Text as published on gao.gov, https://www.gao.gov/products/b-104135, archived 2026-07-17. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-104135, Aug 2, 1951

Number: B-104135

Date: 1951-08-02

B-104135, AUG 2, 1951

THE ATTORNEY GENERAL:

THERE HAS BEEN RECEIVED YOUR LETTER OF JUNE 18, 1951, CONCERNING AN ARRANGEMENT ENTERED INTO DURING WORLD WAR II BY THE DEPARTMENT OF JUSTICE AND MILITARY AUTHORITIES WHEREBY MEMBERS OF THE ARMED FORCES MIGHT BE OBTAINED AS WITNESSES IN CASES IN WHICH THE GOVERNMENT HAD AN INTEREST, INVOLVING AN AGREEMENT WITH THE VARIOUS MILITARY AGENCIES THAT IN THOSE CASES WHERE THE ADVANCE OF TRAVEL EXPENSES WAS NECESSARY AND THE DEPARTMENT OF JUSTICE WAS ULTIMATELY RESPONSIBLE FOR SUCH EXPENSES THE MILITARY AGENCY WOULD, UPON REQUEST OF THE DEPARTMENT OF JUSTICE, ADVANCE TO THE WITNESS EXPENSES OF TRAVEL AND SUBSISTENCE WITH THE UNDERSTANDING THAT THE DEPARTMENT OF JUSTICE WOULD MAKE REIMBURSEMENT THEREFOR TO SUCH AGENCY. YOU STATE THAT THE ARRANGEMENT HAS PROVED HIGHLY SATISFACTORY TO YOUR DEPARTMENT AND TO THE MILITARY AGENCIES INVOLVED DURING THE EIGHT YEARS OF ITS OPERATION, SUCH PREPAYMENT PROCEDURE PERMITTING PROMPT RESPONSE TO SUBPOENA BY MANY WHO OTHERWISE WOULD BE FINANCIALLY UNABLE TO APPEAR AT COURT, BUT THAT AS A RESULT OF DECISION OF THIS OFFICE DATED MAY 18, 1951, B-97772, THE DEPARTMENT OF THE ARMY NOW IS HESITANT ABOUT CONTINUING SUCH ARRANGEMENT. YOU REFER TO THAT DECISION AS INVOLVING THE SITUATION OF AN OFFICER SEEKING REIMBURSEMENT FROM THE DEPARTMENT OF THE ARMY FOR PERSONALLY BORNE EXPENSES INCIDENT TO TRAVEL PREVIOUSLY PERFORMED AS A WITNESS WHICH COULD HAVE BEEN SECURED FROM A UNITED STATES MARSHAL WHERE THE TRIAL WAS HELD, AND REQUEST ADVICE WHETHER THERE WOULD BE OBJECTION TO THE CONTINUATION OF THE ABOVE-MENTIONED ARRANGEMENT WITH THE ARMED SERVICES IN CASES WHERE IT IS NECESSARY, PRIOR TO THE PERFORMANCE OF TRAVEL, TO ADVANCE TRANSPORTATION AND SUBSISTENCE EXPENSES TO PROSPECTIVE WITNESSES, THE DEPARTMENT OF JUSTICE TO REIMBURSE THE MILITARY BRANCH CONCERNED THE AMOUNT OF SUCH ADVANCES.

PARAGRAPH 7D OF ARMY REGULATIONS 410-5, APPARENTLY ISSUED PURSUANT TO THE AGREEMENT TO WHICH YOU REFER, PROVIDES THAT AS A MATTER OF EXPEDIENCY TRAVEL AND ATTENDANCE EXPENSES OF WITNESSES SUBPOENAED BY THE DEPARTMENT OF JUSTICE AND FOR WHICH THE DEPARTMENT OF JUSTICE IS LIABLE SHOULD BE PAID FOR BY THE DEPARTMENT OF THE ARMY, "REIMBURSEMENT THEREFOR BEING SECURED LATER FROM THE DEPARTMENT OF JUSTICE." THUS THE REGULATION CONTEMPLATES THE CHARGING OF A DEPARTMENT OF THE ARMY APPROPRIATION FOR EXPENDITURES FOR WHICH SUCH APPROPRIATION IS NOT AVAILABLE WITH THE EXPECTATION OF SUBSEQUENT ADJUSTMENT OF THE MATTER BY TRANSFER OF FUNDS FROM THE PROPER APPROPRIATION TO THE ONE CHARGED AT THE TIME PAYMENT WAS FIRST MADE. IN THE DECISION OF MAY 18, 1951, IT WAS CONCLUDED THAT SUCH PROCEDURE, CONTEMPLATING A DELIBERATE CHARGING FOR REASONS OF ADMINISTRATIVE EXPEDIENCY OF THE WRONG APPROPRIATION WITH THE EXPECTATION OF SUBSEQUENT ADJUSTMENT BY TRANSFER BETWEEN APPROPRIATIONS, IS IN CONTRAVENTION OF SECTION 3678, REVISED STATUTES, WHICH PROVIDES THAT ALL SUMS APPROPRIATED FOR

