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B-26414 January 7, 1944

Number: B-26414

Date: 1944-01-07

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The Honorable, The Secretary of the Treasury.

My dear Mr. Secretary:

There is returned herewith, without my countersignature, Treasury Department Appropriation Warrant No. 89, dated December 17, 1943, proposing to credit the amount of $623.70 to the appropriation account, "20X1706 Relief of Individuals and Others by Private Laws", citing as authority therefor Private Law 133, 78th Congress, approved November 22, 1943. Said Private Law reads as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Nellie Starr McCorkle, Mesilla Park, New Mexico, the sum of $623.70, in full settlement of all claims against the United States for accumulated leave accrued and payable to her deceased husband, Captain John Ray McCorkle, under the Act of August 1, 1941 (ch. 348, 55 Stat. 616; 5 U.S.C., sec. 61a), by reason of his civil employment prior to his being ordered to active duty, and payment of which was withheld by reason of the fact that he was killed in the Philippine Islands shortly after the passage of the Act and before he was advised of the benefits accruing to him through the provisions of said Act: Provided, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

It was provided in the act of July 1, 1902, 32 Stat. 560, that:

"Hereafter no Act of Congress shall be construed to make an appropriation out of the Treasury of the United States unless such Act shall, in specific terms declare an appropriation to be made for the purpose or purposes specified in the Act."

Section 9 of the act of June 30, 1906, 34 Stat. 764, provides:

"No Act of Congress hereafter passed shall be construed to make an appropriation out of the Treasury of the United States, or to authorize the execution of a contract involving the payment of money in excess of appropriations made by law, unless such Act shall in specific terms declare an appropriation to be made or that a contract may be executed."

In the construction of those provisions of law it has been held consistently hat there must be specific language used in an act to make an appropriation before it can be construed as making one. Also, it uniformly has been held that a specific direction to pay and a designation of the funds to be used for the purpose do make an appropriation. 13 Comp. Gen. 77. The act here under consideration contains no appropriating language; and while it provisions authorize and direct payment of a specific amount they do not designate the funds from which payment of the specified amount is to be made. Hence, in the light of the 1902 and 1906 statutes, supra, and of the uniform holding of this office above referred to, the act here involved cannot be construed as making an appropriation.

However, effect properly may be given to said private law by other means. Under the Act of August 1, 1941, 55 Stat. 616, Captain John Ray McCorkle, upon proper application therefor, would have been entitled to payment for annual leave accrued and accumulated while he was an Assistant Agricultural Engineer in the Department of Agriculture, Soil Conservation Service, up to the time of his entering upon duty in the United States Army on July 1, 1941. Captain McCorkle was killed in action on January 30, 1942. His widow filed claim in this office for payment of the leave which had accrued to her husband predicating her claim on the ground that he had made inquiry regarding the possibility of receiving payment for the leave under the 1941 statute prior to his death. Since the record failed to establish any action on the part of her husband which would perfect or complete his right to payment of his accrued and accumulated leave, it became necessary to disallow her claim -- the widow's allegation that her husband made inquiry regarding the possibility of receiving payment for the leave under the statute prior to his death being of no legal effect to establish such right. Thus, in the light of the history surrounding the claim, Private Law 133, supra, may be viewed as having the effect of curing any defect in Captain McCorkle's claim. In such view, there was no need to make an appropriation in the private law since the appropriation that otherwise would have been chargeable had Captain McCorkle perfected and presented his claim is available for the payment thereof.

Accordingly, in view of the foregoing there is no necessity or authority for the warrant action proposed.

Respectfully,

Comptroller General of the United States.

Enclosure.