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B-106230 November 30, 1951

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The Honorable The Secretary of the Treasury

My dear Mr. Secretary:

Reference is made to letter of October 22, 1951, from the Acting Secretary of the Treasury, relative to simplifying the language of certain appropriations for the Treasury Department as contained in the Treasury Department Appropriation Act, 1952, Public Law 111, approved August 11, 1951, 65 Stat. 182, by deleting therefrom provisions which have been carried in such appropriations for many years, but which may not affect the practices to which they relate.

It is said in the letter that the House Committee on Appropriations on the Treasury Department Appropriation Act, 1952 (House Report No. 272, 82d Congress) stated that the appropriation language for the Treasury Department has been revised quite significantly during the past few years, resulting in more uniformity between bureaus and divisions and eliminating many unnecessary words and phrases without changing the intent and purpose of the appropriation language, and expressed the desire that the Department improve and simplify the remaining appropriation language, so far as possible, before the 1953 budget estimates are transmitted to the Congress.

The changes in appropriation language, as to which the views of this Office are requested, will be stated as and forth in the letter of October 22, 1951, and discussed in the order presented.

Item 1. Arms and Ammunition, 655 Stat. 183.

"Appropriations for the Bureaus of Customs, Internal Revenue, Narcotics, and Mint, and Secret Service Division, White House Police and Treasury guard Force are specifically made available for the purchase of 'arms and ammunition' or 'ammunition'. Arms and ammunition have been purchased by these bureaus and divisions of the Department either in the open market or through a contract made by the Federal Bureau of Investigation. It is the desire of the Department to continue this practice but to delete the specific language contained in the appropriations."

By the act of March 3, 1879, 20 Stat. 412, referred to in the letter of October 22, the Secretary of War was directed, upon the request of the head of any department, to furnish arms and ammunition required for use in connection with carrying on activities of the Federal Government without reimbursement. In construing that statute it uniformly was held that, where no specific

appropriation for the purchase of arms and ammunition was made, a department might not purchase such articles but, where needed, they must be procured from the Secretary of War pursuant to the mandatory requirements of the act. 4 Comp. Gen. 606; 15 id. 485. The 1879 act was amended by the act of April 14, 1937, 50 Stat. 63, which made the issue of arms and ammunition discretionary on the part of the Secretary of the Army, and provided for reimbursement by the departments of the cost of ammunition so issued-- reimbursement with respect to arms not being required except in case of replacement or repairs. However, there appears nothing in the act of April 14, 1937, or its legislative history to indicate that the "discretionary" rather than "mandatory" issue of arms and ammunition by the Secretary of the Army was intended to change the practice theretofore followed by the departments for many years in the procurement of such stores. On the contrary, the act and its legislative history evidence is a plain intent to continue the Department of the Army as the source of supply for arms and ammunition deemed essential by the departments in the discharge of its activities, with a measure of discretion and control over its issue vested in the Secretary of the Army as a necessary incident to effective administration. Such reasoning was followed in the decision of this Office, 17 Comp. Gen. 588, wherein it is stated "when it is satisfactorily shown that the arms or ammunition which the Secretary of War is prepared to furnish will not meet a particular need of the Government, this office will not be required to object to the purchase by the department or establishment concerned of such arms and ammunition will meet the need in the particular instance, if funds otherwise are available therefor." Accordingly, an in the light of decisions cited above, the deletion of the specific appropriation language providing for the purchase of "arms and ammunition" or "ammunition," from appropriations otherwise available therefor, would require the procurement of such supplies from the Secretary of the Army unless it is shown that the arms and ammunition which the Department of the Army is prepared to furnish will not meet them particular need of the bureau concerned for such items.

Item 2. Securing of information and evidence

"The appropriations of the Bureaus of customs, Internal Revenue, and Narcotics are specifically made available for securing of information and evidence'. Information and evidence are purchased by these bureaus in connection with their enforcement activities. The Treasury Department desires to continue this practice but to delete the specific language contained in the appropriations.

"The purchase of information and evidence constitutes a necessary expense of the enforcement activities of each of these bureaus. As you no doubt are aware, informers usually do not furnish information or evidence unless they are compensated in some manner. It is noted that you held, in (1948) 27 Comp. Gen. 516, that the current appropriation for necessary expenses of the Civil Aeronautics Board might be regarded as available for the purchase of air transportations of the Civil Aeronautics Act of 1938, as amended, stating that the procurement of evidence is a usual incident to investigation and persecution; and it has been held by the accounting officers of the Government that specific authority to make purchases of goods in order to procure evidence is a usual incident to investigation and prosecution; and it has been held by the accounting officers of the Government that specific authority to make purchases of goods in order to procure evidence of violations of law is not necessarily required, if general provision has been made in an appropriation for expenses necessary to the administration and enforcement of such law. This Department is of the opinion, therefore, that the appropriations for these

bureaus are available for the procurement of information and evidence, without the need for specific language, unless some other law prohibits or restricts the use of funds for that purpose."

