his immediate family . . . and the expenses of transportation, packing, crating, temporary storage . . . ." (Emphasis ours.)

Regulations issued by the President under the above-quoted provision are found in Executive Order 9805, as amended. Section 1(e) of the Executive Order states:

STAT "' Temporary storage' means storage at point of departure, destination, or way station for not more than 60 days."

Agency Regulation [redacted] Chart "B", (Travel Originating And Terminating Within the Continental United States, Its Territories or Possessions), Item 7E, authorizes

"Temporary storage for a period not to exceed 60 days."

STA Agency Regulation [redacted] paragraph 6a, states:

> "When both the points of origin and destination specified on the travel order are within the continental United States, its Territories or possessions, temporary storage of effects at Government expense may be authorized at any place for a period not to exceed 60 days."

3. It is abundantly clear that the 60 day limit is for application with respect to FCS transfers from [redacted] to Washington, D. C. 25X1A6A

SIGNED
25X1A9A
[redacted]
Office of General Counsel

Attachment

OGC:HRC:jem

Orig & 1 - Addressee w/basic
1 - Subject
1 - Signer
1 - Chrono

25 [redacted]

14 March 1960

MEMORANDUM FOR: Mr. Houston

SUBJECT: Malpractice Insurance

1. After discussions with members of the General Counsel's Office, Office of the Secretary of Defense, and perusal of an article entitled, "Malpractice and the Service Doctor", IX US Armed Forces Medical Journal, February 1958, No. 2, the following conclusions of law and policy emerge.

a. The military departments instruct service doctors that obtaining malpractice insurance is their responsibility and that, not only as a matter of policy as well as lack of statutory authority, the departments will not pay the premium on such insurance.

b. In the event that suit is brought against a service doctor, individually, he can request the Government to defend him. Army Regulation 27-5.

2. It was stated by the author of the above referred to article that if personal liability was found against an Army doctor, the Department of the Army at least would sponsor a private bill for his relief.

3. It was the opinion of the author's article that the Federal Tort Claims Act would probably apply to suits for negligent action against Government doctors, whether civilian or military, except on the part of service personnel or civilian employees receiving treatment within the scope of "line of duty" provided by the Federal Employees Compensation Act. In the latter cases, the other remedies and benefits available to employees and military personnel would apply and thereby preclude action against the Government.

4. In short, the military departments feel that no special provision need be taken at this time to accord further protection to service doctors than that now enjoyed under the (a) Federal Tort Claims Act; (b) the policy of appearing to defend them in the event of suit; and (c) attempt to secure legislative relief in the event that personal liability, uncompensated by insurance, is found.

25X1A9A

Assistant General Counsel

OGC:CFB:jem

Subject Medical
Signer
Chrono

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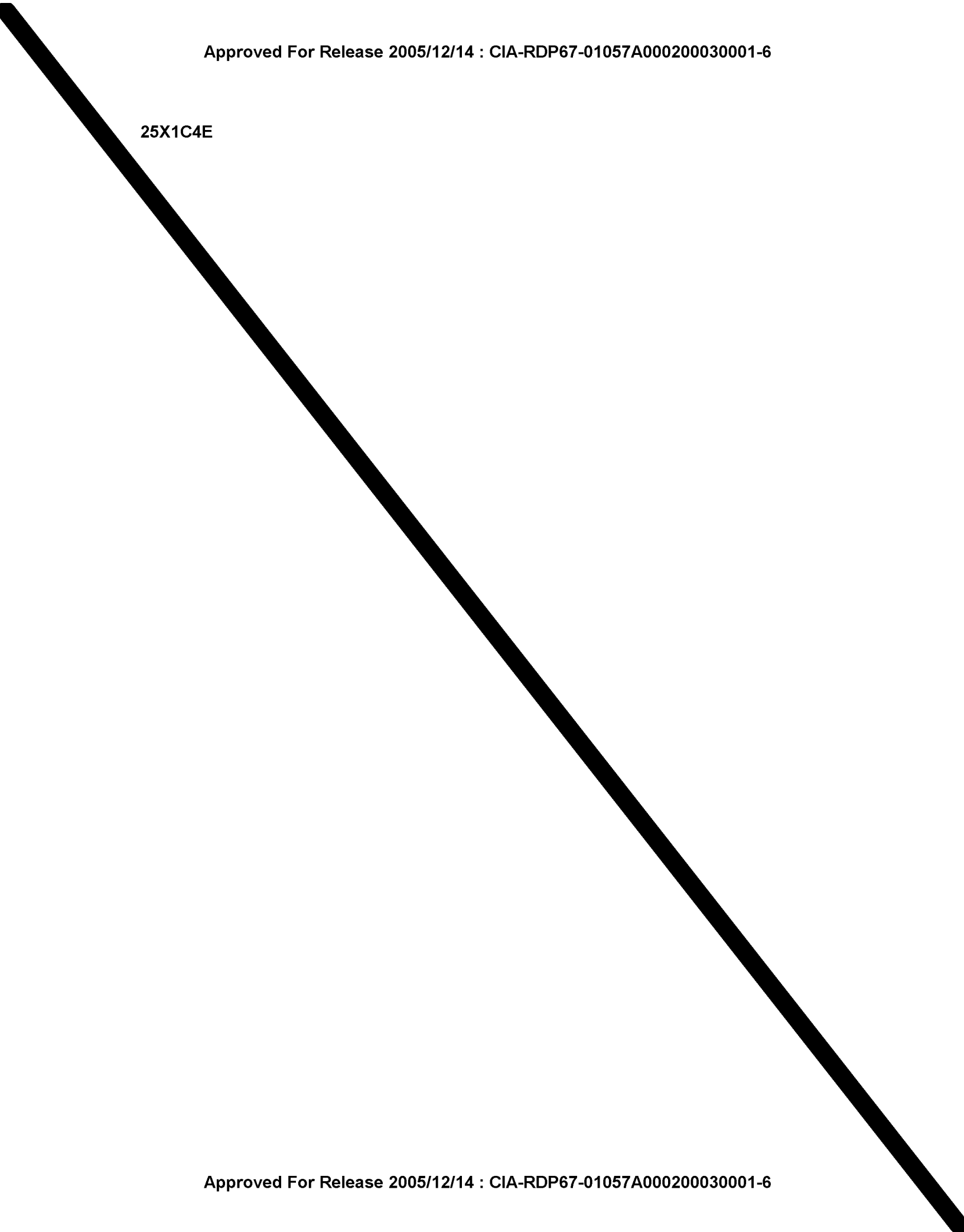
25X1C4E



OGC 60-03341(a)

21 March 1960

MEMORANDUM FOR: Director of Security

SUBJECT: Confidential Correspondents - Dual Compensation

1. We have your memorandum of 9 March 1960 requesting our opinion as to whether receipt of compensation under the Office of Security's Confidential Correspondents Program by a person receiving retirement income from the U. S. Government (especially military) constitutes dual compensation as defined by Federal law.

2. It is platitudinous to observe that the state of the law on this particular question is unsettled. The complexity of unrelated statutes and decisions of courts and the Comptroller General and the Attorney General precludes our providing you a definitive exposition of the legal situation which now obtains. We do believe that, as a practical matter, we can provide a recommendation as to a course of action which, if followed, should take care of any difficulty. We quote below the provisions of the more important statutes to be considered in this type of problem.

3. Section 6 of the Act of May 10, 1916, as amended, 5 USC 58 (which applies to civilians only), provides:

> "Unless otherwise specifically authorized by law, no money appropriated by any act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of $2,000.00 per annum."

Section 212 of the Economy Act of June 30, 1932, as amended, 5 USC 59a, provides:

> "(a) After June 30, 1932, no person holding a civilian office or position appointive or elective, under the United States Government or the municipal government of the District of Columbia or under any corporation, the majority of the stock of which is owned by the United States, shall be entitled, during the period of such incumbency, to retired pay from the United States for or on account of services as a commissioned officer in any of the services mentioned in Title 37, at a rate in excess of an amount which when combined with the annual rate of compensation from such civilian office or position, makes the total

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rate from both sources more than $10,000; and when the retired pay amounts to or exceeds the rate of $10,000 per annum such person shall be entitled to the pay of the civilian office or position or the retired pay, whichever he may elect. As used in this section, the term 'retired pay' shall be construed to include credits for all service that lawfully may enter into the computation thereof.

"(b) This section shall not apply to any person whose retired pay, plus civilian pay, amounts to less than $10,000: PROVIDED, That this section shall not apply to any regular or emergency commissioned officer retired for disability (1) incurred in combat with an enemy of the United States, or (2) caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of Title 38)."

Section 2 of the Act of July 31, 1894, as amended, 5 USC 62, provides:

"No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially authorized thereto by law; but this shall not apply to retired officers of the Army, Navy, Marine Corps, or Coast Guard whenever they may be elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate. Retired enlisted men of the Army, Navy, Marine Corps, or Coast Guard retired for any cause, and retired officers of the Army, Navy, Marine Corps, or Coast Guard who have been retired for injuries received in battle or for injuries or incapacity incurred in line of duty shall not, within the meaning of this section, be construed to hold or to have held an office during such retirement."

4. You will see that if we are to deal with these people in a way which will not endanger their annuities we must not enter into arrangements which will involve paying "salaries" (limited by section 58) or placing them in "offices or positions" (limited by section 59a) or "offices to which compensation is attached" (prohibited by section 62).

5. The Court of Claims held, in Brunswick v. United States, 90 Ct. Cl. 285 (1940), that an annuity (Foreign Service) was not a "salary" within the meaning of section 58. The Comptroller General has taken a contrary view, 32 Comp. Gen. 89. Therefore, at the present time we have to make the best choice we can between the two holdings. Prudence would suggest that it is wiser to follow the Comptroller General's decision since a resolution of this problem in some future court action in a manner unfavorable to the annuitant would produce the greatest amount of administrative difficulty and general unpleasantness. Presuming the annuity to be a "salary" then, we have to prevent the Agency's compensation from taking the form of a second "salary."

6. The Comptroller General has held that payment on a fee basis is not a "salary" within the meaning of section 58. 31 Comp. Gen. 567 (1952). He has likewise held that all intermittent employees are outside the purview of the section. 37 Comp. Gen. 64. He has also held that employment which is purely advisory, generally performed at infrequent intervals, and paid for by fee does not constitute an "office or position" as used in section 59a or an "office to which compensation is attached" within the meaning of section 62. See 28 Comp. Gen. 381, 26 Comp. Gen. 501, 503. See also 22 Comp. Gen. 312 and the decisions cited therein; also 23 Comp. Gen. 275, 277. Since the exemptions from sections 59a and 62 comprehend those from section 58, compliance with those of the former is sufficient to overcome the dual compensation restrictions generally, with respect to the program at hand. But we must emphasize strongly the Comptroller General's view with respect to advisory, intermittent, fee-based employment, that "no particular one of the enumerated elements is considered as determinative of the matter. On the contrary, the absence of any one of such elements is sufficient to take a particular case out of the rule enunciated in [26 Comp. Gen. 501]." 28 Comp. Gen. 381, 382.

7. In view of the above, we recommend that you amend the Confidential Correspondent contract to provide for an arrangement consistent with the above. We should be happy to provide assistance in the drafting of suitable language to assure control of the amounts earned under the contract. You should keep in mind that the designations ("fee," "advisory," etc.) used in the contract would not be controlling in any future dispute; the consistency of the factual pattern with these designations would be.

8. In paragraph 4 of your memorandum you ask what effect the acceptance of payment under this program would have on the retirement pay of a retired military officer. We presume that if the recommendation above is followed the answer is, "none." If the recommendation is not followed (and this would apply also to past payments under the current contract form) a variety of factors would come into play, precluding any but individual consideration of each situation. Among these factors are whether service was as a regular or reserve, the authority under which retirement was effected, and whether the person had been advanced on the retired list. Of course, any correspondent soliciting help in this regard can be assured of whatever aid this Office may be able to render.

25X1A9A
[redacted]
Office of General Counsel

OGC:HRC:jem

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Next 2 Page(s) In Document Exempt

OGC/B-9989

23 March 1960

25X1A9A

MEMORANDUM FOR: [redacted] RSD/OP

SUBJECT : New York Motor Vehicle Regulations - Transit of Foreign Registered Vehicles

1. I have reviewed the letter from Arnold W. Wise, Counsel, New York Bureau of Motor Vehicles, the New York Vehicle and Traffic Law and the International Treaty on road traffic in connection with the problem of transit of foreign registered motor vehicles of employees returning from overseas.

2. While the position of the Bureau of Motor Vehicles may be unreasonable insofar as it interprets New York law to prohibit transit through New York of foreign registered vehicles and vehicles carrying U. S. Forces plates, it is my opinion that the Bureau's counsel has stated the law correctly. Section 51 of the New York Vehicle and Traffic Law is the only State statute pertinent to this problem. It has been interpreted at least once in the New York courts and in that case the word "residence" in the statute was interpreted to mean "domicile," that is, legal residence or a person's permanent place of abode. (Shuba v. Greendonner, 1936, 271 NY 189, 2 N.E.2d 536.) It is clear that neither military personnel nor civilian employees of the Government are domiciled in the countries in which they are stationed while serving the Government. Therefore, while their U. S. Forces or foreign motor vehicle registrations are valid while they are residing in foreign countries, they are no longer valid for operation of a motor vehicle on the highways of New York State after the employees have given up their temporary residences in the foreign countries.

3. I am not as certain as Mr. Wise seems to be that the International Treaty gives recognition to a registration only when it has been procured in the state of permanent residence of the owner of the vehicle. Article 1 of the Treaty provides that "each Contracting State agrees to the use of its roads for international traffic under the conditions set out in this Convention." Article 4 provides that "international traffic means any traffic which crosses at least one frontier; . . ." Article 18 provides "In order to be entitled to the benefits of this Convention, a motor vehicle shall be registered by a Contracting State or subdivision thereof in the manner prescribed by its legislation." In addition,

Article 18 requires that a registration certificate contain inter alia the ". . . permanent place of residence of the applicant. . ." Both U. S. Forces plates and foreign plates issued to U. S. Government employees in foreign countries are issued in a manner prescribed by the legislation or other governing law of those countries. In the absence of other restrictive language in the Treaty, it would seem therefore that such plates must be honored until the vehicle reaches the new place of abode of its owner. If this is so, the foreign registration would be valid for transit through New York State, since the Treaty takes precedence over State law.

4. Regardless of our opinion of the interpretation and controlling effect of the Treaty, I do not think that we should attempt to argue the point with the New York Motor Vehicle Commissioner at this time. For one thing, the status of U. S. Forces registrations under the Treaty is extremely uncertain and owners of vehicles so registered probably far outnumber owners of foreign registered vehicles among returning Government employees. More important, however, is the practical matter that arguing points of law will be time consuming, possibly unsuccessful and probably unnecessary. I would suggest that a reply to Mr. Wise's letter be prepared on the basis of the practical problems presented and the fine cooperation given by all other states. It can be pointed out that it is impossible in many cases for a person to procure a motor vehicle registration in his home state until the vehicle is presented in the state for inspection. If all states were to take the position set forth in Mr. Wise's letter the result would be that returning employees would have to stop at each state line and obtain a local motor vehicle registration. Such a procedure would of course be absurd. It can be stated that returning employees, while not domiciled in the foreign countries in which they were stationed, were actual residents of those countries and their motor vehicle registrations were validly issued in accordance with the laws of the countries of their actual residences. It seems unlikely that the New York legislature intended to prohibit the transit of such validly registered motor vehicles.

5. I am convinced that a polite letter seeking the assistance and cooperation of the New York Commissioner of Motor Vehicles will result in a more prompt and satisfactory solution of our problem than would an attempt to settle the matter on the basis of legal argument especially in view of the fact that we are likely to lose the argument at least insofar as U. S. Forces registrations are concerned.

25X1A9A

[redacted]

Assistant General Counsel

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SECRET

OGC 60-0430

23 March 1960

MEMORANDUM FOR THE RECORD

SUBJECT: Home Leave

1. An article on home leave requirements appeared on page 2 of Support Bulletin #17, dated February 1960. Its text follows:

"One of the prerequisites to the granting of home leave is that an employee must have sufficient accumulated annual leave to his credit to carry him in a pay status for 30 calendar days at the time travel involving home leave is begun. (See FR 20-645, paragraph 5.) Since Saturdays, Sundays, and holidays are not charged against accrued leave, 22 days of actual accumulated leave is, for practical purposes, considered the equivalent of 30 calendar days.

"In writing travel orders which grant home leave, headquarters always checks the employee's leave record to ensure that he has sufficient leave to satisfy the requirements mentioned above. It has come to our attention, however, that in a few cases employees have taken annual leave at their posts, after receiving their home leave orders, which reduced their accumulated leave balance to less than the 22 days required to make them eligible for home leave benefits. In such cases these employees have been required to bear the home leave portion of their travel as a personal expense. In the interest of avoiding such hardships all personnel are reminded that they must have at least 22 days accumulated leave to their credit at the time they depart from their post on a trip involving home leave in order to be eligible for reimbursement for home leave travel."

2. It will be immediately apparent that, of the entire article, only the first sentence is legally sound. Taking the points as they appear in the article:

(a) The so-called 22-day leave requirement does not exist. The number of leave days required varies with the number of weekends and holidays in the 30-calendar-day period. As few as 18 days might suffice for a carefully planned leave over the Christmas holidays. Finance Division has had formal requests as to the propriety of authorizing home leave for individuals with 19 or 20 days accumulated. The statement in the Support Bulletin article will undoubtedly bring new inquiries.

(b) I am unable to locate anyone who knows of an instance in which an employee was required to bear home leave travel expenses because of having less than 22 days. Perish forbid.

(c) With respect to annual leave taken after the orders have been cut, I have held informally that leave taken at the post after the individual had cleared the post would be treated by this Office the same as any other leave en route and the fact that such leave reduced the employee's accrual below the point which would sustain 30 calendar days of leave would not of itself disqualify him for the benefit.

