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B-16406 May 17, 1941

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The Honorable, The Attorney General

My dear Mr. Jackson:

Reference is made to your letter of April 23, 1941 (reference JTF:VOA 103-32-3), as follows:

"I inclose herewith a copy of our letter of March 27, addredded to the Federal Security Administrator and a copy of the reply of the Acting Administrator of April 15.

"Under the will of Celanaire L. Correjolles, $300 was bequeathed to the Lepers' Home at Carville, La. When the will was executed the Lopers' Home belonged to the State of Louisiana but was subsequently acquired by the United States. The State contends that the United States did not, however, acquire the right to this bequest. On the other hand, it would defeat the intention of the testatrix if the money should be turned over the State and expended for ordinary governmental purposes. In several other cases we have approved compromises under which the United States takes one-half and the other half goes to charities within the State of Louisiana.

"In this case the State proposes to consent thath the entire amount be turned over to the officer in charge at the Lepers' Home for expenditure for the personal benefit of the inmates, but indicates that it will continue to object if the money is to be deposited in the United States Treasury. It appears that the suggested disposition would be a happy one, would give effect to the intention of the testatrix, and would be within the power of the court to effect unless the officer is disqualified under some Federal Statute.

"It seems to me, as a matter of first impression, that if the suggested disposition should be made the fund would not be 'moneys received by the Government as trustee' within the contemplation of the Permanent Appropriations Repeal Act (U.S.C., title 31, sec. 725s) and that so far as this statute is concerned there would be no inhibition upon the officer in charge at the Home acting as trustee and disbursing the fund pursuant to an order of the court in which the matter is pending.

"On the other hand, if the money should be paid to the Government as trustee upon condition that it be expended for the personal benefit of the inmates at the Home it would go into the Treasury but seemingly would be affected by the provision in U.S.C., title 31, sec. 725a appropriating such trust funds for

disbursement 'in compliance with the terms of the trust.' I assume this means appropriation and disbursement of the principal when this would accord with the therms of the trust--and it may be that if this is correct the objection to deposit in the Treasury will be withdrawn.

"I should be glad to have your views and suggestions."

The "Lepers' Home at Carville, La.", referred toin the above letter, having been acquired by the United States is now designated as the United States Marine Hospital (Leprosarium), Cargville, Louisiana. Section 4801, Revised Statutes, derived from the act of July 16, 1798, 1 Stat. 605, authorizes the acceptance of private donations or bequests for the erection or support of United States marine hospitals. This office has no information as to the facts with respect to the reported bequest or as to any terms or conditions thereof. However, for the purpose of the present inquiry, and in the light of what is stated in the submission and its enclosure, it will be assumed that the bequest is such as may be accepted by the United States.

There is no authority generally to withhold form deposit collections received by an officer or employee of the Federal Government in his official capacity. Section 3621, Revised Statutes, as amended (31 U.S.C. 495), specifically requires that every person who shall have moneys of the United States in his hands or possession shall pay the same to the Treasurer of the United States. Also, section 20 of the Permanent Appropriation Repeal Act, approved June 26, 1934, 48 Stat. 1233, 31 U.S.C. 725s, provides in part:

"(a) The funds appearing on the books of the Government and listed in subsections (b) and (c) of this section shall be classified on the books of the Treasury as trust funds. All moneys accruing to these funds are hereby appropriated, and shall be disbursed in compliance with the terms of the trust. Hereafter moneys received by the Government as trustee analogous to the funds named in subsections (b) and (c) of this section, not otherwise herein provided for, except moneys received by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, shall likewise be deposited into the Treasury as trust funds with appropriate title, and all amounts credited to such trust-fund accounts are hereby appropriated and shall be disbursed in compliance with the terms of the trust: ***"

This is followed by a list of numerous trust fund accounts, among which are a number of accounts reperesenting gifts, donations, contributions, and bequests. There is no doubt, therefore, that funds such as those now in question constitute trust funds within the purview of section 20 of the said act and should be deposited in the Treasury and accounted for as such, being analogous to funds listed in subsections (b) and (c) of the said section 20. See, also, General Regulations No. 80.

There is noted the statement in the submiision and in the letter dated April 15, 1941, from the Acting Administrator of the Federal Security Agency, that the objection to depositing the involved amount in the Treasury of the United States may be withdrawn by th State authorities if assured that the said amount would be disbursed in accordance with the terms of the trust. In view of the requirements of section 20 of the Permanent Appropriation Repeal Act above quoted, and assuming that the involved bequest contains no such terms or conditions as to preclude its acceptance by the United States, it may be stated that the said amount necessarily must be so disbursed.

The use of the receipt account "8889--Collections, Leper Patients' Benefit Fund, United States Marine Hospital, Carville, La.," referred to in the letter of April 15, 1941, supra, would appear to be particularly well adapted for the disposition of the amount here involved if acceptable. The funds covered into this receipt account are for appropriation and credit to the trust fund appropriation account "75X8889--Loper Patients' Benefit Fund, United States Marine Hospital, Carville, La., Public Health Service," the purpose of which is set forth in the budget for the fiscal year 1942, page 169, as follows:

"Gifts of money, made by will or otherwise for the benefit of leper patients at United States Marine Hospital at Carville, Louisiana, are covered into the United States Treasury in trust, for disbursement from time to time in accordance with terms of the gift or bequest (31 U.S.C. 725s)"

The funds referred to in this matter appear to be of the class for which the account was established and is now maintained on the books of the Government, and if deposited and covered into the Treasury to the credit of said trust fund account they will be for disbursement only for the purposes specified in the trust.

Respectfully,

Lindsay C. Warren Comptroller General of the United States