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B-107279 January 9, 1952

Number: B-107279

Date: 1952-01-09

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Mr. Allan H. Perley, Legislative Counsel Office of the Legislative Counsel House of Representatives

Dear Mr. Perley:

Reference is made to your letter of January 4, 1952, requesting an informal opinion as to whether a proposed filling of a vacancy and a readjustment upward of the salaries of certain attorney personnel of your office, which if carried into effect will create obligations in excess of the appropriation available would, under the circumstances hereinafter related, be in contravention of the provisions of the so-called anti- deficiency act, 31 U.S.C., Supp. IV, 665.

It is understood from your letter that a lump sum of $100,000 was appropriated for personal services in your office for the fiscal year 1952, and that your obligations upon an annual basis were some-what less than that amount. The enactment of Public Law 201, approved October 24, 1951 65 Stat. 612, mandatory salary increased to legislative personnel caused the obligations of your office to increase to approximately $108,000 upon an annual basis, for the liquidation of which there would be required a supplemental appropriation of approximately $8,000. After the enactment of Public Law 201, one of your attorneys, whose rate of compensation was $11,646 per annum, resigned and as a consequence current obligations have been reduced to an amount less than the annual appropriation. It is your stated desire, with the approval of the Speaker, to appoint an employee to fill the vacancy thus created at a lower annual salary rate, to increase the salary of the attorney who is to assume the duties of the employee who resigned, and to grant salary increases to a few other attorneys whose responsibilities will be increased in the realignment of the work of your staff. The proposed readjustment would increase the obligations of your office to an amount in excess of the appropriation but not in excess of obligations existing immediately after the enactment of Public Law 201. Your doubt in the matter arises from the fact that the contemplated changes now will result in a deficit apparently arising directly from administrative action rather than from salary increases granted by such public law.

Title 31, section 665(a), U.S. Code, Supp. IV, provides:

"No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation of fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such

purpose, unless such contract or obligation is authorized by law." (Underscoring supplied.)

The increase in the obligations for personal services over and above the amount appropriated was a direct consequence of the enactment of Public Law 201 and to that extend the said obligations are "authorized by law" within the purview of the above-quoted section. It is no part of the purpose of the so-called anti-deficiency law to limit our curtail essential employment when obligations therefor are otherwise authorized by law, and accordingly, obligations created by filling of the vacancy in your staff and the accomplishment of the other charges contemplated -- so long as the total obligations so incurred upon an annual basis do not exceed the amount of the available appropriation plus the additional obligations first authorized by Public Law 201 -- apparently would not be in contravention of the anti-deficiency law, as amended by the act of September 6, 1950, 64 Stat. 765.

While, as doubtless you are aware, an authoritative decision may not be rendered under the circumstances, the foregoing represents the view of this office upon the question presented by this letter.

Sincerely yours,

Lindsay C. Warren Comptroller General of the United States