3. In discussions with [redacted] I indicated that the incorrect statements in the article were very misleading and that in view of the wide circulation given the Support Bulletin a clarification was in order. [redacted] in whose office the article originated, advised me that he felt the article would have no practical effect and therefore a correction would not be necessary. I intend to leave the matter at that. 25X1A9A 25X1A9A

25X1A9A
[redacted]
Office of General Counsel

OGC:HRC:jcm

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Signer [redacted]
Chrono

81

24 March 1960

MEMORANDUM FOR: Director of Security

SUBJECT: Memorandum of Conversation

On 21 March I had a cordial telephone call from a [redacted] (phonetic), not otherwise identified except as an employee of the American Council on Education. 25X9A6 He stated that he had called to inquire what the legal authority was for the Central Intelligence Agency to contact and interrogate a citizen of a foreign country who had come to this country as an exchange student under Department of State auspices. I could not avoid the thought that he had a specific instance in mind, although he did not say so. I answered essentially as follows:

a. Basic legal authorities for the type of thing to which I supposed he was referring were to be found in the National Security Act of 1947.

b. From time to time the National Security Council issued directives to the Agency with respect to accomplishment of specific tasks.

c. The Agency maintained representatives in certain major cities as well as in Washington to receive members of the public generally, to answer casual inquiries, and to accept information which might be of interest.

d. On occasion, the Agency, through the above-mentioned representatives and others, found it desirable to consult on its own initiative with various experts and with other people who might have information of value in solving a particular problem. OGC FOIAB5

[redacted]

25X1A9A

[redacted]
Office of General Counsel

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OGC 60-0375(a)

24 March 1960

DRANDUM FOR: Assistant Director for Operations

JECT: Publication of Czech Material in [redacted] 25X1A7B

FERENCE: Memorandum from the Office of General Counsel [redacted] 25X1A7B
[redacted], dated 1 January 1958, subject: [redacted] 25X1A7B

1. We have your memorandum of 16 March 1960 on the above subject questing our view as to the desirability of restricting the dissemination material from Czech press services, newspapers, and party journals in w of the accession of Czechoslovakia to membership in the Universal pyright Convention.

2. In the referenced memorandum, we indicated that press agency nsmissions reduced to writing for general consumption without reser- tion of rights could be distributed freely. The same applies to newspapers d other periodicals. As to printed material the rights to which have en reserved in proper form, and as to broadcast material, the copyright atus of which cannot usually be ascertained, the situation continues to one of technical infringement upon a calculated risk.

3. As indicated in the Foreign Service dispatch attached to your morandum, this country has had a copyright agreement with Czechoslovakia nce 1927, the terms of which are in some respects more stringent than ose of the Universal Copyright Convention, and this agreement has been served carefully and is still binding. In view of this, it is difficult persuasive any practical significance to us in the participation of echoslovakia in the multilateral agreement. We therefore do not recommend y change in dissemination at this time. We are again considering some re general aspects of [redacted] problem and may have other 25X1A7B commendations to make in the future which would bear on the handling of tech as well as other material.

25X1A9A
[redacted]
Office of General Counsel

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OC 2152

MEMORANDUM FOR: Inspector General

SUBJECT: Nonfeasance, Misfeasance, and Malfeasance Distinguished.

1. The purpose of this memorandum is to distinguish the legal terms nonfeasance, misfeasance and malfeasance. Although the agreement is by no means universal there are generally accepted legal usages for the terms in question.

2. Nonfeasance is the nonperformance of some act which ought to be performed, failure to perform a required duty at all, or total neglect of duty. Refusal by members of a county council to make an appropriation for the expenses of the county superintendent of schools is nonfeasance since it is a failure to perform a required duty. State v. McRoberts, 207 Ind. 293, 192 N.E. 428 (1934).

3. Misfeasance is the improper performance of some act which a man may lawfully do. The action of county commissioners in approving for payment, without inquiry, fictitious and fraudulent claims made up by a dishonest clerk constitutes misfeasance in office. The county commissioners improperly performed an authorized act, approving claims for payment. Larmore v. State, 180 Md. 347, 24 A. 2d, 284 (1942).

4. Malfeasance is the doing of an act which a person ought not to do at all or the unjust performance of some act which he had no right to do or which he had contracted not to do. Where a Town Superintendent of Highways appropriated for his own personal use Township moneys, such conduct constituted malfeasance in office. The officer committed an act for which he had no authority. Application of Wilcox, 278 App. Div. 572, 105 N.Y.S. 2d 634 (1951).

5. Conduct which comes within any of these three definitions may result in either civil or criminal liability or both. Civil liability, however, is more likely to result from nonfeasance than from malfeasance. The failure of a public official to act (nonfeasance) is more likely to injure an individual and provoke a civil suit than it is to cause harm to the general welfare. On the other hand, the doing of a prohibited act (malfeasance) is more likely to injure the public generally and result in criminal prosecution. The improper performance of an authorized act (misfeasance) stands between the other two in this respect and frequently provokes both civil and criminal action against the offending official.

6. Unfortunately, for the sake of clarity and general understanding, the definitions as they are given above are not always followed. Misfeasance is often used in the sense of malfeasance. Malfeasance is frequently used

as a comprehensive term including any wrongful conduct that affects, interrupts or interferes with the performance of official duties. However, strictly defined, nonfeasance means the omission of an act which a person ought to do; misfeasance is the improper doing of an act which a person might lawfully do; and malfeasance is the doing of an act which a person ought not to do at all.

JOHN S. WARNER
Deputy General Counsel

OGC: RBH:amc

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CIA INTERNAL USE ONLY

Chief, Contract Administration Branch/PD 1 April 1960

Assistant General Counsel

Applicability of Renegotiation Act of 1951 to Procurements by this Agency

1. A letter from the [redacted] dated 16 March 1960 raises the question of the applicability of the Renegotiation Act of 1951 to procurements by this Agency. As I advised you informally yesterday, this Act does not pertain to our Agency and, accordingly, this contractor should not report our contracts as being subject to renegotiation. You will find a more elaborate discussion on this subject in Volume 2 of the CCH Government Contracts Reporter commencing at paragraph 26,000. 25X1A5A1

2. This contractor appears to be unsure as to whether the form of contracting (task order vs. purchase order) has anything to do with the applicability of the Renegotiation Act. It does not. If the Act applied, it would apply to all contracts regardless of form, but, as stated above, the Act and the Executive Orders implementing the Act do not apply to this Agency.

[redacted] 25X1A9A

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OGC/NC[redacted] (31 Mar 60) 25X1A9A

1 April 1960

25X9A5

[redacted]

As I mentioned to you in my letter of 24 March, the dual compensation problem is a complicated one. Without going into detail I shall give you the basic picture with respect to your particular situation.

The statutes place limitations on retired military personnel with respect both to any "salary" received for services performed, and to "holding a civilian office or position." Under the present state of the law, as long as you are performing services for us only intermittently, or are paid on a "fee" basis, you are not considered as receiving a "salary." In addition, since you are an independent contractor performing a purely advisory function, you are not considered as holding an office or position.

Considering the above, our legal staff feels you can freely sign "do not" to the question on the IBM card. Meanwhile I shall have your contract revised to emphasize more strongly the independent, advisory, intermittent nature of your contractual relationship with us.

I trust this takes care of things. Please feel free to drop me a line if other questions arise. In the meantime you can expect to hear from our representatives when the new contract is ready.

Sincerely,

C. P. Cabell
General, USAF
Deputy Director

OOC:HRC:jam (3/30/60)
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CONCUR:
1 April 1960
(Signed) Sheffield Edwards
Director of Security

25X1A9A

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Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

OGC/B-9997(a)

7 April 1960

MEMORANDUM FOR: [redacted] 25X1A8A

ATTENTION : [redacted] 25X1A9A

SUBJECT : [redacted] - U. S. Income Tax 25X1A9A
on Salary from Foreign Government

25X1A9A 1. [redacted], a contract agent, is a United States resident, STAT alien, but a citizen [redacted]. In addition to his salary from CIA, he receives a salary from a foreign government for his services as [redacted] 25X1A9A 25X1A9A [redacted]. You have asked whether the foreign government salary is subject to U. S. income tax.

2. U. S. resident aliens are taxed on all of their income from whatever source received and without regard to their place of actual residence. Under Section 911 of the Internal Revenue Code citizens of the United States are exempt from tax on income from personal services performed abroad if they meet certain qualifications as to residence in foreign countries. This exemption, however, is not available to resident aliens. Section 893 of the Internal Revenue Code exempts income of aliens received for services as employees of foreign governments if certain additional conditions are met. It is probable that Subject would not qualify under two of the additional conditions, but it is not necessary to consider them inasmuch as we have been advised by a representative of the Internal Revenue Service that this exemption is available to a resident alien only if he gives up his permanent residence status.

25X1A9A 3. [redacted] must pay a U. S. income tax on all of his income regardless of source and is not entitled to the above cited exemptions of the Internal Revenue Code. This opinion has been confirmed by the Chief of Technical Rulings, International Operations Division, Internal Revenue Service.

4. Your papers are returned herewith.

25X1A9A
[redacted]
Assistant General Counsel

Enclosure

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25X1C4C

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

OGC 60-0479(a)

11 April 1960

MEMORANDUM FOR: Director of Personnel

ATTENTION: [redacted] 25X1A9A

SUBJECT: Gift of [redacted] Gold Coins 25X1A6A

REFERENCE: [redacted] dated 18 March 1960 25X1A6C

1. We have discussed this case in detail with the Chief, [redacted] 25X1A6A
Desk, WH [redacted] who in turn has verified his understanding 25X1A9A
of the situation with [redacted], whose wife is the donee 25X1A9A
of the coins in question.

2. The facts as reported to us are these. [redacted], whose wife 25X1A9A
is the donor, is a wealthy individual who is known as an avid stamp and
coin collector and who acted gratuitously as a point of contact for
[redacted] in [redacted]. [redacted], however, is not an employee of the 25X1A9A
[redacted] Government. He and his wife are gourmets and from time to time 25X1A9A
in the past [redacted] has, on a social basis, given them gifts of imported 25X1A6A
foods, paid for out of his own pocket, of a value which nearly equals that 25X1A9A
of the coins in question. The coins are reported to be an expression 25X1A6A
of appreciation for the gifts of food. It is our informal understanding
that your suggestion that the coins be sold and the proceeds paid over to
miscellaneous receipts was based on the belief that the coins were given
in return for gifts paid for by our Government. While we would not object
to your suggestion, under these particular circumstances the exchange of
gifts appears to be of such a personal nature that the retention by
[redacted]'s wife of the coins in the form of a bracelet as recommended by 25X1A9A
the Chief of Station, [redacted], in referenced dispatch and concurred 25X1A6A
in by the Assistant to the DD/P, would not appear to be improper and
accordingly this Office would have no legal objection to such retention.
This is not to be construed as a precedent, being based on this peculiar
factual situation.

3. The papers are returned herewith.

OGC:OEP:jem

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Attachment: [redacted] 25X1A6C
1 - Chrono

25X1A9A
[redacted]
Assistant General Counsel

cc: Chief, [redacted] 25X1A8A

Next 3 Page(s) In Document Exempt

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

OGC 60-0484(a)

13 April 1960

MEMORANDUM FOR: Assistant to the DD/I

SUBJECT: Per Diem - [redacted] 25X1A9A

25X1A9A

1. We have your memorandum of 4 April 1960 and its attachment referring to an amendment to [redacted] travel order signed by the Deputy Director (Intelligence) on 18 March 1959, approving an increase of per diem as of 1 March 1959. The background paper indicates that Finance Division will not approve the retroactive payment.

2. It is a settled and long established rule of law that a travel order may not be amended retroactively so as to increase or diminish rights which have become vested under appropriate statutes, regulations, or previous orders, with respect to travel already performed, except to reform the order to bring it into conformity with original intent of the issuing authority--that is, to correct such things as typographical and other clerical errors. Although the rate of per diem is discretionary (within authorized maxima), as to time in travel status already elapsed, the traveler has a fixed legal right to the amount authorized; correlatively, there is no authority to increase the amount, as this would be a gratuity. In short, the per diem rate may not be changed retroactively. In the case at hand, [redacted] may not be paid the higher rate for any period prior to the date of the appropriate amendment to the travel order, 18 March 1959. 25X1A9A

3. For your convenience we are attaching a recent opinion of this Office in a related case. It contains a modestly expanded exposition of the principle stated above.

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25X1A9A
[redacted]
Office of General Counsel

Next 4 Page(s) In Document Exempt

29 April 1960

MEMORANDUM FOR: Mr. Warner

SUBJECT: General Accounting Office Disallowance of Charge for Purchase of Bottled Drinking Water by [redacted] Resident Agency 25X1A6A

REFERENCE: Memorandum from Resident Agent, [redacted] to Chief, Fiscal Division, dated 18 December 1959, subject: Request for Exception to Comptroller General's Decision, Vol. 17, page 698 25X1A6A

1. General Accounting Office auditors have disallowed vouchers submitted by the [redacted] Resident Agent for the purchase of bottled drinking water. The office of the [redacted] Resident Agent is located in an office building where there are no drinking fountains and all the tenants purchase bottled drinking water. Application of the rule of necessity to the fact situation presented in the referenced memorandum suggests to us that under the rationale of 21 Comp. Dec. 739 (1915) funds expended by the [redacted] Resident Agent for bottled drinking water are a necessity and that the vouchers should be resubmitted. 25X1A6A 25X1A6A 25X1A6A

2. The Comptroller General, and the Comptroller of the Treasury before him, have consistently held that the expenditure of Government funds for bottled drinking water is appropriate only when a necessity exists. The decision to which the [redacted] Resident Agent has requested an exception, 17 Comp. Gen. 698 (1938), is typical of the decisions which have held that a necessity from the standpoint of the Government exists only when the water otherwise available is not potable, that is, not safe for drinking. 25X1A6A

3. We believe the present case comes within the rule expressed in 21 Comp. Dec. 739 (1915). That decision held that fees charged by the lessor of an office building in which a Government office was located should be regarded as a necessity and reimbursable where the building was equipped with a central drinking water cooling system which supplied distilled or special water to all of the offices. The Comptroller of the Treasury pointed out that the Government office was not being furnished a special service but one rendered in common to all the tenants.

4. As is generally true of office buildings in the city of [redacted] 25X1A6A the building in which the CIA office is located has no drinking fountains and all of the tenants in the building purchase bottled drinking water. This would seem to make the purchase of bottled drinking water a necessity within the meaning of 21 Comp. Dec. 739 (1915). The only difference in the two situations is that in this case each office purchases drinking water individually rather than paying an additional charge to the lessor for special water supplied through a central system. In both cases there is no other available source of drinking water. As the Comptroller of the Treasury apparently recognized, it is unreasonable to require Government employees and their business guests to obtain drinking water from the rest-room faucet.

25X1A9A
[redacted]
Office of General Counsel

OGC:RBH:jem

25X1 Original - Mr. Warner [redacted]
1 - Subject
1 - Signer
1 - Chrono

25X1 cc: [redacted] [redacted] 25X1A9A

4 May 1960

MEMORANDUM FOR: Director of Security

SUBJECT: 25X1A9A Purchase of Electronic Equipment and Possible Conflict of Interest involving [redacted] and [redacted] 25X1A5A1 Corporation

1. Your memorandum of 29 April 1960 requested the opinion of this office as to whether or not a conflict of interest problem was posed because [redacted], who formerly held a consultant contract with this Agency, is now an employee of the [redacted] with whom we desire to enter contractual relations involving a subject with which [redacted] became familiar in his consultant status. 25X1A9A 25X1A5A1 25X1A9A

2. In considering this problem, we have reviewed Agency Regulation [redacted] and the pertinent statute authorities on this subject. We have also investigated the conflict of interest regulations of other agencies and legislation currently pending in Congressional committees. It is our conclusion that no conflict of interest exists in this case and, accordingly, it would be legally proper for the Agency to enter into negotiations with the [redacted] for an electronic badge system in furtherance of the objectives of Project [redacted]. 25X1A5A1 25X1A2D1

3. [redacted] of your Office has explained the work of [redacted] under his consultant contract. While it appears that he devoted some time to consideration of the technical problems involved in an electronic badge system, the proposal submitted by the [redacted] Corporation was not based on any unique or special knowledge procured by that company from [redacted]. The [redacted] and three other corporations were invited to submit proposals and all received from [redacted] an equivalent amount of technical information and guidance. The proposal of the [redacted] which appears to represent a more promising solution than the proposals of the other three companies, was developed principally by other employees of that company and, if the work is performed by the [redacted] it will be carried out by a division which is separate and distinct from that component in which [redacted] is now employed. [redacted] has had and will have no connection with the negotiation of a contract with the Government on behalf of the [redacted] 25X1A9A 25X1A9A 25X1A9A 25X1A5A1 25X1A5A1 25X1A5A1 25X1A9A 25X1A9A 25X1A5A1

4. The foregoing are among the circumstances which lead us to the conclusion that the normal negotiation of an Agency contract by the

SUBJECT: Purchase of Electronic Equipment and Possible Conflict of Interest involving [redacted] and [redacted]

25X1A9A

25X1A5A1

25X1A5A1

Procurement Division, Office of Logistics with officials of the [redacted] Corporation may be conducted without concern that either the letter or the spirit of the conflict of interest laws, regulations or proposed legislation will be violated.

25X1A9A
[redacted]
Assistant General Counsel

cc: OL/PD
OL/BPS

Distribution:
Orig & 1 - Addrdssee
1 - OGC Subj w/basic Personnel 12
1 - OGC Chrono
1 - OGC Circ
1 - [redacted] Chrono ~~w/basic~~

25X1A9A

OGC/[redacted] (4 May 60)

25X1A9A

2

4 May 1960

MEMORANDUM FOR: The Record

SUBJECT: CIA-NSA Relations in connection with Interagency Procurement

1. Recently I have discussed with [redacted] 25X9A8 General Counsel for the National Security Agency (NSA), two problems in the logistics support field. In both instances I have found him very cooperative and he suggested that he would be pleased to call at my office at a mutually agreeable date so that we could have a more extensive discussion of interagency matters. The problems which have arisen heretofore are as follows:

a. I was recently asked by [redacted], OL/PD 25X1A9A whether NSA had authority comparable to that possessed by the National Bureau of Standards (see 15 USC 273-276) to take surplus property from other agencies without reimbursement therefor, or whether normal GSA procedures apply to NSA. [redacted] advised me that NSA had no special 25X9A8 authority, such as cited above, which would make it unnecessary to go through the normal GSA surplus property disposal procedures.

A further factual investigation seems to indicate that we can avoid the necessity of a transfer with reimbursement under the GSA procedures by treating the problem as one which involves a long-term loan of equipment. [redacted] is investigating further with OSI. It 25X1A9A appears at present that the contemplated transfer involves [redacted] 25X1 25X employed in a program which has heretofore been conducted by CIA but, under NSC directive, is now being carried on by NSA. No further action is required until [redacted] develops additional factual data. 25X1A9A

b. The other problem involves procurement by NSA of cryptographic items which, by NSC directive, are to be obtained by all agencies solely from NSA. I have been asked by OL/PD what constitutes a valid obligation of our funds in connection with such procurement. After some legal research, I have reached a conclusion that the obligation will be effected by the acceptance by NSA of a CIA purchase order, even though NSA does not make a contract with a commercial source for the procurement of Government-wide requirements until a subsequent fiscal year. I am preparing a separate and detailed opinion on this matter.