It is recognized that the payment of compensation to informers or others for information or evidence concerning violations of the internal revenue, customs, and narcotic laws may be considered essential or necessary-- as distinguished from helpful or desirable-- in the effective administration and enforcement of such laws. Therefore, and inasmuch as the funds appropriated for the Bureaus of Customs, Internal Revenue, and narcotics are available for "necessary expenses" in the accomplishment of its law enforcement work-- and there appears to be no applicable provision of law prohibiting the payment of compensation for the furnishing of information and evidence-- no objection is perceived to the expenditure of such funds for the purpose of securing information and evidence administratively determined necessary in the enforcement of the customs, internal revenue and narcotic laws, if the specific language presently carried in the appropriation acts therefor is eliminated. See 29 Comp. Gen. 419; 421; cf. 8 id. 613.

Item 3. Collection and dissemination of information and appeal for law observance and law enforcement.

"The appropriation for the Bureau of Narcotics contains the language 'not to exceed $10,000 for the collection and dissemination of information and appeal for law observance and law enforcement.

"The Bureau of Narcotics is directed by statute to enforce the laws of the United States relating to narcotic drugs and to cooperate with the States in matters relating to narcotic drugs, as well as the securing of legislation in the States (21 U.S.C. 198). The Bureau is constantly called upon by civic organizations and women's clubs to furnish information which may used as a basis for action clubs to furnish information which may be used as a basis for action on the part of State and local authorities. Moreover, dissemination of information to the public and appeal for law observance and law enforcement is a material aid in law enforcement. Thus, there appears to be no doubt that the appropriation for the Bureau of Narcotics would be available for the collection and dissemination of information and appeal for law observance and law enforcement as a necessary expense of the enforcement of the narcotic laws. The Department is not aware of any statute which would prohibit or restrict the use of funds for these purposes."

Section 8 of the act of June 14, 1930, 46 Stat. 587, 21 U.S.C. 198, provides:

"Sec. 8. That the Secretary of the Treasury shall cooperate with the several States in the suppression of the abuse of narcotic drugs in their respective jurisdictions, and to that end he is authorized (1) to cooperate in the drafting of such legislation as may be needed, if any, to effect the end named, and (2) to arrange for the exchange of information concerning the use and abuse of narcotic drugs in said States and for cooperation in the institution and prosecution of cases in the courts of the United States and before the licensing boards and courts of the several States. The Secretary of the Treasury is hereby authorized to make such regulations as may be necessary to carry this section into effect."

The provisions of that statute authorizing the Secretary "to arrange for the

exchange of information concerning the use and abuse of narcotic drugs in said States," appear clearly to contemplate the collection and dissemination of information and appeal for observance and enforcement of the narcotic laws. Since general provision is contained in the appropriation for the Bureau of Narcotics for "expenses necessary" to administer and enforce such statute in common with other narcotic laws, the specific reference in the appropriation to "collection and dissemination of information and appeal for law observance and law enforcement," appears unnecessary.

Item 4. Cases and enameling for medals manufactured

"The appropriation for the Bureau of the Mint is specifically available for 'cases and enameling for medals manufactured'. The Treasury Department desires to continue to supply such cases and enameling, but to delete the specific language contained in the appropriation.

"Over a long period of years (since 1873), medals of a national character have been manufactured at the Bureau of the Mint of this Department for the general public pursuant to the provisions of section 3551 of the Revised Statutes, as amended (31 U.S.C. 368), which provides:

"Dies of a national character may be executed by the engraver, and national and other medals struck by the superintendent of coining department of the mint at Philadelphia, under such regulations as the superintendent, with the approval of the Director of the Mint, may prescribe. Such work shall not, however, interfere with the regular coinage operations, and no private medal dies shall be prepared at any mint, or the machinery or apparatus thereof be used for that purpose.'

At the present time some of these so-called 'list medals' require enameling. Cases are furnished, however, for all medals manufactured.

"The comptroller of the Treasury held, in (1906) 12 Comp. Doc. 762, that section 3551 of the Revised Statutes, giving authority for the manufacture of medals, included only the striking or stamping of national or other medals, and the purchase with the contingent fund of the metal from which they are struck, but that the Mint appropriation was not available for the purchase of materials for mounting such medals or cases for them. However, in (1912) 18 Comp. Doc. 804, this decision was modified, in part, since bars, pins, and ribbons for mounting medals are such integral parts of them that it would be impracticable, if not impossible to mount them at a place other than where manufactured. Thus, because of these decisions, the Appropriation Act for the fiscal year 1914 (37 Stat. 762) for the Mint at Philadelphia carried the words 'cases and enameling for medals manufactured', so that orders places with that Bureau for medals might be completely filled at the Mint."

