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B-155558 November 25, 1964

Number: B-155558

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The Honorable Russell B. Long United States Senate

Dear Senator Long:

We have received your communication forwarding a copy of letter dated November 5, 1964, from Sims and Mack, Attorneys at Law, relative to the application of the act of September 1, 1954, ch. 1214, 68 Stat. 1142, as amended, 5 U.S.C. 2281, et seq., the so-called "Hiss Act," in the case of Master Sergeant Theodore E. Gitz, 283494, fleet Marine Corps Reserve.

It appears that an indictment is presently pending against Sergeant Gitz in the United States District Court for the Eastern District of Louisiana, New Orleans Division, for violations of 18 U.S.C. 1001. The indictment if for knowing and willfully making false statements to the Veterans Administration, in that he submitted certain forms containing false, fictitious and fraudulent statements and representations as to material facts, which he then and there well know were not true, with the intent to defraud the United States.

By letter dated October 12, 1964, Headquarters United States Marine Corps -- by direction of the Commandant of the Marine Corps -- advised the member's attorneys that "This Headquarters is aware of no provision of law which would prohibit the payment of retainer pay to Master Sergeant Gitz."

The act of September 1, 1954, was amended by the act of September 26, 1961, Pub. L. 87-299, 75 Stat. 640, so as to remove those provisions of the statute which prohibit payment of annuities and retired pay to persons who commit offenses, acts or omissions which do not involve the security of the United States. Since the offenses for which Sergeant Gitz was indicted are not within the purview of the act of September 1, 1954, as amended by the act of September 26, 1961, we agree with the administrative conclusion that the provisions of that act would not prohibit the payment of retainer pay to him, even though he is convicted of an offense covered by 18 U.S.C. 1001.

We trust that the foregoing will serve the purpose of your inquiry.

Sincerely yours,

Joseph Campbell Comptroller General of the United States