25X9A8 I reported the foregoing to [redacted] as a matter of possible interest and requested that if any questions of appropriation or procurement law involving this Agency were brought to his attention, he should

SUBJECT: CIA-NSA Relations in connection with Interagency Procurement

contact me for assistance. I requested that he not raise this issue within his own Agency as I did not want to create a problem where one might not now exist in the minds of people at NSA.

25X1A9A

[redacted]

Assistant General Counsel

cc: C/PD/OL

Distribution:
Orig - OGC Subj ℰ r S-2
1 - OGC Chrono
1 - OGC Circ
1 - [redacted] Chrono 25X1A9A

OGC/[redacted] 4 May 60) 25X1A9A

OGC 60-0493(a)

5 May 1960

25X1A9A

MEMORANDUM FOR: Chief, Administrative Staff 25X1A9A
Office of Communications 25X1A6A

SUBJECT: Storage of Household Effects

1. We have your memorandum of 6 April 1960 referring to the proposed shipment of household effects of [redacted] With reference to the provisions of paragraphs 5 and 7 of R 22-1000, you ask whether [redacted] may ship to his new PCS post in [redacted] an amount of household effects in excess of the "Table II Allowances" but less than the "Table I Allowances" and simultaneously store his remaining household effects, which, taken together with the amount shipped, do not exceed the over-all amount allowed in Table I. For the reasons which follow we think the answer is in the affirmative.

FOIAB5

OGC

[redacted]

25X1A9A The alleged restriction on [redacted] shipment is found in the statement in paragraph 7B of [redacted] that "nontemporary storage STAT will not be authorized when the gross weight or volume shipped to the overseas post exceeds the weight of volume listed in Table II." The Table II allowances represent partial shipments: employees are held to these when they are going to posts where furnished quarters are provided by the Government. (See paragraph 5B.) Taken in context, the quoted provision in paragraph 7B means that the employee who wishes to ship to unfurnished quarters more than is allowed to furnished quarters is denied the statutory benefit.

b. Another effect of this regulation: If the employee who elects to confine his household effects shipment to the Table II level makes a miscalculation (or if the packer uses unusually heavy materials) and the gross weight exceeds the Table II limit, he

is divested of his right to be reimbursed for a storage of his remaining effects. This would ordinarily not be learned by the employee until after he had reached his new post and was so far away from his goods in storage that there was little he could do about the whole matter. In our opinion, requiring the employee to take such a risk is unconscionable.

c. Another unfortunate result of this provision is that the employee who exceeds the Table II allowance, though barred from storing the balance at Government expense, is nevertheless authorized to ship it to his destination at Government expense, which is more expensive to the Government than the storage would have been. He thus must elect between (a) storing at his own expense, or (b) shipping to his new post things which he does not want, or cannot use, and which the Agency presumably does not wish to ship.

2. It is the primary function of administrative regulations to fill in the details necessary to the implementation of statutory objectives. Under language such as found in section 4 of the Central Intelligence Agency Act, quoted above, the scope of regulatory authority is broad indeed. Nevertheless, regulations must be written in harmony not only with the express provisions of the statute under which they are issued, but also with the broad objectives of the statute. They may not operate to negate the statute and thus frustrate the will of Congress. In the case at hand, the statute confers a positive legal right on the employee and places a mandate on the Agency to confer the benefit - that is, the storage at Government expense of household effects he cannot use at his prospective post in an emergency area. Consistent with what we have said above, the Agency may by regulations place reasonable limits on individuals as to time, manner, place, amount, etc., of storage, but it cannot impose restrictions which have the effect of unjustly denying the statutory benefit to a large class of employees.

3. Agency Regulation [redacted] sets reasonable standards of household effects weights in Table I, and then, as to storage, denies application of these standards to persons who exceed the limited shipments authorized to furnished quarters (under Table II). In fact, the regulation makes no direct provision for storage at Government expense of the effects of persons going to unfurnished quarters in emergency areas. We have had occasion previously to object to a comparable omission from FR 45-1050, the predecessor of [redacted] on this subject. In our memorandum to Chief, Transportation Division, Office of Logistics, dated 2 July 1959, subject--Proposed Revision of [redacted] and FR [redacted] we stated:

> A regulation may not set different standards of entitlement which artificially and unreasonably discriminate between various categories of employees. For instance, former paragraph 11 of FR 45-1050 provided for storage of effects at Government expense for employees going to furnished quarters in emergency areas but not for those going to unfurnished quarters in the same areas. This unreasonably discriminates against the latter class, who may be in no less need of the benefit than the former."

4. For the reasons above, to the extent that [redacted] would deny to an employee a post which is in an emergency area, and at which furnished quarters are not provided, the storage benefit provided by the statute, on the sole grounds that his household effects exceeded weight restrictions lower than those imposed by Table I, the regulatory provision quoted in paragraph 1a above cannot stand. The Office of Logistics has proposed an amendment to the regulation deleting the objectionable language. Until final coordination and issuance of that proposal, this memorandum is sufficient authority for the storage requested by [redacted]. He may ship household effects within the over-all weight limits specified by the regulation, and any of his household effects, within those limits, which he cannot use at his destination may be stored at Government expense according to the formula provided by the regulations.

25X1A9A

[redacted]
Office of General Counsel

cc: Chief, Finance
Director of Logistics
Chief, [redacted] 25X1A8A
[illegible]

[illegible]

Orig. & 1 - Addressee
1 - [redacted] 25X1A9A
1 - Subject [redacted]
1 - Signer
1 - Chrono
1 - Vital
1 - Legal

Transmittal slip to:
[redacted] 25X1A9A

25X1

117

25X1

5 May 1960

OGC/B-38(a)

25X1A8A

MEMORANDUM FOR: Chief, [redacted]

SUBJECT : Claim for Reimbursement for Foreign Taxes Paid - Submitted by [redacted] 25X1A9A

1. [redacted] has claimed reimbursement for foreign taxes and import duties paid on the purchase of a refrigerator in the country of his assignment. Finance Division returned the claim to [redacted] with the request that it be forwarded to the Office of General Counsel for review. The question is whether taxes and duties of this kind are intended to be reimbursed under the provisions of [redacted] and [redacted] or whether the equalization allowance provided in [redacted] is designed to cover such payments.

25X1A9A
25X1A8A
STAT
STAT
STAT

2. [redacted] is a staff agent assigned to [redacted] under unofficial cover. On 21 May 1959 he purchased a refrigerator on the open market for $484.13. A Government employee under official cover could have purchased the same refrigerator from the same source for $273.81. The $210.32 difference in price represents import duties and local taxes plus a 10% diplomatic discount. [redacted] acknowledges that the diplomatic discount ($30.42) is covered by his equalization allowance. He has claimed $179.90 as the portion of the difference representing import duties and local taxes.

25X1A6A
25X1A9A
25X1A9A

3. The pertinent portions of the Regulations that must be considered are:

STAT Regulation [redacted]

"a. Equalization

(1) There is hereby established an equalization allowance intended to compensate for the excess cost of living at the post (or area) of duty outside the continental United States as compared to Washington, D. C. This allowance shall be computed on the basis of statistical data relating to the cost of living at the local economy."

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STAT [redacted]

"(2) Employees of CIA who paid foreign taxes which they would not have been required to pay except for the fact that cover requirements preclude the application of local tax benefits extended to U.S. Government employees in the area may be reimbursed for such taxes."

STAT [redacted]

"(2) Agency employees under nonofficial cover who, because of the security considerations accompanying maintenance of their cover, pay import duty on their privately owned personal property, including an automobile, which would otherwise be exempt from such charge, and who are not reimbursed by their cover facility or any other source, may be reimbursed therefor up to the weight or volume limitations prescribed for that employee, upon approval of the Chief of Station or Base as to the reasonableness of the types and quantities of personal items."

4. The regulations cited above must be read together in order to determine when a foreign tax or import duty is reimbursable and when it is not reimbursable because a similar benefit is provided, in effect, by the equalization allowance. The equalization allowance is computed on the basis of statistical data relating to the cost of living on the local economy. Clearly, the computation of the cost of living is based on data which includes taxes and import duties in the prices which must be paid for local purchases. Employees under unofficial cover pay such taxes and duties not only on the purchase of expensive items, such as household items, but commonly on the purchase of everyday needs for which the expenditures are much smaller. When an employee makes an expensive purchase, such as the one involved here, he may take notice of the taxes and duties paid and the fact that employees under official cover might be able to avoid them. However, it would be illogical to permit reimbursement in this case unless we permit reimbursement for all taxes and duties, no matter how small, which could have been avoided had the employee been under official cover.

5. The controlling regulations must be read in the only way in which they are not in conflict. That is, that taxes and duties will be reimbursed under the provisions of [redacted] STAT for the property which the Agency ships to an employee's post in order that he may establish his home there. Taxes and duties paid on the purchase of goods for the maintenance of himself and his family after arrival in the country of assignment are considered in the setting of the equalization allowance and cannot be reimbursed seperately.

6. Accordingly, it is the opinion of this Office that Lazzara is not entitled to reimbursement for local taxes and customs duties paid on the purchase of a refrigerator in [redacted]. 25X1A6A

25X1A9A
[redacted]
Assistant General Counsel

cc - Finance Division

OGC/JDM:jcw

Distribution
Orig. & 1 - Addressee
1 - FD
1 - JDM Chrono
1 - H [redacted] 25X1
1 - Hast

120

Next 3 Page(s) In Document Exempt

OOC 60-0439(a)

10 May 1960

MEMORANDUM FOR: Chief, Administration Staff, OC

SUBJECT: Privately Owned Vehicle of [redacted] 25X1A9A

REFERENCE: Your memorandum of 24 March 1960, [redacted] 25X1A9A 25X1A6A

1. We understand from your memorandum that [redacted] privately-owned automobile was transported at Government expense to his post of overseas duty at [redacted]. He has completed his full tour at [redacted] and is now under orders to transfer PCS to [redacted]. We further understand that his cover organization in [redacted] prohibits the importation or possession of a privately-owned automobile in [redacted] 25X1A9A 25X1A6A 25X1A6A 25X1A6A

2. We can find no authority, statutory or otherwise, for advance return of a privately-owned automobile to an employee's residence at the time of appointment or transfer except where an emergency arises (PL 110, 4a(1)(F)). We also can find no authority for payment by the Government of non-temporary storage for a privately-owned automobile. [redacted] possibilities, therefore, seem to be limited to these: 25X1A9A

(a) Under Regulation [redacted], if authorized in his current travel order, amended if necessary, he may ship his privately-owned automobile from [redacted] to any other place, including the continental United States and receive reimbursement up to the constructive cost of shipment from [redacted] to [redacted]. As a practical matter, this constructive cost might well equal or exceed the cost of direct shipment from [redacted] to the continental United States. Storage or disposition of the privately-owned automobile at its destination is entirely the responsibility of [redacted] STA 25X1A6A 25X1A6A 25X1A6A 25X1A6A 25X1A9A

(b) [redacted] may store his privately-owned automobile in [redacted] at his own expense. 25X1A6A 25X1A9A

(c) Travel orders for [redacted] next transfer PCS may authorize transfer of the privately-owned automobile from wherever it happens to be to his next post and he may receive reimbursement for the cost thereof up to the constructive cost of shipment from [redacted] to that next post. If the privately-owned automobile 25X1A9A STA

[redacted]

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STAT STAT

has already been shipped to the continental United States and his next transfer is to the continental United States, he may be reimbursed for the difference, if any, between the constructive cost of shipment from [redacted] to [redacted] and the actual cost of shipment from [redacted] to the continental United States. In either case, the time limits specified in Regulation [redacted] must be waived under subparagraph (8) of the same paragraph. 25X1A6A 25X1A6A

3. Specific answers to your questions follow:

(a) Authority for advance shipment contained in [redacted] STAT does not extend to privately-owned automobiles.

(b) Negative.

(c) See paragraph 2 above.

(d) We do not concur with [redacted] opinion that privately-owned automobiles must be included in the term "furniture and household and personal effects" in subsections (C) and (D) of section 4a(1) of Public Law 110. 25X1A9A

SIGNED

25X1A9A

[redacted]
Assistant General Counsel

25X1A9A
cc: [redacted]

OGC:CFB:jem

25X Orig & 1 - Addressee [redacted]
1 - Subject
1 - Signer
1 - Chrono

OGC 60-0596(a)

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT: Establishment of an Additional GS-11 Auditor Position on the Audit Staff for the Purpose of Effecting an Internal Audit of the Credit Union

REFERENCES: (a) Memorandum from the Director of Personnel to the Deputy Director (Support), dated 21 March 1960, subject - Establishment of Additional Auditor Position

(b) Memorandum from the Comptroller to the General Counsel, dated 25 April 1960, same subject

1. The Comptroller, in reference (b), states that a question has been raised as to the desirability and legality of the Credit Union reimbursing the Agency at the salary equivalent of a GS-7 in connection with the assignment of a GS-11 Agency auditor for the purpose of performing an internal audit of the Agency's Credit Union.

2. As you know, this situation involving the assignment of employees to the Credit Union on a reimbursable basis is peculiar to our Agency and derives from security considerations. The normal credit union hires its own employees "off the street" and these employees have no connection with the individual Government organization which supports the particular credit union. The Federal Credit Union Act in addition to providing for a board of directors, officers and a credit committee makes provision for a Supervisory Committee to be appointed by the board of directors. The Act provides that this Supervisory Committee shall make or cause to be made quarterly and annual audits of the books. The normal credit union may call in outside auditors to perform these audits and may pay for them from credit union funds. The authority for this is contained in the Credit Union Act, which provides that the board of directors, among other duties, shall "provide for compensation of necessary clerical and auditing assistance requested by the Supervisory Committee." We believe, therefore, that our Credit Union is obligated under the Act to pay for whatever auditing services are required by its Supervisory Committee whether such services are rendered directly or for security reasons are performed by an Agency employee on a reimbursable basis.

3. We are not in a position to state what level of competence is required to do the audit, and the responsibility for decision on this point is the Supervisory Committee. In our opinion, the Agency Audit Staff has no official responsibility for the Credit Union audit. That Staff's recommendation, therefore, that a GS-11 level is required is merely advisory so far as the Supervisory Committee is concerned. The Supervisory Committee can also get recommendations on this point from the Federal Credit Union Bureau in HEW but would not be prohibited from obtaining services at a higher level than recommended by that Bureau.

4. As a matter of information, the Chairman of the Supervisory Committee (who is a member of the Audit Staff) advises informally that, in his opinion, the increased size of our Credit Union, with the accompanying complexity of its operations, warrants the assignment of at least a GS-9 for normal internal audit duties and that, as a matter of fact, the Credit Union would be getting its money's worth in reimbursing for a GS-11 both as regards that function and the external audit function required of the Supervisory Committee by the Federal Credit Union Act.

5. Our conclusion is that providing the audit is the responsibility of the Credit Union itself through its Supervisory Committee and the Credit Union should pay the cost thereof. We do not see any basis for expenditure of official funds for all or any part of this cost.

LAWRENCE R. HOUSTON
General Counsel

Attachments - References (a) and (b)

cc: Chief, Audit Staff
Director of Personnel
Comptroller

OGC:OEP:jem

Orig & 1 - Addressee
1 - Subject - Personnel-5
1 - Signer
1 - Chrono

MEMORANDUM FOR: Finance Division
Chief, O & L Branch

SUBJECT: Travel Claims for [redacted] and Dependents 25X1A9A

1. We have your memorandum of 15 March 1960 on the above subject with which you submit three travel vouchers submitted by [redacted] We shall treat these individually, sketching the essential facts related to each. 25X1A9A

2. Voucher No. 2172 claims reimbursement for travel of dependents from [redacted] to Washington, D. C., commencing 5 September 1958. [redacted] was assigned PCS to [redacted] and he and his wife arrived there initially around the first of August 1958. His dependent son arrived separately on 22 August 1958. His wife and son departed [redacted] September 5, 1958, and proceeded to their home in Chicago, arriving on 14 September 1958. Prior to their departure from the United States, [redacted] had exchanged the one-way tickets provided for him and his dependents by the Processing Branch for round-trip tickets. The return portion of the tickets was used in connection with the travel claimed on the voucher at hand. [redacted] was transferred PCS Washington around 15 June 1959 and the travel of his dependents was reportedly approved by an amendment to that travel order dated 10 July 1959. You pose the following questions: 25X1A6A 25X1A6A 25X1A9A 25X1A6A 25X1A9A 25X1A9A

a. From the foregoing, is [redacted] entitled to reimbursement for the travel of his dependents based on a travel order amended ten months subsequent to their arrival in the United States 25X1A9A

b. Is [redacted] ntitled to reimbursement for the travel of his son who remained at the PCS point approximately two weeks and the travel of his wife who remained at the PCS point approximately one month 25X1A9A

3. Advanced return of dependents must be incident to or in reasonable anticipation of orders subsequently issued to the employee authorizing return travel both for himself and his immediate family. 37 Comp. Gen. 160, 1631. See also our memorandum of 10 May 1957, subject: Home Leave (copy attached). In the instant case, the purchase before departing Washington of round trip tickets leaves no room for the proposition that it was ever intended that the dependents remain at the new post for any period of time; nor could we suppose that the return travel was in anticipation of travel orders which, at that time, were presumably to be written two years later. Further, paragraph 7d(1) of [redacted] provides for the advance return of dependents upon a determination that this is in the best interests of the Agency. The record is devoid of information which could reasonably support such a determination. Further, paragraph 7d(4) provides for advance travel of dependents to be reimbursed on post-approval only in extreme emergencies where travel must begin before authorization can be requested. These standards have clearly not been met. Finally, paragraph 7d(5) requires the execution of a repayment agreement, and this requirement was not met. There is no authority for payment of the voucher.

4. Voucher 1696 carries [redacted] claim for 230 pounds of unaccompanied air freight for himself and his dependents on his return to the United States. His travel order authorized 100 pounds. In view of the opinion expressed above and the concomitant invalidity of the travel order amendment authorizing dependent travel, air freight may be reimbursed only with respect to the 100 pounds authorized by the employee's travel order. 25X1A9A

5. Voucher No. 2269 carries a claim for mileage from Chicago, Illinois, to New York City at ten cents per mile in connection with his PCS travel. The obligation reference for this voucher is travel order No. NE-7-59 which transfers [redacted] from Washington, D. C., to [redacted] 25X1A6A
It appears that [redacted] was brought to Washington on TDY at the time of 25X1A9A
his appointment in Chicago and that he traveled from Washington to 25X1A9A
New York by automobile. It also appears that during his TDY his family

came to Washington for reasons of their own, so that they accompanied him from Washington to New York. Under these circumstances it is difficult to perceive any basis for reimbursing the traveler mileage from Chicago to New York, which travel was not authorized and never took place. The claim may not be allowed.

25X1A9A

Office of General Counsel

Attachment

Distribution:
Orig & 1 - Addressee
1 - Subject - Travel 7
1 - Signer
1 - Chrono.

