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B-119760 April 27, 1954

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Honorable Charles J. Kersten, Chairman House Select Committee to Investigate Seizure and Force Incorporation of Lithuania, Latvia, and Estonia by the U.S.S.R.

Dear Mr. Chairman:

Reference is made to your letter of April 16, 1954, with enclosures, requesting a ruling as to whether the Committee may employ from time to time upon a consultant basis the services of Mr. Farcasanu, a native of Romania. Doubtless the question arises because of the prohibition contained in section 1302, Supplemental Appropriation Act, 1954, 67 Stat. 418, 435 against the use of appropriated moneys for the payment of compensation to certain aliens.

It appears that Mr. Farcasanu was granted the status of permanent residence in the United States under the authority of H.Con.Res. 191 July 1, 1952, 66 Stat. 847, 62, that he has had five years' legal residence in the United States, but has not yet applied for final papers of citizenship.

The pertinent provisions of section 1302, referred to above, prohibit the use of appropriated funds for the payment of compensation to any officer or employee whose duty station is in the United States unless such officer or employee "(2) is a person in the service of the United States on the date of enactment of this Act, who, being eligible for citizenship, had filed a declaration of intention to become a citizen of the United States prior to such date, (3) is a person who owes allegiance to the United States * * * This section shall not apply to * * * nationals of those countries allied with the United States in the current defense effort." It may be inferred from your letter that Mr. Farcasanu filed a declaration of intention to become a citizen of the United States prior to August 7, 1953, the date of the enactment of the Supplemental Appropriation Act. However, it is assumed he was not in the service of the United States on that date. It thus would appear that Mr. Farcasanu does not qualify for employment under the second exemption of the statute.

Concerning Mr. Farcasanu's eligibility under the third exemption, the term "allegiance" as used in the act has been construed to mean that absolute and permanent allegiance owed by a citizen to his government as distinguished from the qualified and temporary allegiance owed by an alien to the government of the country in which he is residing. 17 Comp. Gen. 1047. Accordingly, until such time that Mr. Farcasanu becomes a naturalized citizen of the United States, if that be his intention, he could not qualify for employment under the third exemption of the act.

The prohibition of the section does not extend to nationals of those countries allied with the United States in the current defense effort. However, it is not the responsibility nor the proper province of accounting officers initially to determine political facts and I am sure you will understand why this Office may not authoritatively decide upon its own initiative whether Romania is allied with the United States in the current defense effort within contemplation of section 1302 of the Supplemental Appropriation Act, 1954. In the absence of other authority designated by statute to make such determinations, the primary responsibility for determinating which countries are allied with the United States in the current defense effort devolves upon the agency whose appropriation is to be obligated, but in the light of foregoing and taking into consideration generally known facts concerning the existing relationship between the United States and the government of Romania, it would appear that the propriety of procuring Mr. Farcasanu's services as an "officer or employees" of the Government on the basis that he falls within the exception to the prohibition would be more than questionable under the law.

Sincerely,

Lindsay C. Warren Comptroller General of the United States