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B-122068, Mar 18, 1955

Number: B-122068

Date: 1955-03-18

B-122068, MAR 18, 1955

PHILIP YOUNG, UNITED STATES CIVIL SERVICE COMMISSION:

YOUR LETTER OF NOVEMBER 9, 1954, DIRECTS OUR ATTENTION TO THE PROVISIONS OF SECTION 5 OF THE ACT OF SEPTEMBER 1, 1954, PUBLIC LAW 769, 68 STAT. 1144, AND OFFERS TO RENDER ANY ASSISTANCE POSSIBLE IN CONNECTION WITH SUCH INSTRUCTIONS WHICH YOU ASSUME THIS OFFICE WILL PROMULGATE THEREUNDER.

THE REFERRED-TO ACT OF SEPTEMBER 1, 1954, PROHIBITS THE PAYMENT OF ANNUITIES TO OFFICERS AND EMPLOYEES OF THE UNITED STATES AND OF THE DISTRICT OF COLUMBIA CONVICTED OF CERTAIN OFFENSES. SECTION 5 THEREOF PROVIDES -

"SEC. 5. NO ACCOUNTABLE OFFICER OF THE GOVERNMENT OF THE UNITED STATES OR OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA SHALL BE HELD RESPONSIBLE FOR PAYMENTS MADE IN VIOLATION OF THE FIRST SECTION OR SECTION 2 OF THIS ACT WHEN SUCH PAYMENTS ARE MADE IN DUE COURSE AND WITHOUT NEGLIGENCE."

YOUR LETTER STATES THAT YOUR COMMISSION IS CHARGED WITH THE ADMINISTRATION OF THE CIVIL SERVICE RETIREMENT ACT, PANAMA CANAL CONSTRUCTION ANNUITY ACT, AND THE ACT PROVIDING PENSIONS FOR WIDOWS OF DECEASED LIGHTHOUSE SERVICE EMPLOYEES, BUT THAT THE ACT ALSO COVERS PAYMENTS UNDER VARIOUS STATUTES ADMINISTERED BY OTHER AGENCIES SUCH AS THE MILITARY SERVICE, SOCIAL SECURITY BENEFITS, AND OTHER CIVILIAN RETIREMENT SYSTEMS. YOU SUGGEST THAT IF EACH AGENCY WERE TO ADOPT INDEPENDENT STANDARDS AND PROCEDURES FOR CARRYING OUT THE INTENT OF THE LAW UNWARRANTED DUPLICATION AND LACK OF UNIFORM PROCEDURES MIGHT RESULT.

I SHOULD LIKE TO SAY THAT WE ASSISTED IN THE DRAFTING OF THE ABOVE QUOTED PROVISION IN SECTION 5, AND OUR PURPOSE IN SUGGESTING LEGISLATION TO THAT EFFECT WAS TO OVERCOME ONE OF THE LIMITATIONS CONTAINED IN THE ACT OF DECEMBER 29, 1941, 55 STAT. 875, CONCERNING THE AUTHORITY OF OUR OFFICE TO GRANT RELIEF TO CERTIFYING OFFICERS IN CERTAIN SITUATIONS. THAT LIMITATION RELATES TO OBLIGATIONS INCURRED IN GOOD FAITH BUT WHERE "THE PAYMENT WAS NOT CONTRARY TO ANY STATUTORY PROVISION SPECIFICALLY PROHIBITING PAYMENTS OF THE CHARACTER INVOLVED." AS THE ACT OF SEPTEMBER 1, 1954, SPECIFICALLY PROHIBITS THE PAYMENT OF ANNUITIES OR RETIRED PAY TO PERSONS WHO ARE CONVICTED OF CERTAIN OFFENSES ENUMERATED THEREIN, OR WHO COMMIT OFFENSES WHICH IN EFFECT CONSTITUTE BREACHES OF FAITH IN MATTERS INVOLVING THEIR OFFICIAL DUTIES, THE RELIEF OF CERTIFYING OFFICERS FOR SUCH PAYMENTS - EVEN THOUGH BASED UPON OFFICIAL RECORDS, AND MADE IN GOOD FAITH - WOULD NOT HAVE BEEN POSSIBLE UNDER THE ACT OF DECEMBER 29, 1941.

SINCE, UNDER THE 1941 ACT, THE MATTER OF GRANTING RELIEF BY US OF ACCOUNTABLE OFFICERS CONCERNING ANY IMPROPER PAYMENTS MUST REST UPON THE FACTS OF EACH

PARTICULAR CASE AND HAVING REGARD FOR THE PURPOSES BEHIND SECTION 5, AS STATED ABOVE, WE DO NOT FEEL THAT IT WILL BE NECESSARY TO ISSUE ANY INSTRUCTIONS CONCERNING THE APPLICATION OF THE REFERRED-TO PROVISION.

HOWEVER, I SHOULD LIKE YOU TO KNOW THAT YOUR OFFER OF ASSISTANCE IS APPRECIATED, AND SHOULD SOME UNFORSEEN NECESSITY ARISE FOR PROMULGATION OF INSTRUCTIONS BY US, WE SHALL AVAIL OURSELVES OF YOUR KIND OFFER.