OGC/HRC:amc:mks (9 May 1960)

SECRET

OGC 60-0618(a)

26 May 1960

MEMORANDUM FOR: Chief, Finance Division

SUBJECT: Constructive Cost Computations

1. We have your memorandum of 28 April 1960 asking whether, in computing constructive travel expense allowances, the cost of transporting unaccompanied baggage may be included. To the extent of the amount of baggage actually transported on the indirect travel, not to exceed the amount authorized by the travel order, the answer is in the affirmative.

2. In 33 Comp. Gen. 614, to which you refer in your memorandum, the Comptroller General stated:

"In arriving at a constructive cost of air travel for comparative cost purposes, it reasonably appears that there properly may be included such items of expense as would be authorized if the travel actually were performed by air. An authorization for excess baggage to be transported by air properly is for determination by the administrative official authorizing the travel having regard for the needs of the traveler incident to the particular travel to be performed. Of course, for such item to be included in a comparative cost statement, it would be necessary for the traveler to disclose the amount of baggage actually transported, since it is by reason thereof, together with the authorization for excess baggage in the travel order, that the item is reimbursable."

The cited Comptroller General's opinion is sufficient authority for the proposition advanced in your memorandum.

25X1A9A

[redacted]
Office of General Counsel

OGC:HRC:amc

Orig & 1 - Addressee
1 - Subject
1 - Signer
1 - Chrono

27 May 1960

OGC/B-98

MEMORANDUM FOR: Chief, FTD

ATTENTION : 25X1A9A

SUBJECT : Contracting with Government Employees for Services to USJPRS

1. The United States Government, as represented by the U. S. Joint Publications Research Service, contracts with individuals for translating, editing and typing services. You advised this Office by telephone that inquiries are received from time to time from other Government agencies as to the legality and/or propriety of employees of those agencies performing services for USJPRS. In replying to such inquiries you may find it useful to advise such other agencies that we believe the use of their employees by USJPRS is not in conflict with Federal statutes or regulations for the reasons set forth in the following paragraph.

2. In carrying out its functions, USJPRS finds it necessary to contract with qualified individuals to perform translating, editing and typing duties. Much of the work requires specialized knowledge such as fluency in foreign language and can be performed by only a relatively few individuals. The work is of such a nature that it often can be done in the individual's home in his own free time. The volume of work varies to such a degree that it is impracticable to maintain a full time staff of sufficient size to handle the workload on a regular basis. For practical reasons and in the interest of economy, USJPRS contracts with qualified individuals as the need for their services arises. They are independent contractors, not employees. Their work is usually done at such times and places as they choose and when done in USJPRS offices it is normally by the choice of the individual and at his own convenience. He is not subject to direct supervision and not required to spend any particular time in the office. He is paid for his work by the word or page as may be appropriate and never on a time basis. These standards apply to all individuals with whom USJPRS contracts for such services whether those individuals have regular jobs with the Government or private employers or are self-employed or unemployed. In our opinion there is no conflict with the provisions of dual employment and dual compensation laws where Government employees perform such services for USJPRS.

cc - CPD w/att.

25X1A9A

Assistant General Counsel

OGC/JDM:jcw
Distribution:
Orig & 1 - Addressee
1 - JDM Chrono
1 - PERSONNEL/5
1 - East
1 - CPD w/att

OGC/B-105

31 May 1960

FOR: Office of Logistics, Procurement Division

25X1A9A

: [redacted]

: Filing of IRS Information Returns on Payments Under Non-Personal Services Contracts

1. This memorandum will confirm my opinion expressed in our telephone [redacted] on 27 May. At that time you asked whether the Agency must file [redacted] Revenue Service Information Returns (Forms 1099 and 1096) on payments [redacted] individuals under non-personal services contracts. I advised you that [redacted] of such returns is required by law.

2. The contract of concern is Number [redacted] for procurement of a study [redacted] government computer requirements. The study will be undertaken and the [redacted] prepared by an individual. You designate the contract as a "non- [redacted] services contract" inasmuch as the individual will provide us with [redacted] result resulting from his own research undertaken without supervision or [redacted] by the Agency. STAT

3. Section 6041 of the Internal Revenue Code of 1954 provides as follows:

"All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of . . . compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income . . ., of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary or his delegate, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary or his delegate, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment."

The regulations under IRC Section 6041 make it clear that the law requires ...ting of information returns by this Agency in the case of payments under ...-personal services contracts such as Research Study Contract [redacted] STAT

Signed

As[redacted] General Counsel 25X1A9A

GC/JDM:jcv

Distribution:
Orig. & 1 - Addressee
1 - JDM Chrono
1 - TAXES/1
1 - Basf

[redacted]

31 May 1960

MEMORANDUM FOR THE RECORD

SUBJECT: Departing Aliens Exempt from Tax Clearance Requirements

Certain departing aliens no longer need to obtain "sailing permits". New rulings under IRC Section 6851 published in Treasury Decision 6426, C.B. 1959 52, 19 exempt the following categories of aliens from "sailing permit" requirements:

"1. Representatives of foreign governments in the diplomatic service, whether accredited to the United States or other countries, members of their households, and servants accompany them. Persons in this category who have filed the waiver provided for under section 247(b) of the Immigration and Nationality Act are not entitled to this exception.

"2. Alien visitors or tourists who:

(a) were admitted solely on a B-2 visa;

(b) have been in the United States or any of its possessions for not more than 60 consecutive days, whether or not within the same calendar year, or for not more than a total of 60 days, whether or not consecutive, during the calendar years;

(c) have received no gross income from sources within the United States for the taxable year up to and including the date of their intended departure, and for the preceding taxable year in any case in which the period for making the income tax return for such preceding year has not expired; and

(d) are not in default in making return of, or paying, United States income tax for any taxable year.

"3. Aliens in transit through the United States or any of its possessions who have a C-1 visa or who are admitted under a contract, including a bond agreement, between a transportation line and the Attorney General pursuant to section 238(d) of the Immigration and Nationality Act and who remain in the United States or a possession thereof for a period of not more than five days in any one trip. However, such individuals will have to obtain a certificate of compliance if the internal revenue officer or employee at the point of departure has information indicating that they are obligated to the United States for income tax.

"4. Alien commuters who:

(a) are residents of Canada or Mexico;

(b) commute between such countries and the United States at frequent intervals; and

(c) derive wages which are subject to the withholding of United States income tax.

However, such individuals will have to obtain a certificate of compliance if the internal revenue officer or employee at the point of departure has information indicating that collection of tax from them will be jeopardized by their departure."

25X1A9A

Assistant General Counsel

OGC/JDM:jcw

Distribution:
Orig. - TAXES/5
1 - JDM Chrono
1 - East

OGC 60-0801
21 June 1960

MEMORANDUM FOR: Chief, Benefits and Services Division

SUBJECT: Military Leave - [redacted], JOT 25X1A9A

1. The Office of General Counsel sees no legal objection to approving 25X1A9A
the request of [redacted], for 88 hours of Military Leave
beginning 26 May 1960.

25X1

2. Mr. [redacted], a Junior Officer Trainee, is a member of the Air Force Reserve. On 11 May 1960 he was ordered to active duty under provisions of Section 6d(1), Public Law 759, 80th Congress as amended by Public Law 51, 82nd Congress in the grade of First Lieutenant, for a period of 36 months unless sooner relieved. According to special orders No. A-2284, Headquarters Air Reserve Records Center, Denver, Colorado, Mr. Hathaway was assigned to a technical training center from a reserve unit on the day prior to the effective date of active duty. He has not resigned from the Agency and on or about 23 May applied for 15 days Military Leave.

3. Two questions must be answered in determining whether Mr. [redacted] 25X1
situation falls within the requirements of the Agency regulations applying to Military Leave. First, was the leave requested "for training purposes only," and second, was [redacted] a member of a "reserve component of the armed services" during the time his leave was to run? Regulation [redacted] 25X1A9A 25X1
paragraph 7a provides that:

> "Military Leave for training purposes only, not to exceed 15 calendar days in any one calendar year, may be granted with pay without charge to annual leave to members of reserve components of the armed services of the United States."

4. Although [redacted] has been assigned to a Center where it can be 25X1A9A
assumed that some initial training will be encountered, the facts as presented do not set out a request "for training purposes only." New legislation in 1956 broadened the purpose for which military leave could be requested to include any "active duty." Section 29a of the Act of 10 August 1956, 5 U.S.C., provides that:

> Each Reserve of the armed forces or member of the National Guard who is an officer or employee of the United States. . .is entitled to leave of absence from his duties without loss of pay, time, or efficiency rating for each day, but not more than 15 days in any calendar year in which he is on active duty, or is engaged in field or coast defense training under Section 502-505 of Title 32." (emphasis added)

Comptroller General construed this legislation on 8 November 1957 holding his earlier decisions limiting Military Leave rights to leave for training purposes only would no longer obtain "in view of the statutes." The decision went on to allow Military Leave rights for employees in the reserve ordered to active duty for general service "for any purpose--training or otherwise." [redacted] then may be allowed military leave within the 25X1A9A
statute, although ordered to active duty for other than training purposes, provided he is a member of a "reserve component." It is suggested that the Army regulation be changed to include the broader allowance to comply with the statutory change.

25X1A9A

5. The term "component" in the statute and regulation refers to the reserve organization of the particular service to which the employee-Reservist belongs, in this case, the Air Force Reserve. It does not refer to the duty station to which the individual is assigned while on active duty. [redacted] was not relieved from his reserve component and reassigned to the regular Air Force. He was simply relieved from one service assignment and assigned to another in the process of being ordered to active duty. He, therefore, was a member of "a reserve component of the armed services" during the time his unexpected 15 days was to run.

6. A recent Comptroller General's decision disallowing Military Leave for a Government employee entering on active duty can be distinguished on its facts from the instant case. In an unpublished opinion dated 9 March 1960, the Comptroller General held that "the active duty for which a leave of absence without loss of pay is provided, includes only active duty as a member of a reserve component of the armed forces, which must be distinguished from service in the regular component." The opinion concluded that enlisting in the Regular Army after having served in the Air National Guard would not entitle the employee to military leave under the statute since there was clearly no connection between enlistment and his former status in the Guard. In the instant case, [redacted] volunteered for active military service 25X1A9A
within his own reserve component. His situation, therefore, is covered by the statute.

SIGNED

[redacted] 25X1A9A

Office of General Counsel

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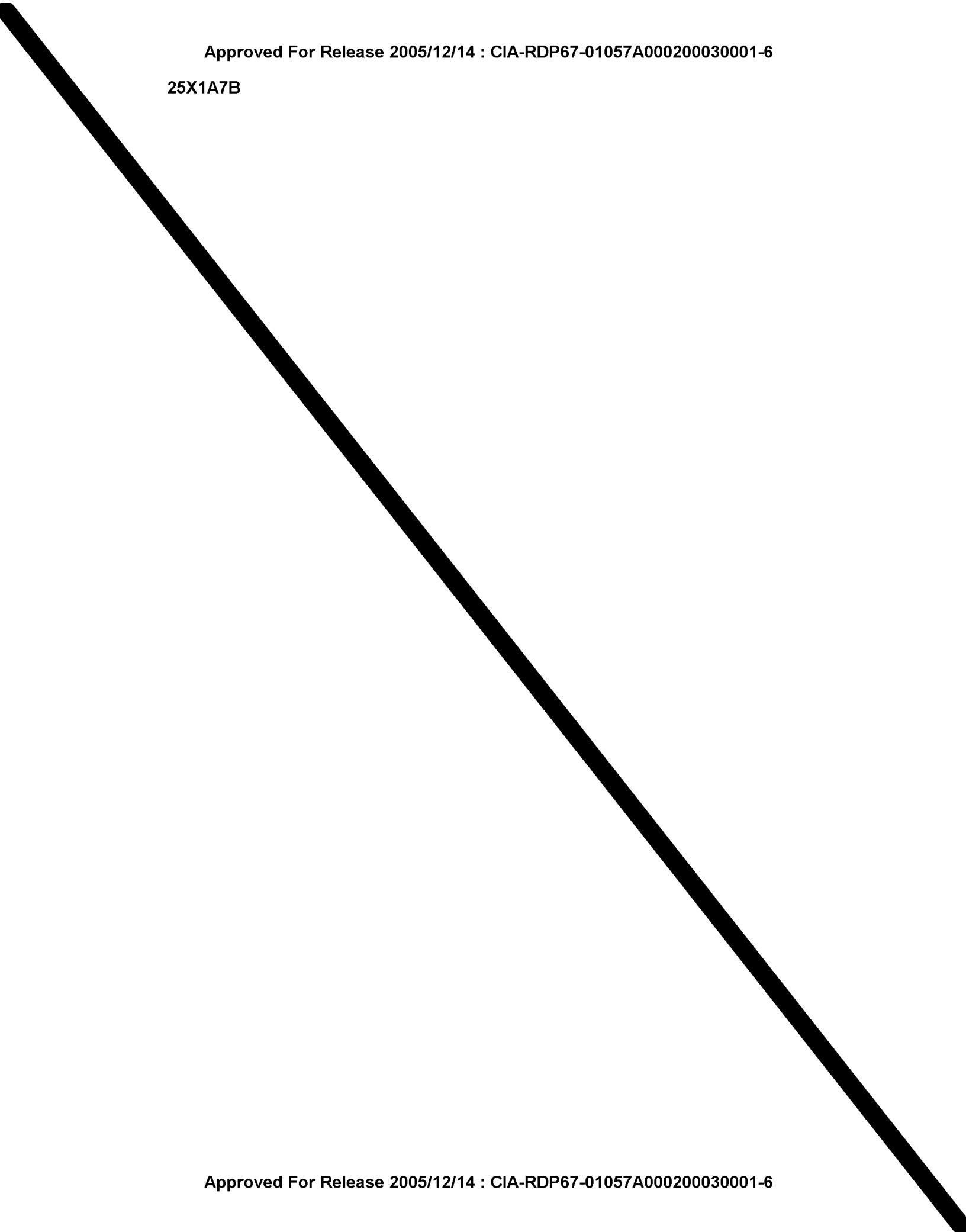
25X1A7B



Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

27 June 1960

MEMORANDUM FOR: Deputy Director (Support)
Attn: [redacted] 25X1A9A

SUBJECT: Temporary Lodging Portion, Home Service Transfer Allowance

REFERENCES: (a) Section 252.22, "Temporary Lodging Portion, Home Service Transfer Allowance," Standardized Regulations (Government Civilians, Foreign Areas).

(b) Section III, "Home Service Transfer Allowance," Agency Regulation [redacted] and Field Regulation [redacted] 25X1 titled Standardized Allowances.

(c) OGC Memorandum, "Home Service Transfer Allowance" dated 23 October 1956.

1. Question has been raised by Agency employees and by the Office of Personnel concerning the definition and proper application of standards established in the Standarized Regulations with regard to payment of the temporary lodging portion of the Home Service Transfer Allowance. The Standarized Regulations provide in part at Section 252.22:

> ". . . The grant, or grants, may cover periods during which the employee, or member of his family, incurred expenses for temporary lodging at his post within a time-range beginning 30 calendar days prior to the employee's entrance on duty and ending 30 calendar days after his entrance on duty;"

The reasoning and arguments advanced in support of the claims herein discussed, where temporary lodging expenses have been incurred at a time in excess of 30 days prior to entrance on duty at headquarters, have been sufficiently numerous and varied as to indicate a need for examination.

2. The first two cases outlined below were brought to our attention by the Chief, Tax and Allowance Staff, Finance Division, and have been discussed with each of the claimants. The considerations advanced by each on his own behalf (and on behalf of others who find themselves in a similar situation), are indicated below. The basic fact situation of the third case has also been relayed informally to us. The fourth case has been given active consideration by the Office of Personnel. The propositions advanced by claimant and a possible approach for solution, which is

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Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

considered by the Office of Personnel, are noted in turn. Those four cases are as follows:

(a) [redacted] home leave point was Washington, D. C. He incurred none of his temporary lodging expenses prior to 30 days before returning to duty at headquarters. 25X1A9A

[redacted] points out that although Agency Regulation [redacted] provides that the 30-day period for which an individual may be reimbursed for expenses incurred for temporary lodging for himself and his family must fall within the 60-day period which begins 30 days before the individual's entrance on duty at his new post in the United States and ends 30 days after his entrance on duty (Section 4a(2)), that he as an individual and others returning from the field, based the action taken with regard to temporary lodging expenses on the provisions of Field Regulation [redacted] 25X1A9A 25X1

By his memo [redacted] indicated that the advice and guidance available to him at the time was contained in Section III, Field Regulation [redacted] and that it was there indicated: 25X1A9A 25X1

> "The temporary lodging . . . is based . . . at hotels or other temporary lodgings ordinarily used by employees arriving at a FCS post of assignment in our country. This portion shall continue for a period of 30 days if the individual's dependents accompany him (or 15 if not). . . ."

With regard to the question presented, in effect by [redacted] that the term "entrance on duty" at a post might be construed to mean "arrival at a post," and so allow reimbursement for the expenses incurred within 30 days after arrival in the Washington area, representatives of Finance Division have noted that OSC advised under date of 23 October 1956 that the "entrance on duty" date (EOD) "for purposes of the Home Service Transfer Allowance is the date upon which the individual returns to Washington for FCS following home leave." 25X1A9A

The Finance representatives also noted another argument that had been presented to them that since employees of this Agency are not entitled to "home leave," but merely to travel reimbursement to their home leave points, the "date of arrival" should govern. All leave is charged to annual leave. It was felt by various claimants that this reasoning should apply particularly in those instances where an employee takes home leave locally in the Washington area. The question was presented in addition that if the arrival date may not be used, whether a different result might be achieved if the employee who was to go on leave in the Washington area were to report in to his new office for one day upon arrival in Washington in order to settle his travel accountings before continuing on extended leave.

(b) [redacted] arrived in Washington, D. C., on 20 July 1959 after "home leave" in Florida, 9-18 July. He incurred temporary lodging expenses for the period 20-24 July. He returned to duty 25 August. It was requested that in accordance with the finding contained in the OGC opinion of 23 October 1956 cited above, the date 20 July, the date of the arrival back in Washington from Florida, be utilized in determining eligibility for the temporary lodging portion of the Home Service Transfer Allowance rather than the date 25 August, the day on which he returned to duty, in order that reimbursement might be granted for all, rather than part of the temporary lodging expenses incurred.

(c) [redacted] At the informal meeting with [redacted], this office was advised of the case of a [redacted] who was tentatively considering submission of a claim for the temporary lodging portion of the allowance for 22 days temporary lodging expenses for which reimbursement had been denied by the [redacted]. This employee arrived in Washington on 13 June 1959; reported for 5 days TDY 15-19 June; took home leave in nearby Virginia; established temporary quarters for the period 17 June through 15 July; reported for duty on 10 August. The claim was duly submitted to the [redacted] for the expenses incurred during the temporary lodging period, 17 June through 15 July. The [redacted] authorized payment for the period 10-15 July, that portion of the temporary lodging period falling within the 30 days prior to the date of reporting for duty, and denied reimbursement for the remainder.