It is also stated in the letter that it appears obvious to the Department that said cases are a necessary part of the medals, and that it is to the advantage of the Government to have the medals manufactured and supplied by the Bureau of the Mint complete for delivery.

The above-quoted provisions of the Revised Statutes authorize the superintendent of coining department of the Mint at Philadelphia, Pennsylvania, to manufacture national and other medals under such regulations as the superintendent with the approval of the Director of the Mint may prescribe. The appropriation for the Bureau of the Mint provides for "necessary expenses" at the mint at Philadelphia

and no express statutory provision prohibiting the enameling or furnishing of cases has been found. Accordingly, and since expenditures for "cases and enameling for medals" reasonably appear to be a necessary and incidental expense in connection with the statutory function of manufacture and supply of national land other medals, and the enameling and furnishing of cases therefor properly may be regarded as an integral part of furnishing the medals, the appropriation for the Bureau of the Mint may be regarded as available for such expenditures without the need for the language in question appearing in the appropriations therefor. Se 10 Comp. Gen. 453. Also, such language does not appear required to enable the bureau of the mint to enamel and supply cases for military medals ordered by the Armed Forces under section 601 of the act of June 30, 1932, as amended, 31 U.S.C. 686.

Item 5. Acquisition of specimen and rare coins for addition to the Mint's collection

"The appropriation for the Bureau of the Mint contains language, similar to that included for many years, for "not to exceed $1,000 for acquisition, at the dollar face amount or otherwise, of specimen and rare coins, including United States and Foreign gold coins and pieces of gold used as, or in lieu of, money and ores for addition to the Government's collection'. The Department desires to continue making additions to this particular coin collection, but would like to delete the specific authorization therefor from the appropriation language.

"The Mint cabinet, containing samples of United States coins and foreign coins, was formally established at the Mint in Philadelphia Washington, D.C. since 1923. This collection is particularly valuable to the Engraver of the Mint. There are many technical problems involved in coin designs, aside from the question of artistic merit. The Engraver and other Mint technicians are charged with the responsibility for the suitability of the design from a practical operating standpoint. This collection is consulted by Mint officials also in connection with the manufacture of foreign coins. It assures production of coins with unquestioned exactitude. In addition, the collection is frequently used in connection with requests by the United States Secret Service for a determination as to the genuineness of coins suspected to be counterfeit. The detection of counterfeit coins, regardless of the date thereon, is essential for the preservation of the integrity of our coinage. It is assumed that the cost of acquisition of coins for the Government's collection constitutes a necessary expense of the Bureau of the Mint and that the appropriation for that bureau is available for that purpose, without the need for specific language, if the Congress wishes to drop the limitation.

"There appears to have been some question, however, whether more than the dollar face amount could be paid for rare coins of the United States. Section 3 of the Act of August 27, 1935, 49 Stat. 939 (31 U.S.C. 773c), provides that no sums appropriated, or authorized to be expended, shall be available for, or expended in, payment upon securities, coins, or currencies of the United States except on an equal and uniform dollar basis. It appears that out of an abundance of caution, the phrase 'the dollar face amount or otherwise' was added to the limitation contained in the appropriation language to make it clear that the appropriation could be used to acquire rare coins at a premium. Upon reconsideration of this question, the Department is now of the view that it is unnecessary to have specific authority to pay premium prices for coins for the Mint collection because of their numismatic value."

There can be no doubt that the acquisition of specimen and rare coins, because of their numismatic value, may require the payment of an amount over and above the dollar face value of such coins, and such premium payments appear not to be within the purview of section 3 of the act of August 27, 1935, 49 Stat. 939, 31 U.S.C. 773c, which prohibits, by reason of the devaluation of the dollar, the payment of claims or credits against the United States upon its securities, coins, or currencies, except on an equal and uniform dollar for dollar basis. Accordingly, if it be administratively determined that the acquisition of specimen and rare coins for the Government's collection is requisite for the proper performance of the duties described ink the letter, the cost thereof reasonably may be regarded as a proper charge against the appropriation for the bureau of the Mint without the need for the specific language therefor in said appropriation.

Item 6. The availability of the appropriation for retired pay, Coast Guard, for obligations incurred during prior fiscal years

For several years the appropriation for retired pay for the Coast guard has carried the language 'including the payment of obligations therefor incurred during prior fiscal years.'