THE VARIOUS BRANCHES OF EXPENDITURE IN THE PUBLIC SERVICE SHALL BE APPLIED SOLELY TO THE OBJECTS FOR WHICH THEY ARE RESPECTIVELY MADE, AND FOR NO OTHERS. ALSO, IT WAS CONSIDERED THAT SUCH ARRANGEMENT WAS INCONSISTENT WITH SECTIONS 604 AND 1210 OF THE GENERAL APPROPRIATION ACT, 1951, 64 STAT. 752, 765, PROVIDING THAT NO PART OF ANY APPROPRIATION FOR PAY AND ALLOWANCES OF MILITARY PERSONNEL CONTAINED THEREIN SHALL BE TRANSFERRED OR USED FOR ANY OTHER PURPOSE, AND THAT NO FUNDS MADE AVAILABLE BY THAT ACT OR ANY OTHER ACT SHALL BE WITHDRAWN FROM ONE APPROPRIATION ACCOUNT FOR CREDIT TO ANOTHER, OR TO A WORKING FUND, EXCEPT AS AUTHORIZED BY LAW. I AM SURE YOU WILL AGREE THAT THE CITED STATUTORY PROVISIONS ARE TO BE REGARDED AS APPLYING GENERALLY TO THE SITUATION INVOLVED, WHETHER IT BE REIMBURSEMENT FOR PERSONAL EXPENDITURES OR ADVANCE OF FUNDS PRIOR TO TRAVEL AND THAT, AS A PRACTICAL MATTER, THE CONCLUSION REACHED IN THE DECISION IS CONSISTENT WITH THE MAINTENANCE OF SOUND GOVERNMENTAL ACCOUNTING CONTROLS.

WHILE THE DIFFICULTY OF THE SITUATION CONFRONTING THE DEPARTMENT OF JUSTICE WITH REFERENCE TO THE PROBLEM OF PROVIDING TRANSPORTATION AND SUBSISTENCE TO MILITARY PERSONNEL WHO MIGHT OTHERWISE BE FINANCIALLY UNABLE TO PERFORM THE NECESSARY TRAVEL TO APPEAR AT COURT AND THE DESIRABILITY OF CONTINUING THE EXISTING ARRANGEMENTS WITH THE VARIOUS MILITARY AGENCIES ON THE BASIS INDICATED BY YOU ARE RECOGNIZED, I BELIEVE YOU WILL AGREE FURTHER THAT IF SUCH ARRANGEMENTS ARE TO CONTINUE INDEFINITELY THEY SHOULD BE AUTHORIZED BY APPROPRIATE LEGISLATION, EVEN THOUGH THE MILITARY FUNDS DISBURSED UNDER SUCH ARRANGEMENT ARE ULTIMATELY RETURNED TO THE APPROPRIATION FROM WHICH DRAWN. CONSIDERING, HOWEVER, THE TIME THAT THE ADMINISTRATIVE PRACTICE DESCRIBED IN YOUR LETTER HAS CONTINUED UNQUESTIONED UNDER THE ARRANGEMENT WITH THE VARIOUS ARMED SERVICES, YOU ARE ADVISED THAT THIS OFFICE WILL NOT APPLY THE SAID DECISION OF MAY 18, 1951, AS REQUIRING THE DISCONTINUANCE OF SUCH LIMITED PRACTICE FOR A REASONABLE TIME, BUT NOT BEYOND THE END OF THE CURRENT FISCAL YEAR, WITH THE STRICT UNDERSTANDING, HOWEVER, THAT THE MATTER WILL BE IMMEDIATELY SUBMITTED TO THE CONGRESS FOR ITS SANCTION, UNLESS OTHER PROPER PROCEDURES TO CORRECT THE PRACTICE CAN PROMPTLY BE WORKED OUT. THIS OFFICE SHOULD BE KEPT ADVISED OF THE ADMINISTRATIVE ACTION TAKEN IN THAT RESPECT.