(d) [redacted] arrived in Washington on 24 October 1959 from the Far East. Upon arrival he and his dependents obtained temporary living quarters for a period of ten days. Upon completion of leave on 21 December, he reported for duty.

[redacted] states that upon arrival in Washington on 24 October, he contacted the Far East Division. He advised the contact of his whereabouts and that he would be on annual leave until 21 December.

In his request for review and payment under Section 9a, Agency Regulation [redacted] noted in part, that he was not advised before leaving the field of any restrictions on temporary lodging other than that reimbursement of not more than $12 per day for a maximum of not more than 30 days would be allowed. By his memorandum he also pointed out that he was not furnished with a copy of the personnel regulation covering temporary lodging; that "In effect, the regulation on this allowance was changed while I was enroute to Washington, D. C., and I was never given any notice of this, although on 24 October 1959, I reported officially to FE Division"; and that

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his claim for reimbursement for temporary lodging was not disallowed as a questionable item but because of the technical point that it was not within the 30-day period "before the individual's entrance on duty."

By a proposed memorandum for the FE Division which was provided for our comment, the Office of Personnel suggests as a basis for approval of [redacted] claim that "The legal requirement is met by physical presence at the duty station and contact with the appropriate administrative office to advise of availability for duty as required." The memorandum concludes: 25X1A9A

> "In view of the preceding, if the Chief of the Far East Division verifies the facts presented herein and concurs that [redacted] constructively entered on duty on 24 October 1959, the Office of Personnel will officially record such action and so notify [redacted] and the Finance Division." 25X1A9A 25X1A9A

3. The Home Service Transfer Allowance is a cost-of-living allowance granted to an employee pursuant to Section 901(2)(ii) of the Foreign Service Act Amendments of 1955, for extraordinary and necessary expenses deemed incident to the establishment of his residence at a post in the Continental United States between assignments to posts abroad. Executive Order 10100, dated 20 June 1949, authorizes the Director of CIA to pay allowances conforming to those granted by the Secretary of State in accordance with the regulations prescribed in Executive Order 10011, and prescribes such further regulations as he may deem necessary to effectuate the purposes of the Order. Agency Regulation [redacted] Standardized Allowances, incorporates Section 252 "Home Service Transfer Allowances," of the Standardized Regulations (Government Civilians, Foreign Areas), in paragraph I and provides in paragraph 3 as follows: 25X1

> "a. Provided all applicable eligibility criteria are met the Home Service Transfer Allowance will be granted to staff employees and staff agents." (underscoring added).

The time-range governing the period of grant or grants is set forth in Section 252.22 of the Standarized Regulations. That section provides in part ". . . 30 calendar days prior to the employee's entrance on duty and ending 30 calendar days after his entrance on duty." It is further provided that "where an employee is already at the post to which he is transferred, or has not yet entered on duty as the result of medical treatment, the effective date of transfer, rather than the date of entrance on duty, shall govern." As is indicated by the regulation and has been consistently applied by the Department of State and this Agency, "entrance on duty" means reporting in to work at the regularly assigned tasks of the individual's current assignment. Such a reporting in for work is routinely recorded and reflected on the Agency Time and Attendance Record.

4. It was noted by one claimant that his claim for reimbursement for temporary lodging was not disallowed as a questionable item, but

because of the termination of [redacted] was not within the 30 day period before his entrance on duty. The condition established by the regulation with regard to the time-range governing the period of grant, is a basic condition of eligibility. Such requirements are not properly construed as mere technicalities. Failure to meet such requirements constitutes failure to establish eligibility for consideration of the claim submitted.

5. In keeping with the foregoing, this office would confirm the opinion of the Finance Division and the area division B & F office that each of the cases indicated were properly denied. Even though the details of the Standarized Regulations were not repeated in the Field Regulations, the applicability of the Standarized Regulation was clearly indicated at paragraph 1 of each of the several Field Issuances.

6. It is the opinion of this office that a momentary contact with a division representative would not suffice to meet the requirement of reporting for duty. Although not necessary to the determination of the foregoing cases, it is also our opinion that reporting in for one day in order to settle travel accountings before continuing on extended leave would also not meet the requirement of the Standarized Regulation. Such reporting in would be little different than the TDY which is most often directed upon arrival in the United States after overseas assignment.

7. One claim was presented by review under the authorities contained in Section 9a of Headquarters Regulation [redacted] Obligation and Expenditure of Funds. That section provides: 25X

> "a. GENERAL EXPENDITURE
>
> When authority is not otherwise specifically provided in Agency regulations the Deputy Director (Support) may take final action on any matter arising out of the unusual functions of this Agency and involving the expenditure of confidential funds, if the expenditure involved in each matter does not exceed $2,500. The term 'unusual functions' as used herein is intended to differentiate the extraordinary problems of this Agency from the normal administrative or operating problems confronting the ordinary Government agency." (underscoring added).

8. It is the opinion of this office that a claim for temporary lodging portion, Home Service Transfer Allowance, does not meet the criteria established in Section 9a for determination by the Deputy Director Support. Provision is made for travel benefits and travel allowances in Agency Regulations with a certain degree of particularity.

OGC:JGO:re

Distribution:
Orig. & 1 - Addressee
1 - Finance Div- [redacted] 25X1A9A
1 - O/P - Attn:
1 - SS/A/DD/S
1 - [redacted] 25X1A9A
1 - [redacted]

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[redacted] 25X1A9A
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1 - Circulation
1 - Subject Pt A-10

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OGC/B-175

29 June 1960

MEMORANDUM FOR: Chief, T&D

SUBJECT : Loss of Privately-Owned Equipment Stored by T&D

1. [redacted], CI Staff, has advised us that certain experimental equipment belonging to him was lost while in the possession of T&D for the purpose of evaluation for possible Agency use. There is very little information on this matter in writing and most of the facts have been determined by resort to memory on the part of [redacted] and members of T&D and the Office of Security. It seems probable, however, that the facts are substantially as related below.

2. In March 1957 [redacted] delivered to T&D personally owned equipment for evaluation and possible development. It was a bread-board model of a device called a "BJ Gauge" originally developed by [redacted] several years before and according to him would cost about $1,500.00 to reproduce today. By June of 1957, T&D had concluded that developmental costs would be about $30,000.00 and that T&D would not be able to go ahead with the development unless some other component of the Agency was willing to underwrite the cost. Sometime between March and August of 1957 [redacted] had interested the Office of Security in the equipment and they were considering its possible development at their expense. However, in August of 1957 it was determined that Security had no further interest in the equipment. A file memo from [redacted] of the Office of Security, dated 23 August 1957, states that [redacted] was informed telephonically on 23 August 1957, that Security, and especially the Interrogation Research Division of the Office of Security, no longer had any interest in his BJ Gauge then in possession of T&D.

3. The facts in paragraph 2 above are either documented in writing or represent the best memory of [redacted] of T&D, and [redacted] of the Office of Security. There is no substantial disagreement in the facts recalled by those three individuals. However, after August 1957 the record is somewhat less clear. [redacted] told T&D that he would like to leave the equipment in the T&D Lab temporarily and T&D agreed to this. He thinks that T&D was willing to keep it because of the possibility that a requirement for it might come up, whereas T&D believes that there was no thought of a future requirement on its part and that they were merely storing it for him while he shopped it among other components of the Agency. [redacted] recalls conversations with [redacted] and [redacted] of T&D in which each said that development of the equipment might well be picked up by some other element of the Agency if not by T&D.

[redacted]

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4. Although there is no way of being sure of when or how the equipment was lost it seems likely that this occurred when the T&D vault was cleared out in June of 1958. The two men previously responsible for the vault had left their jobs early in 1958 and those who replaced them knew nothing of the equipment. It was disassembled and being experimental and homemade could have looked like junk to someone who was not familiar with it. It seems probable that it was discarded for this reason. In any event the equipment was missing when [redacted] came to pick it up in March 1959. 25X1A9A

5. [redacted] would like to be reimbursed for the value of his lost equipment and you have asked whether the Agency is liable for its loss and must reimburse him. The only authority under which the Agency can pay such a claim is the administrative adjustment section of the Torts Claims Act, 28 USC 2672. That section provides that the head of a federal agency may settle any claim for money damages of $2,500.00 or less for loss of property caused by the negligence or wrongful act of any employee of the Government while acting within the scope of his employment, under circumstances where the United States, if a private person, would be liable to the claimant. Accordingly, we may settle this claim only if a private party would be liable for negligence in such a case. 25X1A9A

6. The Agency here was acting as a bailee. Until 23 August 1957 [redacted] equipment was in the possession of the Agency at our request in order that we might ascertain its usefulness for our business. At that time there existed a bailment for the benefit of the bailee and the bailee would therefore have been liable for even a slight degree of negligence. However, it appears from the record that after 23 August 1957 the equipment remained in our possession primarily for the benefit of the bailor, [redacted] 25X1A9A Under such circumstances the bailee probably would be liable only for damages resulting from gross negligence. The facts do not indicate that T&D employees were grossly negligent in discarding the equipment. It is our opinion that under such circumstances a private person would not be liable to the claimant and accordingly there is no authority for the Agency to pay damages to [redacted] 25X1A9A 25X1A9A 25X1A9A

Signed
25X1A9A
[redacted]
Assistant General Counsel

cc - CI Staff, 25X1A9A [redacted]

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1 - [redacted] 25X1A9A
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15 July 1960

MEMORANDUM FOR: Chief, New Orleans Office, Contact Division

THROUGH: Chief, Contact Division, (Admin)

SUBJECT: Application of the Hatch Act to WAE Employee in [redacted] 25X1A6A

1. Your request for an opinion, on 25 May 1960, as to whether Mr. [redacted] 25X1A9A, a WAE employee in [redacted] 25X1A6A may engage in political activity without violating provisions of the Civil Service Act and the Hatch Act is answered in the affirmative.

25X1A9A 2. Your memorandum states that [redacted] is a WAE employee who spends an average of not more than 36 hours per month on Agency matters and is paid on an hourly basis at the GS-13 level. Therefore, he is considered to be an intermittent employee within the meaning of Civil Service regulations which makes such employees subject to Section 9 of the Hatch Act. However, he is subject only to political-activity prohibitions of the Act while in active-duty status and for the entire 24 hours of any day of actual employment. Civil Service regulations permit him to be listed as a candidate for a public-elective office provided he does not engage in political activity on any day on which he performs duty as a Federal employee. (See the attached pamphlet entitled "Political Activity of Federal Officers and Employees," U.S. Civil Service Commission, Pamphlet 20, November, 1959, page 8.)

25X1A9A 3. [redacted] should be advised that if his political activities should, at any time in the future, adversely affect the interests of the Agency or the Federal Government, then Agency policy would preclude his continuing such activities if he is to remain a WAE employee of the Agency.

25X1A9A 4. [redacted] should be advised further that it shall be his responsibility to keep appropriate Agency officials informed on a continuing basis of any political activities on the possibility that any action in the future might be construed to be in conflict with his official duties.

SIGNED

25X1A9A
[redacted]
Office of General Counsel

OGC:JBU:re

Attachment: "Political Activity of Federal Officers and Employees," U.S. Civil Service Comm., Pamphlet 20, November, 1959.

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Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

OGC 60-1018

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26 July 1960

MEMORANDUM FOR: Director of Communications

SUBJECT : Classified Telephone Switchboard

1. It is our understanding from telephone conversations with 25X1A9A [redacted] of your office that the National Security Agency has offered to maintain a classified telephone switchboard at the new Central Intelligence Agency headquarters when it opens. Mr. 25X1A9A [redacted] said that NSA would provide two operators to carry out this service with the stipulation that the Agency reimburse it for the salaries and other expenses incurred in detailing these employees to the new building and, further, that the Agency pick this personnel up on its strength reports. NSA apparently has stated that, because of personnel ceiling difficulties, it cannot loan the two employees if it must retain them on its rolls.

2. Your request for an opinion on whether this arrangement can legally be entered into by the Agency is answered in the negative. There are no legal objections, however, to the alternative solution, 25X1A9A suggested by [redacted], of hiring these two operators directly and asking NSA to train them.

3. Section 601, Title VI of the Economy Act of 30 June 1932 (47 STAT 417), as amended, gives two departments of Government operating under separate appropriations the authority to enter into an agreement to detail personnel from one to the other for which reimbursement or transfer of appropriations may be made. However, according to 24 COMP GEN 420 (1944), during the period an employee is detailed from one agency to another he remains an employee of the first or loaning agency. We conclude from this that he also remains on the rolls of the loaning agency. The only exception to this rule is found in detailing military personnel on a reimbursable basis for which specific legislation provides that no count shall be made in computing strengths under any law. Short of a legislative determination

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to bring civilian agencies under this rule, there can be no authority for extending this rule to the problem here. Therefore, while NSA may be reimbursed from appropriated funds for the two operators loaned to the Agency, it must continue to carry them on its rolls.

4. The Director's special authority could not be applied to pay this personnel from confidential funds and add them to the CIA strength reports. The question here is whether NSA can strike them from its strength reports, not whether CIA can pick them up. Therefore, the issue lies with NSA, not CIA.

5. If the Agency should hire these two operators directly, NSA could supervise their training and later activities without violating the rules set out in paragraph 3. They would, of course, remain on the rolls of the Agency.

25X1A9A

[redacted]

Office of General Counsel

OGC:JBU/pkc

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1 - Subject
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1 - Legal
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MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Possible Suit Against B. T. Singer and the CHICAGO TRIBUNE

1. This memorandum is for information only.

2. You have requested our opinion on your legal rights against B. T. Singer Features, which sold the CHICAGO SUNDAY TRIBUNE an article entitled "What We Know About Russia's Strength," by Allen W. Dulles, Director, Central Intelligence Agency, and published in the TRIBUNE's Sunday Magazine section on 17 July 1960. (Attachment 1).

3. A review of the article in the TRIBUNE indicates that it is substantially a rewrite of your 8 April 1959 speech before the Edison Electric Institute. The article is composed predominantly of verbatim quotes from that speech, although substantial portions of the speech are omitted. After extensive research, we have concluded that a possible action lies both against Singer Features and the CHICAGO TRIBUNE. Also, if Mr. Lloyd Wendt, Sunday Editor of the TRIBUNE, has described accurately his contact with Mr. Singer, the latter's representation that he had the rights of publication would give the TRIBUNE grounds for a fraud action against Singer and his company.

4. At least three possible approaches to legal action on your part are suggested by the facts. First, an action for libel might be maintained if it can be proven that the article, as printed, is not an accurate reflection of your remarks in New Orleans on which the article is based. Mr. Grogan's memorandum of 20 July 1960 (Attachment 2), indicating that Mr. Singer has long been considered a pro-Communist, suggests a stronger motive in his actions than the commercial aspects of selling this article to the TRIBUNE. A careful reading of material removed by him from the New Orleans speech suggests that Singer sought, for the most part, to avoid statements supporting the belief that Moscow has not changed its basic mission of world conquest and its techniques devoted to accomplishing this. He has attempted through careful editing to build a picture of an ever-growing, ever-more powerful Soviet nation, operating under the guidance of an infallible blueprint which is designed to make it the world's economic leader. He omits such statements as "I do not conclude from this analysis that the secret of Soviet success lies in greater efficiency. On the contrary, in comparison with the leading free enterprise economies of the West, the Communist state-controlled system is relatively inefficient." One could, in fact, conclude from the article as it appeared that it is inevitable that the Soviet Union will come by advance to first place in the world in volume of production.

5. The fundamental basis of the law of defamation and therefore an essential element in a plaintiff's argument is proof that the defendant has published false matter which has injured the plaintiff's reputation. (Lamm v.

Electric Co. of Missouri, 166 S.W. 2d 1065, 144 A.L.R. 622; Grant v. Reader's Digest Association, C.C.A.N.Y. 151 F 2d 733; Berg v. Printers' Ink Pub. Co., D.C.S.D.N.Y. 54 F Supp. 795.) Admittedly, the present situation is somewhat afield of the usual libel action. Usually, of course, the defamer has made some statement which reflects directly on the character of the defamed such as charging him with improper conduct in office. Nevertheless, it could be argued, the essential element - a false statement which injures the reputation of the defamed - is present.

6. The falsehood here is the attribution of authorship to you of the story published in the TRIBUNE. The reader could be expected to believe you did, in fact, write the article for the newspaper. He, therefore, would believe that this represents your current position on Moscow's military strength and economic posture. From this he would probably also conclude that this is the official position of the United States Government. If, in fact, this rewrite of your original remarks did not reflect accurately the tenor of your original remarks or your present viewpoint, 15 months after the speech was first presented, a good case can be made for the charge that false matter has been published which has injured your reputation. Furthermore, the case is strengthened by applying the rule protecting persons in their office or calling. The protection long afforded to tradesmen to their reputations in their callings has been generally extended to persons holding public office. (Fitzgerald v. Piatte, 1923, 180 Ark 625, 193 S.W. 86.) Therefore, facts which might not be actionable in the case of other persons have been used successfully to support an action for injury to the public official in his office or calling. (Lawson, "The Slander of a Person in his Calling," 1881, 15 Am. Rev 573.) To be actionable under this theory the defamatory statement must be made with reference to a matter of peculiar importance to the office itself. (Restatement of Torts, sec 573.) Certainly the facts here would qualify under this rule.

7. A second approach to a cause of action would be a suit for invasion of the right of privacy. This area of the law, admittedly, is very uncertain, particularly in situations in which a public official is suing for invasion of his right. Nevertheless, the situation here in which a party publishes an article, purportedly written by another, which, in fact, is a misleading rewrite of a public speech made 15 months earlier, presents a strong case for finding that a cause of action lies for wrongful invasion of the right of privacy. Professor William Prosser writes:

> Most courts now recognize the existence of a right of privacy which will be protected against interferences which are serious and outrageous, or beyond the limits of common ideas of decent conduct. The right has been held to cover intrusions upon the plaintiff's solitude, publicity given to his name or likeness ... (and) placing him in a false light in the public eye. The right is subject to a privilege to publish matters of news value, or of public interest, or a legitimate kind. (Prosser, Law of Torts, p. 639.)

The right is recognized both in California and Illinois, the two jurisdictions which would be the most likely for bringing suit in your case. (Gill v. Curtis Pub. Co., 1951, 38 Cal. 2d 273, 231 P 2d, 565; and Bleck v. Park Dog Food Co., 1952, 347 Ill. App. 293, 106 N.E. 2d 742.)