"Section 411 of the Career Compensation Act of 1949, as implemented by Executive Order No. 10124 of April 25, 1950, provides that members retired for physical disability prior to October 1, 1949, may elect, prior to October 1, 1954, to qualify for disability retirement pay under the provisions of the new Act, or to receive retired pay based upon the old qualifications but computed under section 511 of the new Act. On September 30, 1949, there were approximately 3,258 officers and enlisted men on the physical disability retired list of the Coast Guard. As of July, 1951, only about 50 per cent of these members on the retired list had notified Coast Guard Headquarters of their election. Adjustments are made retroactive to October 1, 1949, in cases where the members make an election which results in increased retired pay. Since the election made is irrevocable, it appears that some members intend to wait out the five- year period in order to take advantage of any beneficial tax legislation, clarifications by the Comptroller General of questions pertaining to applicable ranks, grades, or ratings and the applicability of other beneficial retirement statutes. Many of these members will be entitled to increased retired pay when they make their elections. The language mentioned above was apparently included to make sure that current appropriations rather than those for former years would be available for the increases resulting from retroactive adjustments.

"It is the view of this Department that the obligation for a retroactive increase in retired pay in any particular case is not incurred until the member concerned makes his election, and therefore that no special language is necessary to make the current appropriation available for that expense. ***

Specific authority for the availability of current appropriations for "Retired Pay, Coast Guard," for the payment of obligations therefore incurred during prior fiscal years, first appeared in the second Supplemental Appropriation Act 1951, Public Law 911, approved January 6, 1951, which provides: "Appropriations made under this head [Retired Pay} for the fiscal year 1951 shall be available for the payment of obligations incurred during prior fiscal years for retired pay." In part I of the House Hearings thereon, at page 146, Admiral Richmond, United States Coast Guard, explained, "this language is required in order that we can use current appropriations to pay for past years." Also, see statement of

Admiral Richmond, pages 187, 188, of the Hearings before the Sub-committee of the Committee on Appropriations, House of Representatives, on the Coast Guard appropriations for 1952.

Section 1 of the Surplus Fund-Certified Claims Act of 1949, 63 Stat. 407, 31 U.S.C., Supp. IV, 712a, provides:

"Except as otherwise provided by law, all balance of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year."

The provisions of said section 1 appear to be substantially similar to section 3690, Revised Statutes, 31 U.S.C. 712, which latter section was repealed by section 3 of the 1949 act, 63 Stat. 407? In applying said section 3690, it uniformly was held that expenditures are properly chargeable to the appropriation for the fiscal year in which the liability therefore was incurred, and the rule has been applied in all cases in which there is a definite determination as to the time the public funds became obligated, regardless of the fact that payment may not be made or that the precise amount payable is not known during the same fiscal year. 18 Comp. Gen. 363; 21 id. 547; 23 id. 370; id. 86e; 27 id. 711, 714.

Section 411 of the Career Compensation Act of 1949, 63 Stat. 823, relates generally to persons theretofore retired for physical disability who are receiving or entitled to receive retirement pay and persons theretofore granted or entitled to receive retirement pay for physical disability. Thus, the payment of retirement pay to such persons in the amount authorized by the applicable provisions of law in effect prior to October 1, 1949, the effective date of section 411, constitutes a definite liability against the funds appropriated therefor. Section 3 of Executive Order 10124, 15 F.R. 2375, continues such method of payment unless there is elected a different method prior to October 1, 1954, and section 4, E.O. 10124, thereof makes the election retroactively effective as of October 1, 1949.

The effect of the election granted to certain persons to qualify for disability retirement pay under the provisions of the Career Compensation Act of 1949, or to receive retirement pay computed under one of the two methods contained in section 411 thereof, merely serves to redetermine the proper amount of retirement pay which lawfully may be paid such persons. It does not appear under the circumstances that the election of a different method of payment which results in an increase of retirement pay, retroactively effective, gives rise to an obligation in anywise now or independent of the liability for retirement pay previously incurred. On the contrary, the liability for the payment of retirement pay having been fixed, it follows from the general rule, stated above, that retroactive adjustments of increases in the amounts thereof are for relating back and for payment from the particular appropriations charged with the primary liability for retirement pay. Se 27 Comp Gen 283, 292. Accordingly, and considering the effect of the recent inclusion of the express authority in the current appropriation for "Retired Pay, Coast Guard," for the payment of obligations insured for retired pay during prior years, that said appropriation would not be properly chargeable with the payment of such prior year obligations if the appropriation language in question were deleted therefrom.

Sincerely yours,

Lindsay C. Warren Comptroller General of the United States