Text as published on gao.gov, https://www.gao.gov/products/b-160343, archived 2026-08-23. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-160343, Nov. 23, 1966

Number: B-160343

Date: 1966-11-23

B-160343, NOV. 23, 1966

TO ADMINISTRATOR, VETERANS ADMINISTRATION:

ON OCTOBER 26, 1966, MR. L. M. PELLERZI, GENERAL COUNSEL OF THE UNITED STATES CIVIL SERVICE COMMISSION, TRANSMITTED FOR OUR CONSIDERATION A LETTER DATED OCTOBER 19, 1966, ADDRESSED TO MR. ROBERT C. FABLE, JR., GENERAL COUNSEL OF THE VETERANS ADMINISTRATION, AND SIGNED BY THE HONORABLE JOSEPH M. F. RYAN, JR., JUDGE OF THE DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS. WE REFER ALSO TO THE LETTER OF NOVEMBER 1, 1966, FILE REFERENCE 02, FROM YOUR GENERAL COUNSEL TO THE GENERAL COUNSEL OF OUR OFFICE RELATIVE TO THE MATTER. SINCE JUDGE RYAN'S LETTER CONCERNS AN EMPLOYEE OF THE VETERANS ADMINISTRATION, WE ARE DIRECTING OUR DECISION IN THE MATTER TO YOU.

JUDGE RYAN'S LETTER READS, IN PART, AS FOLLOWS:

"DURING A CONTESTED CUSTODY HEARING, PAINE VS. PAINE, CIVIL ACTION D 894- 62, THE COURT HEARD TESTIMONY FROM A WITNESS, MRS. ISABELLE D. FINLEY, WHO IS EMPLOYED BY VETERANS' ADMINISTRATION, SOCIAL WORK SERVICE. MRS. FINLEY, UNTIL RECENTLY, HAD WORKED FOR THE DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC WELFARE. IN THAT CAPACITY, SHE WAS ASSIGNED THE TASK OF INVESTIGATING FOR THIS COURT THE SITUATION UNDER WHICH THE CHILDREN OF THE PARTIES WERE LIVING. THE DISTRICT OF COLUMBIA GOVERNMENT HAD BEEN FORMALLY REQUESTED TO MAKE SUCH AN INVESTIGATION BY THE LATE HONORABLE JOHN H. BURNETT IN AN ORDER DATED APRIL 29, 1965. MRS. FINLEY MADE THE INVESTIGATION AND SUBMITTED A REPORT TO THE COURT, WITH COPIES ALSO PROVIDED FOR COUNSEL TO THE PARTIES.

"AS IS THE PROCEDURE IN SUCH CONTESTED CUSTODY CASES, THE CASEWORKER WHO MADE THE INVESTIGATION IS MADE AVAILABLE BY THE COURT FOR EXAMINATION AND CROSS EXAMINATION BY COUNSEL FOR THE RESPECTIVE PARTIES. MRS. FINLEY APPEARED IN COURT OCTOBER 12 FOR THAT PURPOSE. DURING HER TESTIMONY ON THE STAND, SHE ADVISED THE COURT THAT SHE HAD BEEN FORCED TO TAKE ANNUAL LEAVE TO MAKE SUCH AN APPEARANCE BECAUSE HER AGENCY INTERPRETED 28 U.S.C. 1823, AS BEING INAPPLICABLE TO HER SITUATION.

"THE ONLY REASON FOR MRS. FINLEY'S APPEARANCE WAS TO AFFORD THE COURT NEEDED ASSISTANCE IN REACHING A DECISION. HER ONLY CONNECTION WITH THE ENTIRE CASE WAS OFFICIAL AND NOT PERSONAL. TO REQUIRE HER TO GIVE UP HER ANNUAL LEAVE IN ORDER TO COMPLETE THE FINAL OBLIGATIONS OF HER FORMER OFFICIAL DUTIES WOULD SEEM TO UNDULY PENALIZE SUCH OFFICIAL WITNESSES.'