8. A New York case, D'Altomonte v. New York Herald Co., 308 N.Y. 153, 124 N.E. 2d 97 (1954), in which the plaintiff sued for a representation that he the author of an absurd story provides the type of factual situation with a comparison could be made with the present facts. On appeal the court reversed the lower court's holding for the plaintiff on the grounds, however, it was not within the New York Statute concerned with this type of situation. The courts tend to find some other basis for liability than purely an invasion of one's privacy such as defamation, breach of an implied contract or invasion of some property right. Nevertheless, Prosser notes that there is "a large and growing field in which privacy becomes important because other remedy is available."

9. A third approach to a cause of action lies in a suit to force abandonment of a copyright. The newspaper might also be forced to print a retraction of the article with any clarifying comments you might wish to make. Since the original speech was placed in the public domain, by publishing it in several places such as the Congressional Record on 30 April 1959, a direct action for infringement of copyright or exploitation of your personal property would not lie. The Rickover case, in which the admiral succeeded in the federal courts to prohibit a publisher from publishing speeches which he had made on subjects which he is noted as an expert, could not be applied here, since the court held in that case that the admiral had not published his speeches and that they were not consequently in the public domain. If an action were brought for abandonment of the copyright which the CHICAGO TRIBUNE has taken out on the article, it is unlikely that the defendants would maintain that the case falls within the rule that materials in the public domain may be protected by copyright, if there is a distinguishable variation in the arrangement and manner of presentation. To bring the case under this rule would be to admit that a "distinguishable variation" had been made in your original presentation which, in itself, would support a suit for libel.

10. In summary, Mr. Singer and the CHICAGO TRIBUNE had the right to publish your 6 April 1959 speech, since it was in the public domain, provided they clearly indicated the source and date. They also had the right to publish excerpts from the speech if these excerpts were clearly acknowledged as being such and if, taken out of context, they did not distort the overall tenor of your remarks. However, Mr. Singer had no right to represent, and the CHICAGO TRIBUNE to publish, a rewrite of the speech which was made by omitting key passages of the original and to which was appended an original title supposedly authored by you. In view of the various theories by which an action might be brought and the jurisdictions in which such a suit could be commenced, you may wish, should you decide to pursue the matter legally, to consult private practitioners who have had experience with defamation cases. Of course, we would assist these attorneys in any way we could in preparation of the case. Suit could be brought either in California, the jurisdiction in which Mr. Singer and his company are located, or in Illinois, the jurisdiction in which the article was published. An alternative approach might be for the TRIBUNE to litigate its rights against Singer and his company.

Distribution:
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1 - Asst to DCI
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25X1A9A

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Subj - Publications

Singer

Chicago

3

MEMORANDUM FOR: Mr. John S. Warner

SUBJECT: Technical Adultery and Naturalization

1. Section 316(a)(3) of the Immigration and Nationality Act states:

"No person, except as otherwise provided in this title shall be naturalized unless such petitioner during all the periods referred to in this subsection has been and still is a person of good moral character ...."

2. Section 244(a) allows the Attorney General in his discretion to suspend deportation with respect to a deportable alien who meets one of several sets of criteria. A common criterion for each set is that during the period of time appropriate to the category the alien "has been and is a person of good moral character."

3. Section 101(f)(2) states:

"For the purposes of this act, no person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is recognized to be established, is, or was one who, during such period has committed adultery."

Section 101(f) does not define good moral character but does set some preclusive standards as an aid in making determinations, to the end of greater uniformity. The standards apply equally to section 244(a) and section 316(a) (as well as others in which the term is used), by the terms of section 101(f). The leading case on the point with which we must deal is specifically a ruling on section 244. I believe that it follows from the above that it is also applicable to section 316, and this was clearly indicated in the opinion of that case, which I shall discuss below.

4. The precise question with which we have to deal is whether an alien, who obtains a Mexican mail order divorce and subsequently marries in good faith, is or is not a person of good moral character within the meaning of that term as set forth in section 101(f)(2) of the Immigration and Nationality Act.

5. The leading case on this subject is Dickhoff v. Shaughnessy, 142 F.Supp 939 (D.C.S.D.N.Y. 1956). This is to my knowledge the only case which makes a serious analysis of the particular problem of technical adultery. Because of its fairly comprehensive approach I am attaching a full text of that portion of the opinion dealing with the question at hand. The holding in the Dickhoff case was that an alien who obtained a Mexican mail order divorce and subsequently married in good faith was statutorily eligible for suspension of deportation under section 244(a)(5). For the reasons I mentioned in paragraph 3 above, this is, in effect, a holding that within the meaning of the term as used in the statute, Dickhoff was of good moral character notwithstanding the technical adultery implicit in his marital status. Consider the statement in

the opinion in that case (at page 538): "Nevertheless, we cannot have one interpretation of the same statutory provision when naturalization is involved, and another when deportation is involved." Apart from those cases commented upon in the Dickhoff opinion, I find the following cases in point.

b. Petition of Greulich, 117 A 2d 316 37 N.J. Super. 371 (1955). This case held that where the petitioner was married in 1938 in reliance on an invalid Mexican mail order divorce which had been obtained by her spouse in 1935 and had continued in such marriage relationship for over 17 years, the petitioner's conduct was not tantamount to adultery proscribed in the standard of morality established by section 101(f)(2).

c. Petition of DaSilva, 140 F Supp 596 (D.C.N.J. 1956). This case held, in a terse opinion, that the marriage of the petitioner subsequent to the procurement of a Mexican mail order divorce, was bigamous and adulterous and that consequently the petitioner was not entitled to naturalization. In the DaSilva opinion there is no attempt to distinguish between technical adultery and actual adultery within the meaning of the statute, nor does it appear that the question was raised.

d. A related case is In Re Mayall, 154 Fed Supp 556 (D.C.E.D.Pa 1957). In this case the petitioner was divorced in Great Britain and subsequently married in Pennsylvania the person named in the divorce decree as correspondant with respect to the grounds for the divorce, which were adultery. In Pennsylvania there is a positive personal incapacity placed on a party to such a divorce action which proscribes marriage to a person with whom he or she has committed the crime of adultery. Notwithstanding this, the U. S. District Court for the Eastern District of Pennsylvania held that this was not determinative of whether her subsequent living with the second husband rendered her moral character good or bad within the meaning of section 316(a), and the court made a positive finding that she was and had been a person of good moral character.

e. I am unable to find any appellate cases in point.

4. You will note that on page 538 of the Dickhoff opinion there is mention of four prior cases on the question of whether the commission of technical adultery precludes good moral character. Two were stated to have been in the affirmative on this question and two in the negative. With respect to the two stated to have been in the negative, I do not think this is quite so. With respect to the petitions of FG and EED, 137 F Supp 782, this case turned on the question of whether acts committed before the Immigration and Nationality Act was passed could be considered in this question. There was no question with respect to the validity of a divorce or subsequent remarriage, and, in fact, there was no question of "technical adultery" at all. As to the petition of Nakra, 142 F Supp 749, this was a situation in which the husband obtained a Mexican divorce <u>after</u> filing his naturalization petition. There was evidence that a meretricious relationship existed long before the divorce and that that relationship had produced three children. There wasn't anything technical about this. The two other cases from the Southern District of New York, said to have held that technical adultery was not a statutory bar to a finding of good moral

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character, are unreported and therefore I am unable to comment on them here.

5. In discussing the question of adultery and good moral character, Gordon v. Rosenfield, Immigration Law and Procedure, page 775, state the following:

"Difficulties arise in situations involving 'technical adultery' where the parties have entered into irregular unions in good faith or have continued such relationships on a stable basis over a long period of time. Often an apparently valid remarriage is impaired by an existing impediment. Of course, if the party contracted his second marriage knowing that his first wife was still alive and that the first marriage was unterminated, he has committed bigamy and adultery, and cannot claim the shelter of a presumption favoring the validity of the second marriage. And one ruling has found that such misconduct was not cured by a subsequent nunc pro tunc (retroactive) annulment of the first marriage.

"The most appealing situations arise when a party has entered into marriage in good faith, unaware of any impediment. Under prior law such a person was not chargeable with lack of good character. In its earliest rulings after the effective date of the 1952 Act, the Board of Immigration Appeals tended to adhere to the letter of the statute and found that good faith alone did not excuse the participant in an adulterous association, unless it had been inaugurated by a ceremonial marriage. In Dickhoff v. Shaughnessy this issue was carefully reexamined and the court found that the 1952 Act was not intended to penalize 'technical adultery' resulting from a good faith remarriage following an invalid Mexican divorce. Thereafter the Board adopted this view and now holds that adultery is not present when the irregular relationship was entered into in good faith. Matter of U., 7 IN 360 (I.D. 839, 1956). See also Matter of M.A., 7 IN 365 (I.D. 837, 1956) ...."

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[redacted]
Office of General Counsel

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12 August 1960

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT: Cost of Shipment of Effects - 25X1A9A

REFERENCE: 8 July 1960 Memorandum to Deputy Director (Support) from Director of Communications, same subject

1. We have for comment the referenced memorandum, which contains a recommendation for your approval of the payment of $114.17, presumably under the authority of [redacted] to [redacted], who, at the time of his hiring, was inadvertently misled by a series of actions of Agency officials as to his entitlements with respect to the shipment of his household effects. 25X1 25X1A9A

2. It would seem that Agency Notice No. [redacted], which you issued on 7 May 1960, clearly enunciated for all employees the principle that the Government can assume no obligation as a result of someone's reliance on the incorrect statements of its officers exaggerating benefits provided by law. This case seems to fall clearly within this principle. Also, as you know, the extraordinary authorities granted to this Agency in the Central Intelligence Agency Act, upon which the authorities delegated to the DD/S by [redacted] depend, are not available for the solution of ordinary administrative problems with which any Government agency might be confronted. 25X1 25X1

25X1A9A 3. Therefore, since [redacted] claim is based on his misunderstanding of his transportation entitlements and consequent shipment by him in excess of those entitlements, the lack of authority to reimburse him more than that prescribed is not cured by his reliance on the erroneous implications in the actions of those Agency officials with whom he dealt. Further, since the excess cost to him is not related to the peculiar functions of this Agency, it is the belief of this Office that there is no basis for resort to the extraordinary authorities mentioned above. From the above it would seem that there is no basis for payment of the claim.

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[redacted]
Office of General Counsel

Att. Referenced Memorandum

Orig. & 1-Addressee, 1-Subject, 1-Signer, 1-Chrono

Transportation 4

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Next 1 Page(s) In Document Exempt

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

[redacted]

OGC/B-266

19 August 1960

MEMORANDUM FOR: Acting Chief, Finance Division

SUBJECT : [redacted] - Charges for Excess Shipment of Household Effects

25X1A9A

25X1A9A

1. Your memorandum of 15 July 1960 refers to a memorandum by [redacted] dated 2 June 1960 which contests an assessment of $1,565.29 for the shipment of household effects exceeding by 4,260 pounds the amount alleged to be allowable under Agency regulations. Your memorandum requests this Office to render opinions on the following two questions:

a. Whether or not the Finance Division is applying the Agency regulations correctly in limiting the weight of effects that may be shipped at Government expense, from an overseas post to the U.S., to the weight not in excess of the balance of the gross weight allowance after deducting the gross weight of effects in storage at Government expense.

b. Whether the Director of Central Intelligence has authority under public law to impose any weight limit on the effects that may be shipped between the United States and an overseas post in either direction.

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2. Question b is answered in the affirmative. [redacted]

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On this point, we note that the Comptroller General in Decision B-142252 dated 1 April 1960 discussed in some detail the law and regulations in question and in accepting our interpretation as to weight allowances set by those regulations implicitly agreed that the Director had authority to limit by regulation the weight of shipments of furniture, household goods and personal effects.

[redacted] SECRET

3. Question a is answered in the negative. In our opinion Finance Division is not properly interpreting Agency regulations in the manner in which it determines the allowable weight of furniture, household goods and personal effects which may be shipped from an overseas post to the United States. [redacted] paragraph 5a, sets the weight and volume limitations for effects which may be shipped or stored at Government expense. Paragraph 5b sets lower limitations for shipment of effects of employees assigned to posts in emergency areas. Paragraph 7 provides for the non-temporary storage of effects of employees assigned to posts in emergency areas and the are there limited to the shipment of effects not in excess of the lower weight and volume limitations set in paragraph 5b. Paragraph 7 provides that the weight allowance for storage of effects shall be determined by subtracting the weight of the effects shipped from the normal weight allowance, i.e., the allowance set in paragraph 5a. However, neither paragraph 7 nor any other portion of the regulations provide that the weight allowance for shipment shall be reduced by the weight of goods stored. The interpretation and application of the regulation by Finance Division appears to have assumed that such a limitation on the weight of the goods which may be shipped is authorized by paragraph 7 or some other part of the regulations.

4. In accordance with the foregoing, it is the opinion of this Office that the Director of Central Intelligence has authority under law to limit by regulation the weight of the effects of employees which may be shipped at Government expense between the United States and an overseas post in either direction. Additionally, it is our opinion that under the regulations now controlling the basic weight allowance of effects of an employee which may be shipped at Government expense to the United States from an overseas post may not be diminished by the weight of effects which the employee has been allowed to store at Government expense while assigned to a post overseas.

25X1A9A

Signed
[redacted]
Assistant General Counsel

cc - Transportation Division (OL/TD)

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1 - OL/TD
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OGC 60-1004(a)

22 August 1960

MEMORANDUM FOR: [redacted] 25X1A9A
Chief, [redacted] 25X1A8A

SUBJECT : Prohibition Contained in Section 454 of Title 28 U. S. Code Against Federal Justices and Judges Practicing Law

REFERENCE : Your Memorandum of 20 July 1960 to Office of General Counsel, Subject: "Opinion on Section 454 of Title 28 U. S. Code"

1. Section 454 of Title 28 of the U. S. Code, enacted June 25, 1948 (62 Stat. 908), sets forth that: "Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor." You have inquired:

a. As to whether "practice of law" refers only to U. S., state and territorial courts, and

b. Whether a Federal judge or justice can, without contravening the statute be a partner of a foreign law firm having its only office abroad and having as partners only lawyers admitted to practice in foreign countries.

2. As a matter of background we would point out that this law which was originally enacted by the 12th Congress on December 18, 1812, contained the following pertinent language:

". . . that it shall not be lawful for any judge appointed under the authority of the United States, to exercise the profession or employment of counsel or attorney or to be engaged in the practice of the law. And any person offending against the injunction or prohibition of this act, shall be deemed guilty of a high misdemeanor." (2 Stat. 788)

This language was substantially re-enacted by the 61st Congress on March 3, 1911, in codifying the laws pertaining to the judiciary. (36 Stat. 1161) As will be noted, the reference to exercising the profession or employment

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of counsel or attorney has been omitted from Section 454. However, the legislative history contained in House Report 308, 80th Congress, first session, comments only with regard to this omission that "Changes in phraseology were made." We may safely assume, therefore, that the words referred to were omitted simply because of the fact that acting as counsel or attorney has, through the years, become well understood to be included in the term "practice of law." The general rule now in effect, as expressed in cases so numerous that it is unnecessary to cite them, is that the practice of law is not limited to the conduct of cases in court but in a larger sense includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured. Further, it is not necessary that a fee be received for the legal services rendered.

3. The Supreme Court in the case of Ex parte Curtis, (1882) 106 U.S. 372, 27 L. Ed. 232, in commenting on the original law enacted in 1812 (referred to above), and similar laws which prohibit Government officials from engaging in certain outside activities incompatible with the office held, stated:

> "The evident purpose of Congress in all this class of enactments has been to promote efficiency and integrity in the discharge of official duties, and to maintain proper discipline in the public service."

Further comment on this law was made in the case of U. S. v. Balsamo & Brison Co., (1908) 164 F. 215, wherein it is stated at page 230:

> "The right to contract belongs to every citizen; but when a citizen becomes a member of Congress, all right to contract with his government is, by Rev. St. § 3739 (U. S. Comp. St. 1901, p. 2508), denied him. The profession of law has been held a right of which one may not be deprived by legislation, but only by decree of court. Ex parte Garland, 71 U. S. 333, 18 L. Ed. 366. But, when a lawyer becomes a federal judge, the law by Rev. St. § 713 (U. S. Comp. St. 1901, p. 578), forbids him the right to use his property and practice his profession. Such prohibitions are not restrictions of liberty or deprivations of property. They are the law's aids to public service. They make the public servant have an eye single to the public duty, voluntarily assumed, and in performing . . . duties . . . he has in a court capacity the law but throws around him the time-proven safeguard of faithful service that he can the better serve the masters." (Emphasis supplied.)

4. Turning to your specific questions, we would say:

a. The prohibition in Section 454 against the practice of law is not limited to the United States and its territories.

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The Congress on three separate occasions has expressed unequivocably and without reservation or exception its disapproval of the action of any Federal justice or judge who "engages in the practice of law." Accordingly, we hold that for a justice or judge to engage in the practice of law anywhere in the world would be in contravention of the statute.

b. With respect to your second question, it is clear that any activity as a member of a foreign law firm would constitute the practice of law and thus would place the individual under the prohibition referred to in the answer to the first question.

If it were held otherwise than above, it would be possible for a Federal judge or a Supreme Court justice (although it cannot be imagined that the ethical standards of any of them would permit it) to have an interest in a nearby Canadian or Mexican law firm while handing down decisions in the United States. If such were the case, then our hypothetical judge would indeed be serving two masters and proper discipline in the public service would not have been maintained.

SIGNED
25X1A9A
[redacted]
Assistant General Counsel

OGC/OEP:pbc
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OGC 60-1145

[redacted] FOR: Assistant Chief, Development Projects Division, DD/P

[redacted]: Housing Allowances for Personnel Assigned to Domestic Site

1. By your memorandum OMC-0740 you have set forth the problem of [redacted] shortages and high rental costs that will be incurred by personnel [redacted] to be assigned to a domestic field installation. You inquire as [redacted] legality of payment of a housing allowance (a) to civilian personnel [redacted] to be assigned to the base, and (b) a supplemental housing or cost-[redacted]ving allowance to military personnel detailed to this Agency for work [redacted] base. Preliminary discussions with representatives of the Air Force [redacted]ncerning the general problem have not been fruitful. Agency statutory [redacted]rities, however, provide authority for such payments.

2. Extra compensation or allowances may not be paid to federal [redacted]yees unless specific statutory authorization is provided to allow for [redacted]receipt of such allowance payments by the individual (5 USC 70) and [redacted]thorize the employing agency to expend federal funds to pay such [redacted] compensation or allowances. (5 USC 69) Such authority is provided [redacted]ency legislation.

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4. Sections 901(1) and 901(2) of the Foreign Service Act, referenced by section 4(b) of P.L. 81-110 set forth above, and the regulations of the President issued in Executive Order 10011, restrict the granting of housing, temporary lodging, and cost-of-living allowances to Government personnel on foreign duty. No authorization has been provided, nor rates established, for payment of such allowances to personnel stationed in the United States. The granting of allowances by the Director in general conformance with the standards and rates established by the Secretary of State is therefore authorized in accordance with the clear wording of E.O. 10100, underscored above.

5. The legal authority for payment of cost-of-living or housing allowances to military personnel by CIA is not subject, basically, to any different considerations from those necessary to the determination of payment of the allowances to civilian personnel. Freedom from the restrictions on the payment of extra allowances set forth in 5 USC 70, is contained in our organic statute at section 4(b).

6. In Johnston v. United States, 175 F 2d 612, at 618, the court discussed the question of appropriate legal authorization for the payment of extra allowances to military personnel. Although not necessary to the decision reached in that action, the court stated in passing:

> '. . . It is true that the military pay of an officer may be wholly inadequate when he is called upon to discharge the duties of a civilian office requiring great expenditures, and it is of course true that in such situations he should receive the additional allowances appurtenant to the civilian office. But we find that Congress has not been unmindful of these factors, or of the restrictive provisions of Revised Statutes, sections 1764 and 1765.
>
> 'Legislation to avoid the evils which appellant fears has been frequent and falls into two main categories: Public acts to deal with recurring situations and private laws to deal with the situations of particular individuals. An example of the former class is the Foreign Service Act, 1946, 60 Stat 999, 22, USCA, section 801 et seq., wherein the Foreign Service laws were revised and codified. Congress took care to provide that, 'notwithstanding the provisions of section 1765 of the Revised Statutes,' the Secretary might grant to officers or

employees of the Service, additional allowances for quarters, cost of living, and "representation," i.e., entertainment, etc., 60 Stat 1025-1026, 22 USCA section 1131."

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OGC [redacted] statutory language quoted favorably by the court is identical to the language adopted by the Congress [redacted]

7. Although it is indicated that the Agency has authority for the ment of a quarters or cost-of-living allowance in the United States, s an appropriate case, for both civilian and military personnel, the ency is not the final arbiter in such a matter. Final determination sts with the Comptroller General. In the fact situation in which this stion arises, the Government Accounting Office could well find that the thority cited should not be utilized for payment of allowances to person- l stationed within the United States, in the absence of an express firmation by Congress that it was intended for Stateside as well as over- as use.

8. Until such time as operational considerations might allow referral f the question to the Government Accounting Office, it is our opinion at the literal authority granted the Agency in Public Law 81/110 may be ilized, in an appropriate case of demonstrated need, for the payment of ing or cost-of-living allowances to personnel stationed within the ted States. However, in view of the unique fact situation that gives se to this determination, each future case considered for approval under s stated authority should be brought to the attention of this office for iew prior to final determination.

LAWRENCE R. HOUSTON
General Counsel

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OGC 60-0962(a)

30 August 1960

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT : Request for Authorization for Home Leave Travel - [redacted] 25X1A9A

REFERENCE : Memorandum for DD/S from Chief, WH Division, dated 28 June 1960, Same Subject

1. We agree with the statement in reference memorandum that Mr. [redacted] 25X1A9A has lost his entitlement to reimbursement for home leave travel by the Agency because of PCS assignment in the United States. However, this loss does not have a regulatory basis but rather is established by the clear-cut wording of the law itself. In this connection, we quote paragraph 6 of General Counsel's Opinion 55-22, dated 1 August 1955, wherein it is stated: OGC

[redacted] FOIAB5

25X1C4D We also agree that he has lost entitlement to [redacted] home leave.

2. In any event, the question arises as to whether the circumstances described in reference are such as to warrant the exercise of the special authority delegated to the DD/S by R [redacted] for payment of travel expenses for home leave, when such expenses as previously shown are not permitted OGC FOIAB5 [redacted] In other words, was the situation one which may be said to involve the unusual functions of the Agency as opposed to an ordinary situation common to any Government agency? We 25X1A9A think it did not. The reason [redacted] did not take leave en route 25X1A6A from [redacted] to Washington was that he was urgently needed to take over a

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[illegible] at Headquarters in connection with a "cover" operational [illegible] Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6 [illegible] public business, no matter what the precise nature of that business, which causes an individual in loyalty to his service or under direct orders to forego home leave and its attendant travel benefits or any other kind of leave, is not a situation which is peculiar to this Agency. Accordingly, we are of the opinion that [redacted] is not for application here.

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[redacted]
Assistant General Counsel

Attachment - MS/S 60-3053

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OGC 60-1091(a)
31 August 1960

MEMORANDUM FOR: Chief, Tax and Allowance Staff

SUBJECT: Home Service Transfer Allowance 25X1A9A

1. We have your memorandum of 10 August 1960 regarding a claim for the transfer portion of a home service transfer allowance. The claimant seeks this benefit at the "with family" rate. It appears that the claimant's family has never taken up residence at his new post.

2. You direct our attention to Section 252.21 of the Standardized Regulations and point out that this provision allows only the "without family" rate to those employees who arrive at their post in advance of their families. The approving officer takes issue with this and further alleges that, even were it so, the presence of the claimant's wife in his city of assignment on one particular day subsequent to his entry on duty there was sufficient to fulfill the requirement as regards the "with family" rate.

3. The provision of the Standardized Regulations to which we have referred above states in pertinent part:

> ". . . In the event that the employee should enter on duty at his post in the United States in advance of the arrival of his family, he may be granted and paid the transfer portion of the home service transfer allowance provided for an employee without family and may, upon the arrival of his family at the post, be granted and paid the difference between the amount already granted and the allowance to which he is entitled by reason of his family status; or he may await the arrival of his family and collect the full amount of the allowance after their arrival."

We feel that this language admits of no other interpretation but that if the employee's family never arrives at his post, he cannot be paid the allowance to which he is entitled by reason of his family status. Further, in view of the purpose of a home service transfer allowance, to cover "extraordinary and necessary expenses deemed incident to the establishment of his residence at a post" (Standardized Regulations, paragraph 252.11a), we believe that "arrival of his family" at his post necessarily means arrival for the purpose of taking up residence. One day's presence at the post hardly constitutes this.

4. For the reasons stated above, it is the opinion of this Office 25X1A9A that [redacted] claim may not be allowed.

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25X1A9A
[redacted]
Office of General Counsel

OGC 60-3832(a)

10 September 1960

MEMORANDUM FOR: Comptroller

SUBJECT : Reclaim of Per Diem by 25X1A9A

REFERENCE : Memorandum to Office of General Counsel from Comptroller, dated 14 June 1960, Same Subject

1. You have requested the opinion of this Office as to the legality of honoring a reclaim for per diem by It appears that he was 25X1A9A traveling in a foreign country on TDY, accompanied by his wife (not an employee), and that they were guests in the rental quarters of a Chief of Station which were so-called "organization quarters," the lease of which had been taken over by the Agency pursuant to The Finance 25X1
Division suspended payment of per diem for the period in question on the ground that Government quarters were occupied by both and his 25X1A9A
wife. In connection with the reclaim, you have also requested our opinion as to the applicability of a decision by this Office and one by the Comptroller General, both as they affect quarters leased under the
25X1 provisions of

2. Office of General Counsel Opinion 7-0324a, dated 6 August 1957, directed to the Special Assistant to the Deputy Director (Support), held 25X1A6A
inter alia, with regard to the Station, that "quarters which are ostensibly privately leased but which have had the lease taken over by the Agency covertly should be considered Government quarters and per diem reduced accordingly." Acting Chief, Finance Division has stated that this principle has been followed by the Finance Division whenever it has been known that Government quarters have been occupied by an Agency employee traveling on official business. You have requested specific advice as to
25X1 whether so-called or organization quarters are properly to be 25X1A9A
treated in all cases as Government quarters. contends our 25X1A6A
opinion was for application only to the Station. We consider that the opinion in question at the time it was written was valid, and still is valid, for any geographical location. Accordingly, Finance Division may 25X1A9A
properly make the regulatory deduction from 's per diem on the basis of his having occupied Government quarters.

3. You have inquired whether there may be considered applicable the Comptroller General's decision reported at 39 Comp. Gen. 117 (B-140061) pertaining to a non-employee wife who, with her husband, occupied regular Government transient quarters overseas. The Comptroller General held there that an appropriate deduction would have to be made for the wife inasmuch as Government lodging could not be furnished to private persons without charge. We have been advised that this decision is to be considered applicable to its precise factual situation, i.e., to those cases where the wife occupies transient Government quarters. It is not therefore applicable to the [redacted] case. 25X1A9A

4. However, the Comptroller General has not ruled formally on the situations where the non-employee wife accompanying her husband stays (1) in quarters which are supplied by the Government and assigned to other Government personnel, either civilian or military and used by them as a residence; or (2) where she stays in private type housing, the rental of which is paid for by funds furnished by the Government to civilian or military personnel. We have discussed this matter informally with a member of the Office of General Counsel to the Comptroller General and he assures us that it is not the desire of the Comptroller General that a charge be made in these situations for the wife. It is their feeling that to attempt to make such a charge would involve administrative problems all out of proportion to any potential benefit which the Government might receive. It was stated that this would apply to other non-employee house guests as well. Accordingly, no deduction need be made from [redacted] 25X1A9A per diem on account of the lodging furnished his wife.

25X1A9A
[redacted]
Assistant General Counsel

cc- Deputy Director, Support (DSA)
Office of Personnel
Audit Staff

Attachments (Addressee Only)
4 - Background Papers

1 - R & A
1 - Signer
1 - Chron

12 September 1960

MEMORANDUM FOR: Chief, Contract Administration Branch/PD

SUBJECT: Payment of Transportation Charges to [redacted] 25X1A5A1
[redacted] 25X1A5A1

25X1A9A 1. [redacted] has asked my opinion as to whether the Agency may pay transportation charges on a recent [redacted] where, through mutual error, the contract inadvertently stated that the items would be delivered "F.O.B. destination" rather than "F.O.B. origin." I understand that the invariable course of dealings in a number of cases over the past years between the contractor and this Agency has been for the contractor to insist on "F.O.B. origin." I further understand that we are satisfied that the Agency intended to negotiate this contract on the basis of F.O.B. origin. 25X1A5A1

2. Under the circumstances, there is no legal objection to the issuance of a supplemental agreement in which this mutual mistake is set forth and the contractor is reimbursed for the transportation charges which we had originally intended to pay. In reaching this conclusion, I have raised this case on a hypothetical basis with 25X1A9A [redacted] the Agency GAO representative, who informed me that the foregoing is the correct procedure.

25X1A9A
[redacted]
Assistant General Counsel

Distribution:
Orig - Addressee
1 - Contract File - 120-9238-9
1 - OGC Subj Contracts
1 - OGC Chrono
1 - [redacted] Chrono 25X1A9A

[redacted] 25X1A9A

175

175

OGC 60-1237(a)

15 September 1960

MEMORANDUM FOR: Chief, FBID/OC

SUBJECT : Request for Authorization of Part-Time, Outside Employment -- [redacted] 25X1A9A

25X1A9A 1. You have inquired as to whether it would be permissible for [redacted] to accept outside, part-time, after-hour employment as a teletype operator with USIA. We feel that the question is answered in the affirmative by the decision of the Comptroller General reported at 37 Comp. Gen. 64, which reads in pertinent part as follows: (Page 65)

"The problems arise under section 6 of the act of May 10, 1916, 39 Stat. 120, as amended by the act of August 29, 1916, 39 Stat. 582, 5 U.S.C. 58. That act provides in pertinent part as follows:

Unless otherwise specifically authorized by law, no money appropriated by any act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of $2,000 per annum.

"The Federal Personnel Manual, Chapter R1-33, divides employees into three distinct groups and defines them as follows:

Full-time employees are those regularly scheduled to work the number of hours and days required by the administrative workweek for their employment group or class.

Part-time employees are those regularly employed on a pre-arranged schedule whose hours or days of work are less than the prescribed hours or days of work for full-time employees in the same group or class.

Intermittent employees are those employed on an irregular or occasional basis whose hours or days of work are not based on a pre-arranged schedule and who are compensated only for the time when actually employed or for service actually rendered.

"The statute by its terms applies only to an employee who is receiving more than one 'salary.' The courts have indicated that the word 'salary' as used in the 1916 act does not apply to persons employed on an intermittent basis. United States v. Gorman, 76 F. Supp. 218; United States v. Shea, 55 F. (2d) 382. In line with the judicial interpretation we here hold that all intermittent employments are outside the purview of the statute." (Emp. added.)

2. It would appear from the facts as stated that [redacted] is an intermittent employee. I have discussed the factual situation with him and he assures me that such is the case and that he has no regularly scheduled tour of duty and will be employed only when called by USIA. In addition, I explained to him the difference between part-time and intermittent employment and informed him that in any event it is the Comptroller General who has the power to make the ultimate decision as to his status. 25X1A9A

25X1A9A
[redacted]
Assistant General Counsel

Att-Form 879, Outside Activity
Approval Request on [redacted]
25X1A9A

cc - OP

OGC/OEP:pbc
Distribution:
Orig & 1 - Addressee
1 - OP
1 - Subj Feb 12
1 - Signer
1 - Chrono

OGC 60-1256

21 September 1960

MEMORANDUM FOR: OCI/CENDIV

ATTENTION : [redacted] 25X1A9A

SUBJECT : Transit Visas

1. In connection with our discussion about the documentation required for aliens transiting the United States who do not debark, the following background material may be of interest to you.

2. The Immigration and Nationality Act, 66 Stat. 163 (1952), as amended, provides that certain classes of aliens are ineligible to receive visas and are excluded from admission to the United States. Section 212(a) of that Act (8 U. S. Code 1182) lists the classes which are ineligible, and subsection (a)(26) states as ineligible:

> ". . . any nonimmigrant who is not in possession of (A) a passport valid for a minimum period of six months from the date of expiration of the initial period of his admission or contemplated initial period of stay authorizing him to return to the country from which he came or to proceed to and enter some other country during such period; and (B) at the time of application for admission a valid nonimmigrant visa or border crossing identification card."

Subsection (d)(4) states, however, that the requirements of subsection (a)(26) above may be waived by the joint action of the Attorney General and Secretary of State for several reasons, including an unforeseen emergency in individual cases and "in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in Section 238(d) of the Act."

3. Under Section 238(d), the Attorney General has the power to enter into contracts "including bonding agreements between transportation lines to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries." In 1959 the Department of State promulgated a regulation which laid down the rules to be followed regarding aliens in "bonded transit." This regulation may be

found in Title 22, Code of Federal Regulations, section 41.6(e). Under this regulation, a visa and a passport are not required of an alien who is being transported:

> ". . . in immediate and continuous transit through the United States in accordance with the terms of a contract including a bonding agreement entered into between the transportation line and the Attorney General . . . to insure such immediate and continuous transit through, and departure from, the United States en route to a specifically designated foreign country . . . . "

However, specifically excepted from this rule are aliens who are citizens and residents of the following: Albania, Bulgaria, Communist-controlled China, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, North Korea, North Vietnam, Poland, Rumania, the Soviet Zone of Germany, and the USSR. An alien who is a citizen and resident of the above countries must, therefore, be in possession of a visa and a passport if he is to be transported through or across the United States from one foreign country bound to another foreign country.

SIGNED

[redacted] 25X1A9A

Assistant General Counsel

C/MCM:pbc
Distribution:
Orig & 1 - Addressee
1 - Subj Aliens 7
1 - Signer
1 - Chrono

7 October 1960

MEMORANDUM FOR: Mr. Dulles

1. While the dual compensation laws are complicated, particularly in their interpretation, the basic rules can be stated more simply. Section 62, 5 U.S.C., provides that no person who holds an office, the salary for which amounts to $2,500, shall be appointed to any other office to which compensation is attached unless specially authorized by law. The Comptroller General holds that a retired officer holds an office within the meaning of this prohibition, and, therefore, if his retired pay is over $2,500 he cannot be appointed to a civilian position unless there is specific statutory authority. The prohibition does not apply to elective office or presidential appointments by and with the advice and consent of the Senate, nor in cases where retirement is for injuries received in battle or incapacity incurred in line of duty. There are various other specific exceptions, such as the authority given to this Agency to appoint not more than 15 retired officers who otherwise would be barred. Statutes relating to reserve officers provide that they are not deemed to hold an office within the meaning of section 62, and they, therefore, do not come within the prohibition. Even if there is no prohibition on appointment of a retired officer, section 59a, 5 U.S.C., limits the combined pay from retirement and the civilian position to $10,000 per annum, and if the combination exceeds that they must choose between the retired pay or the pay of the civilian office. This limitation does not apply to regular officers retired for disability incurred in combat with an enemy or caused by an instrumentality of war and incurred in line of duty during a period of war, or to reserve officers, unless, according to a recent Comptroller General opinion, they are retired for physical disability.

2. I believe it is clear from the above that any general proposal to use retired officers in Government employment would require liberalizing legislation. Traditionally, there has been considerable congressional opposition to any further blanket exemptions, although possibly this is not now as strong as it once was.

s/

Lawrence R. Houston
General Counsel

OGC: LRH:jeb
cc: DDCI
DD/S
OGC chrono
subject P&A 5

SECRET

OOC 60-1173(a)

14 October 1960

MEMORANDUM FOR: Chief, Finance Division

SUBJECT : Computation of Travel Allowance of [redacted] 25X1A9A

1. Reference is made to your memorandum to this Office, dated 25 August 1960, in which you request a legal ruling as to the proper means of computing the travel allowance of [redacted] 25X1A9A who sailed from [redacted] 25X1A6A, to Washington, D. C., from 24 February 1959 to 19 April 1959.

2. According to your memorandum and attached papers, [redacted] 25X1A9A was authorized to return to Headquarters from [redacted] 25X1A6A by sea or air transportation. He desired to return by ship and, upon discovering that the usually traveled sea route was booked, requested the right to take the first available ship from [redacted] 25X1A6A to England and then to the United States. Headquarters approved the request provided certification was obtained from the travel bureau that no American ship was available, and that all cost in excess of the "direct route" was borne by [redacted] 25X1A9A. [redacted] 25X1A9A obtained a travel bureau certificate stating that they would be unable to book accommodations on any ship, American or foreign, crossing the Pacific, and no British ships to England were available. The travel agency suggested taking an Italian ship to Italy and then an American ship to the United States, a route no more indirect than the authorized route to England. On being notified, Washington replied, "Since authorized sea or air and direct air is available, your choice sea automatically requires comparative cost formula." [redacted] 25X1A9A and his family took the route recommended by the travel agency.

3. In correspondence with [redacted] 25X1A9A, you stated that the computation of his travel allowance would be based on the "simulated direct route" costs and that since he had used surface transportation in his actual trip, surface transportation would be used in computing the simulated direct travel allowance. [redacted] 25X1A9A is claiming that the trip allowance should be recomputed on the basis of the only available direct transportation authorized, which was air.