THE ONLY STATUTORY AUTHORITY PERMITTING AGENCIES TO GRANT COURT LEAVE TO AN EMPLOYEE FOR APPEARANCE AS A WITNESS IS CONTAINED IN 28 U.S.C. 1823 (B), WHICH

PROVIDES:

"EMPLOYEES OF THE UNITED STATES OR AN AGENCY THEREOF IN THE ACTIVE SERVICE CALLED AS WITNESSES ON BEHALF OF THE DISTRICT OF COLUMBIA IN ANY JUDICIAL PROCEEDING IN WHICH THE GOVERNMENT OF THE DISTRICT OF COLUMBIA IS A PARTY, AND EMPLOYEES OF SUCH GOVERNMENT CALLED AS WITNESSES ON BEHALF OF THE UNITED STATES OR THE DISTRICT OF COLUMBIA IN ANY JUDICIAL PROCEEDING IN WHICH THE UNITED STATES OR THE GOVERNMENT OF THE DISTRICT OF COLUMBIA IS A PARTY, SHALL NOT BE PAID WITNESS FEES, BUT THE PERIOD OF SUCH SERVICE SHALL BE WITHOUT LOSS OF SALARY OR COMPENSATION AND SHALL NOT BE DEDUCTED FROM ANY AUTHORIZED LEAVE OF ABSENCE WITH PAY.'

THE QUOTED SECTION (1823 (B) ( IS INAPPLICABLE TO THE PRESENT CASE SINCE, HERE, NEITHER THE UNITED STATES NOR THE DISTRICT OF COLUMBIA WAS A PARTY IN THE JUDICIAL PROCEEDING.

HOWEVER, IN 15 COMP. GEN. 196 IT WAS HELD:

"* * * WHERE THE VALUE OF THE WITNESS' TESTIMONY IN PRIVATE LITIGATION ARISES FROM HIS OFFICIAL CAPACITY AND HE IS SUBPOENAED SOLELY BECAUSE OF AND TO TESTIFY IN THAT CAPACITY OR TO PRODUCE OFFICIAL RECORDS, HE MAY BE REGARDED AS IN A DUTY AND PAY STATUS DURING THE PERIOD OF HIS NECESSARY ABSENCE IN RESPONDING TO SUCH SUBPOENA. * * *"

SEE ALSO 38 COMP. GEN. 307; COMPARE 43 ID. 171.

WE BELIEVE THAT THE PRINCIPLE ENNUNCIATED IN 15 COMP. GEN. 196, AND RELATED CASES, REASONABLY MAY BE APPLIED IN THE PRESENT CASE. IT IS EVIDENT THAT MRS. FINLEY WAS CALLED TO TESTIFY SOLELY BECAUSE OF THE INVESTIGATION SHE HAD CONDUCTED AT THE REQUEST OF THE COURT IN HER OFFICIAL CAPACITY AS AN EMPLOYEE OF THE DISTRICT OF COLUMBIA GOVERNMENT. WHILE HER TESTIMONY HAD NO RELATION TO HER PRESENT POSITION WITH THE VETERANS ADMINISTRATION WE DO NOT BELIEVE THAT SUCH FACT IS CONTROLLING. SEE, GENERALLY, 9 COMP. GEN. 168.

ACCORDINGLY, UNDER THE CIRCUMSTANCES, THE EMPLOYEE MAY BE REGARDED AS HAVING BEEN IN AN OFFICIAL DUTY STATUS WHILE TESTIFYING IN COURT AND SHE MAY BE PAID HER REGULAR COMPENSATION FOR THE PERIOD INVOLVED. HOWEVER, ANY WITNESS FEES WHICH MAY HAVE BEEN PAID TO MRS. FINELY SHOULD BE RECOVERED BY YOUR OFFICE AND DEPOSITED INTO MISCELLANEOUS RECEIPTS AS DIRECTED IN OUR DECISIONS 15 COMP. GEN. 196 AND 23 ID. 628.