SECRET

4. Where all modes of travel are authorized, the employee may choose any mode without reference to comparative costs. However, he is obliged to choose from among the available usually traveled routes if he wishes to avoid bearing all costs in excess of the available direct route. He should expect to bear any expense to the Government above the cost of travel by air if he refuses to accept air transportation.

25X1A9A 5. [redacted] was authorized by Headquarters to take sea transportation even though by a necessarily circuitous route. Had Headquarters amended his travel orders to exclude air transportation, he could have not been expected to have had to bear any of the expense of his voyage to the United States since the circuitous route became the direct sea route as no other shorter means of sea transportation was then available. However, the Headquarters order approving sea travel through Europe specifically directed that "all cost in excess 25X1A9A of the direct route be borne by [redacted]." Since Headquarters was aware at the time it authorized the sea route through Europe that the usually traveled sea route was not available, we interpret the words "direct route" to mean the usually traveled air route and not the only available sea route. The route chosen, then, became an indirect route because of the availability of the direct air route.

6. The final telegram to the [redacted] Station made it clear that comparative cost formula would be used if the sea route to Europe were 25X1A9A chosen. [redacted], therefore, could anticipate reimbursing the Agency 25X1A6A for any cost above what the latter would have had to pay except for 25X1A9A [redacted] having decided to take the European route. In computing comparative costs, however, the Agency erred in using the first-class direct sea route rate from [redacted] to San Francisco since this route 25X1A6A was unavailable at the time he was scheduled to leave [redacted] and, 25X1A9A [redacted] therefore, is irrelevant to the computation. The mere fact that Mr. chose sea transportation does not give the Agency the right to look to the cost of direct sea transportation when computing the additional expense incurred by the Agency as a result of his personal desires, when he could have in no way booked this cheaper fare. Therefore, in calculating comparative costs, the Finance Division should have looked to the cost which would otherwise have arisen had the employee not chosen the European route, in this case, the cost of direct air 25X1A6A transportation from [redacted] to the United States. The cost of direct air transportation should also provide the measure for determining the per 25X1A9A diem to be allowed [redacted] for returning to the United States. However, any time taken in excess of that required by air should be charged against annual leave.

SIGNED

25X1A9A

[redacted]
Office of General Counsel

OGC/JBU:pbc
Attachment - 25X1A9A

[redacted] Travel Documents

Distribution: Orig & 1 - Addressee
1 - Legal
1 - Circ.
1 - Signer
1 - Vital
1 - Subject
1 - Chrono

SECRET

20 October 1960

MEMORANDUM FOR THE FILE

SUBJECT: Travel by Privately Owned Boat

25X1A9A [redacted] [redacted] called today and asked whether 25X1A8A we would take legal objection to a Travel Order authorizing travel by a privately owned boat. I advised him that we would not, but that we would require a formal submission before advising whether an actual expense or commuted basis would be more appropriate for reimbursement. Discussed this with Henry Barkley, OGC/GAO, who concurred. See Comptroller General Decision B-96601, dated August 4, 1950 (Unpublished).

25X1A9A
[redacted]
Office of General Counsel

OGC:HRC:jcw
Distribution
Orig. - Subject File
1 - Signer
1 - Chrono

OGC 60-1381

24 October 1960

MEMORANDUM FOR: Comptroller

SUBJECT : Establishment of a Revolving Fund at Headquarters for Use in the Establishment of Service and Recreational Facilities in the Field

1. In connection with the termination of the activities of the 25X1A6A [redacted] Station, there has been made available a sum of money ($2,000 - $3,000) in the form of non-appropriated funds, being the net profit remaining after the settlement of all club accounts.

2. It has been suggested that this money be used to establish a revolving fund at Headquarters for future use in the setting up of recreational and service facilities in other areas. The Office of General Counsel perceives no legal objection to the establishment of such a fund inasmuch as it has been determined by Headquarters that it will be used for the maintenance of morale and efficiency of personnel living under conditions caused by factors peculiar to the mission of the Agency.

25X1A9A
[redacted]
Assistant General Counsel

cc: DD/S
SSA/DDS
D/Personnel

OGC/OEP:pbc
Distribution:
Orig & 1 - Addressee
1 - DD/S
1 - SSA/DDS
1 - D/Personnel
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1 - Signer
1 - Chrono

Next 1 Page(s) In Document Exempt

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

OGC 60-1333(a)

9 November 1960

MEMORANDUM FOR: Chief, Finance Division

SUBJECT: Indirect Travel

1. We have your memorandum of 12 October 1960 presenting a question on indirect travel. The traveler's itinerary was [redacted] London, New York, Montego, New York for home leave, and thence to Washington PCS. The first stop in New York was for refueling. 25X1A6A

2. Paragraph 4 of your memorandum states:

25X1A9A [redacted] questioned our determination that the travel from New York to Montego Bay and return is a side or loop trip. Our determination is based on the fact that when his plane reached New York, he had in fact arrived at his home leave point and thus the travel from his former 25X1A6A duty station [redacted] to his home leave point had ended; and that the subsequent trip from New York to Montego Bay and return cannot be considered in calculating allowable transportation cost. Your opinion is requested as to the legality of payment to [redacted] for that portion of his travel from New York City to Montego Bay and return. 25X1A9A

3. It is our opinion that your determination is correct. A side trip cannot be considered part of the route, even the indirect route, between points not on the side trip. And it is practically a truism to observe that once the traveler closes the loop, by returning to a point already touched, all travel on the loop becomes a side trip.

4. As you know this Agency's policy on indirect travel is a very liberal one. Nevertheless, even under such a policy, we cannot countenance reimbursement by the Agency for travel which is by no stretch of the imagination on the route between the official points of origin and destination. The lack of justification for such reimbursement is even more to be emphasized in a case such as this one where the side trip took place after arrival at the destination (home leave point) specified in the travel order. The short duration of the refueling stop does not change matters. Although the Government undertakes to pay indirect travel to the employee's official destination (not to exceed the cost direct), its obligation ceases the moment he arrives there.

25X1A9A

Office of General Counsel

OGC/HRC:cdk:mks
Distribution:
Orig & 1 - Addressee
1 - Subject - Travel 6-2
1 - Signer
1 - Circulation
1 - Chrono.

OGC 60-1376(a)

9 November 1960

MEMORANDUM FOR: Office of the Deputy Director (Intelligence)

ATTENTION: [redacted] 25X1A9A

SUBJECT: Travel Voucher No. BV 95423

1. We have reviewed the file on the subject voucher, transmitted by your memorandum of 20 October. During his stay at Briggs Air Force Base, the traveler was charged varying amounts for meals, and $1.50 per night for lodging. Paragraph 5b of R 22-500 refers to deductions from per diem allowances for lodging furnished without cost at Government facilities. You ask if such lodging is applied, for this purpose, against the day secured, the day vacated, or both.

2. Although we believe, for reasons which appear in paragraph 3 below, that the question does not arise from the facts presented in this case, it is the opinion of this Office that a night's lodging is, for per diem allowance purposes, considered occupancy on the day it commenced only. It would be unconscionable to charge a night's lodging to the day commenced and also to the morning vacated, when the traveler might well take commercial lodging on the second evening. We attribute no such meaning to the regulation.

3. You also refer to difficulty with the terms "without cost" and "service charge" with respect to the furnishing of meals and lodging on Government installations. In this case, the traveler was charged $1.50 for lodging. This amount is too great to be considered a mere "service charge" or the furnishing of lodging "without cost" as those terms are used in our regulations.

25X1

4. Paragraph 5b(3) c [redacted] relates to travel at Government facilities where the traveler is charged for meals and lodging. With respect to the period of time when this traveler was in such a facility, that provision is for application in the computation of his allowance.

25X1A9A
[redacted]
Office of General Counsel

OGC/HRC:edk
Distribution:
Orig & 1 - Addressee
1 - Subject - Pay & Allowances 10
1 - Chrono
1 - Signer
1 - Circulation
1 - Legal

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Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

10 November 1960

MEMORANDUM FOR: The Record

SUBJECT: 18 U.S.C. 281 - Conflict of Interest

1. I called Mr. David C. Stephenson, Office of Legal Counsel, Department of Justice, on the interpretation of the words, "before any...agency," of 18 U.S.C. 281, Compensation to Members of Congress, Officers and Others in Matters Affecting the Government. I asked whether these words limit the application of the statute to quasi-judicial proceedings before executive forums, such as administrative tribunals or commissions. He said that the statute was not so limited and that any contract or contract negotiation would qualify as being "before" the unit of government concerned with it. I posed the following hypothetical problem.

> An employee wishes to take annual leave to work for a company with which the Agency has a contract. He has had no contact with this contract in his Agency position. He would, however, be directly associated with the contract in his work for the company. Is there a violation of Section 281?

2. Mr. Stephenson stated that the employee would technically be in violation of Section 281 if he accepted the position. Whether the Department of Justice would bring an action against the employee if he accepted the offer to work for the company would depend on the nature of the employment. If what he did for the company could be considered to have been of a purely internal character, e.g., producing the company's product or improving its efficiency, etc., the Department would take no action. If, however, he were in a position to affect the contract relationship itself, such as by representing the company in its execution of the contract, the Department would consider prosecuting the violator.

3. I inquired further as to how the Department would consider the case if the employee had negotiated the contract for the Government with the company. He said that such a case epitomizes a type of situation which the conflict of interest legislation was intended to combat. He stated further that the Department would find a technical violation of Section 281 if such were the case and would strongly consider prosecuting.

25X1A9A

OGC/JBU:cdk
1 - Cipher
1 - Chrono
1 - Subject

Next 3 Page(s) In Document Exempt

Approved For Release 2005/12/14 : CIA-RDP67-01057A000200030001-6

OGC 60-0820a

30 November 1960

MEMORANDUM FOR: Budget and Fiscal Officer, Far East Division

SUBJECT: Travel and Per Diem Claim - 25X1A9A [redacted] [redacted] 25X1A9A

1. You have requested our opinion on whether a claim for per diem and travel time covering a period of delay while en route from an overseas assignment can be recognized if the delay was caused by the illness of a dependent after arrival in continental United States.

2. A review of the facts which you have submitted reveals that 25X1A9A [redacted], an Agency employee, and his family left 25X1A6A [redacted] on 12 March 1960 on orders cut in December 1959 which, in addition to the usual travel time, granted 20 days annual leave in the United States. They were to proceed to Los Angeles by direct route, then to Sacramento, California; Portland, Oregon; Glasgow, North 25X1A9A Dakota; and finally, to Washington. [redacted] became ill at the 25X1A9A first stop, Guam. She was still able to travel, however. The [redacted], therefore, continued their journey during which time [redacted] 25X1A9A condition varied. Finally, between Sacramento and Portland she became very ill and when examined upon landing was informed that she could not be moved again until she underwent surgery. The first operation, performed three days after arrival in Portland, was followed by a 25X1A9A second and a third. [redacted] stayed on in Portland until his wife's condition was no longer critical, and then proceeded directly to Washington where he reported in several days after arrival after finding quarters for his family. [redacted] returned to Washington 25X1A9A as soon as her doctor said she could travel. He is asking that he and his family be given per diem for this time and that the delay not be charged against annual leave.

3. The General Counsel ruled in a memorandum dated 20 August 1958 (General Counsel's Opinion Number 58-5) that, Where delay in completion of travel of an officer or employee to a post abroad is caused by illness of a dependent... there is no legal objection to treating such delay as a necessary part of travel time and not as leave. He said further, There is no legal objection to payment of per diem for the period of delay for both employee and dependents. The opinion cited an unpublished opinion of the Comptroller General which permitted the payment of per diem for the dependents of a Department of Agriculture employee travelling under the Point IV Program. The Comptroller General referred to Section 103.696 of the Foreign Service Regulations (now 180 FSTR 2.26) which permits authorization or approval of emergency, unusual, or additional payments if allowed under existing authority, and cited Section 911(2) of the Foreign Service Act

FOIAB5

OGC

[redacted]

4. This Office sees no reason for not applying the same rule to officers and employees going to or returning from overseas. Therefore, as the delay in the [redacted] case was not for personal convenience, but occasioned by matters beyond the control of the individuals concerned, this Office would not object to paying per diem for the period of delay and to counting the delay as travel time rather than leave, provided Mr. Thibault and his family were in a travel status during the period of delay.

25X1A9A

5. Generally speaking, an officer returning from overseas PCS to Washington is considered to be in a travel status until arriving at Washington, except for any periods of delay for personal convenience, such as leave. Even though he takes an indirect route for personal convenience, he is considered to be in a travel status for at least a part of the trip. The mere indirectness, then, of the route does not destroy this status, provided the route chosen can be said to advance the traveler in any way toward his final destination. Thus, for example, a side trip which passes the same point twice would temporarily suspend an employee's travel status. Likewise, if he interrupts his journey, stopping en route to take leave, his travel status terminates until he resumes his journey. Thus, his travel status could conceivably terminate and resume a number of times before the officer reaches his final destination. However, if the officer stops en route through no choice of his own, because, for example, of schedule difficulties or an emergency

illness, he will be treated as being in a continuing travel status. A decision of the Comptroller General, dated 17 December 1959 (39 Comp. Gen. 446) disallowed a claim for per diem for a period of illness which occurred after the employee had reached his home leave point on the grounds that his official travel status terminated on arrival at his home leave point.

25X1A9A 6. In the [redacted] case, then, arrival at Portland would, under ordinary circumstances, have terminated their travel status which would not have resumed until they departed despite any illness in the family during their stay there. However, [redacted] became ill before 25X1A9A arriving at Portland; her illness became critical during the final leg from Sacramento, that is, while they were still in a travel status. The issue, then, becomes whether the fact that the actual treatment and convalescence took place at an established annual leave point terminated 25X1A9A the [redacted] travel status.

25X1A9A 7. At the time [redacted] condition became critical, i.e., en route by air from Sacramento to Portland, Portland was the only place available for necessary emergency treatment. Portland, then, became an emergency treatment point rather than the location chosen for breaking the journey to take annual leave. The [redacted] travel 25X1A9A status did not terminate, therefore, upon landing. Assuming [redacted] left Portland as soon as his wife's condition was no longer critical, and 25X1A9A 25X1A9A [redacted] flew to Washington as soon as she was able to travel, his wife, and family could be allowed per diem for the entire period of the delay until each arrived in Washington. Also, this delay may be counted as travel time not chargeable to annual leave. However, the General Counsel ruled in the opinion cited above that in the interests of orderly administration...it would be desirable to have an administrative approval by the appropriate official for any such leave to be treated as part of travel time. Assuming such approval is present, the employee's entitlement, nevertheless, would not include the time required to get his family settled in Washington, which should be charged to annual leave.

25X1A9A

[redacted]

Office of General Counsel

OGC/JBU:cdk:mks
Orig & 1 - Addressee
1 - FDD/OO
1 - Subject - P&A 11
1 - Signer
1 - Chrono.
1 - Circ.
1 - Legal
1 - Vital

OGC 60-1581(a)

MEMORANDUM FOR: Acting Assistant Director/SI

SUBJECT: Possible Conflict of Interest Presented by Request of
25X1A9A [redacted] for Leave of Absence for Outside Employment

1. According to your memorandum of 17 November 1960, and attached papers, 25X1A9A [redacted], an employee of the Nuclear Energy Division, Office of Scientific Intelligence, has requested a leave of absence for a period of ten to eleven months to accept a position offered with the 25X1A5A1 [redacted] of Concord, Massachusetts, at an annual salary of $18,000 per year, to begin about 1 January. Your memorandum states that you are inclined to consider [redacted] request favorably 25X1A9A and request our concurrence in this decision. According to the first endorsement to your memorandum, dated 9 November 1960, and signed by Col. Glenn A. Smith, Acting Chief, Nuclear Energy Division, the Agency has a contract with the [redacted] which will expire 25X1A5A1 on 1 January 1961. Col. Smith has stated that no further work with this corporation is contemplated. He also said that it would benefit the 25X1A9A Agency for [redacted] to gain the experience which employment with this corporation would afford.

2. Statutory restrictions prohibiting so-called conflicts of interest are found in Title 18 U. S. Code Sections 202, 216, 281, 283, 284, 434, and 1914. The relevant section in this case is 281, which states:

> Compensation to Members of Congress, officers and others in matters affecting the Government
>
> Whoever, being . . . (an) officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any . . . contract . . . or other matter in which the United States is a party or directly or indirectly interested, before any . . . agency . . . shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States . . . .

3. The question of whether the contract, which this Agency has with the corporation involved, is the type of transaction intended to be covered under Section 201, is answered affirmatively. The fact that the contract will no longer be executory during the period of the proposed outside employment is relevant only in determining whether [redacted] 25X1A9A could be placed in a position in which he might theoretically act against the interests of the United States in favor of the corporation. In general, if a Federal employee's outside activities involve purely internal operations of the company for which he is employed, e.g., producing the company's product, performing research to improve that product, etc., there would appear to be no actionable violation of Section 201. If, however, the employee were placed in a position which might affect the contract relationship between the corporation and the United States Government, such as by representing the company in the execution of the contract, an actionable violation of Section 201 would result. The 25X1A9A activity in which [redacted] desires to engage appears to involve purely internal operations of the Nuclear Metals Corporation.

4. In conclusion, this Office concurs in your decision permitting 25X1A9A [redacted] to accept the position, as described, with [redacted] 25X1A5A1 25X1A5A1 [redacted] of Concord, Massachusetts.

LAWRENCE R. HOUSTON
General Counsel

OGC:JBU:cdk (6 Dec 60)
Distribution:
Orig & 1 - Addressee
1 - OGC Subject (w/basic)
1 - OGC Signer
1 - OGC Chrono
1 - Legal
1 - Vital
1 - Circulation

201

MEMORANDUM FOR: Special Assistant to the DD/S

SUBJECT: Per diem Allowances

You have requested clarification of our opinion of 9 November 1960 in which we stated that, for per diem allowance purposes, a night's lodging is considered occupancy only with respect to the day it commenced. In our opinion, this necessarily means that an individual who departed from a military facility in the middle of a day cannot be considered as having received lodging at that facility (either with or without charge) on that day. Therefore, paragraph 5(b) of Regulation 22-500, which relates to per diem at Government facilities where the traveler is furnished meals and lodgings, is not for application with respect to any day on which the traveler departed without having been provided lodging. Under such circumstances, per diem for the day should be computed in the normal manner.

25X1A9A

Office of General Counsel

OGC:HRC:cdk (13 Dec 60)
Attachment OGC 9 Nov 60 Opinion

Distribution:
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1 - Subject(without attachment)
1 - Signer
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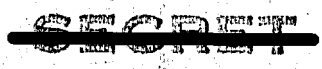

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