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B-31546 January 21, 1943

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Chairman, War Manpower Commission.

My dear Mr. McNutt:

I have your undated letter, received January 5, 1943, as follows:

"Your attention is called to the following matter upon which your advice or appropriate corrective action is urgently requested.

"The Second Supplemental National Defense Appropriation Act, 1943, approved October 26, 1942 (Public No. 763, 77th Congress, 2d Session), appropriated an additional sum in the amount of $10,117,680 for the continuance and expansion of the manpower mobilization program carried on by the War Manpower Commission in the Office for Emergency Management, Executive Office of the President. The pertinent statutory provision reads as follows:

"'For an additional amount for the Office for Emergency Management, War Manpower Commission, fiscal year 1943, including the objects specified in paragraph 1 and 10 and subject to the provisions of subparagraphs (a), (b), and (c) of paragraph 13 under this head in the First Supplemental National Defense Appropriation Act, 1943, to be consolidated with the appropriation for the War Manpower Commission in said act, $10,117,680 ***. Provided further, That no part of this appropriation shall be available to pay the salary of any person at the rate of $4,500 per annum or more unless such person shall have been appointed by the President, by and with the advice and consent of the Senate.'

"You will observe that while the act provides that this additional amount is 'to be consolidated with ' the appropriation for the War Manpower Commission in the first Supplemental National Defense Appropriation Act, 1943, approved July 25, 1942 (Public No 678, 77th congress, 2d Session), Public No. 763 quoted above contains two special limitations upon the use of the moneys therein appropriated, which limitations did not appear in the earlier appropriation act. In the first place, a limitation is placed upon that portion of the total sum of $10,117,680 which may be used for the employment service functions of the Commission, that is, 'not to exceed $8,304,618.' Secondly, a limitation is placed upon the use of the moneys for salaries of $4,500 per annum or more, that is, persons to whom such salaries are paid must be appointed by the President confirmed by the Senate.

"It is apparent that if the two limitations noted above apply only to the sums appropriated in Public No. 763, and not to the sums previously appropriated in

the earlier act (Public No. 678), and I am so advised by my General counsel, separate accounts must be established to insure strict observance of the statutory limitations. Thus, an account must be maintained for the moneys appropriated by Public No. 763 which are subject to the limitation requiring Senate confirmation for persons paid salaries of $4,500 or more, and an account must be maintained for the moneys originally appropriated for the Commission in Public No. 678 which are not affected by either of the above limitations.

"In your 'Accounts and Procedures Letter No. 5467,' dated November 4, 1942, you properly provided for a separate limitation account for that portion of the sums appropriated in Public No. 763 which are available for employment service functions; this account bears the appropriation symbol 1130500.095. However, in the same letter, you failed to provide for separate accounts reflecting, respectively, the amount originally appropriated to the War Manpower commission by Public No. 678 and not subject to the limitation relating to Senate confirmation of certain employees, and the amount later appropriated by Public No. 763 which is subject to that limitation. Instead, the letter of November 4, 1942, noted above, assigns the amount of $1,482,503 (the remainder of the sum appropriated in Public No. 763 after segregation of employment service moneys and moneys for traveling expenses)to the same account as that containing the moneys originally appropriated for the War Manpower Commission in Public No 678, i.e., that given the appropriation symbol 1130500.091.

"If funds appropriated in Public No. 763 are merged in one account with funds previously appropriated in Public No. 678, it will be most difficult if not impossible to give full expression to the will of congress that the statutory limitation relating to Senate confirmation of certain employees, apply only to funds appropriated in and by the Second Supplemental National Defense Appropriation Act, 1943. As a temporary expedient, steps have been taken to centralize in Washington all determinations as to which positions are chargeable to the new appropriation and which to the old, the distinction being based on budgets submitted and approved in connection with each appropriation bill. While the result intended by Congress is thus approximated notwithstanding the failure to establish two accounts, the expenditure of the appropriations can be controlled properly only by the establishment of a new account to which the amount appropriated by Public No. 763 and available for other than employment service functions and traveling expense, can be credited.

"I am informed that the failure to establish a separate limitation account for the $1,482,503 appropriated by Public No. 763, may be traceable to the belief that the words 'to be consolidated with the appropriation for the War Manpower Commission in said Act in Public No. 763, require that the sums appropriated in Public No 763 be merged in exactly the same account as that established for the sums appropriated in Public No. 678. On the same reasoning, however, that portion of the sums appropriated in Public No. 763 which are available for employment service functions would likewise have to be credited to the same original account, since the words quoted above apply to the entire sum appropriated in the act, is amply demonstrated by the legislative history of the limitation in question, as more fully discussed in the opinion of the General counsel of the War Manpower Commission, a copy of which I have attached.

"I respectfully submit that the accounting provided for in the 'Accounts and Procedures Letter No. 5496,' dated November 4, 1942, will not permit of proper controls upon the expenditure of the moneys involved consistently with the intent of Congress, and I request that the letter be amended to provide for a

separate account with an appropriation symbol distinguishing it from the accounts set up under Public No. 678, to which separate account may be credited the $1,482,503 made available to the War Manpower Commission in Public No. 763 for purposes other than employment service functions and traveling expenses."

In the consideration of the matter presented by your submission it is necessary first, to dispose of the question whether the proviso appearing in the Second Supplemental National Defense Appropriation Act, 1943, 56 Stat. 993, making an additional appropriation for the War Manpower commission applies only to the additional amount appropriated in said act or whether it applies, also, to the amount appropriated in the First Supplemental National Defense Appropriation Act, 1943, approved July 25, 1942, Public Law 678, 56 Stat. 769.

It is a well established rule of statutory construction that a proviso must be strictly construed (59 C.J. 1089) and should not be construed to embrace or encompass persons or things not clearly within its terms.

The provision under consideration -- by its specific terms -- operates upon whatever moneys are comprehended by the words "this appropriation" so that what must be considered is the extent and scope of such words. The Second Supplemental National Defense Appropriation Act, 1943, is prefaced with the customary wording "the following sums are appropriated" and then appropriates the sum of $10,117,680 for the War Manpower Commission for the fiscal year 1943. Thus, by itself and without more, "this appropriation" ordinarily would refer to and cover only the moneys appropriated by the act. However, in making the appropriation of $10,117,680, the act provides that said amount is to be "consolidated with" the appropriation for the War Manpower Commission in the first Supplemental National Defense Appropriation Act, 1943, approved July 25, 1942, thus giving rise to the question whether the words "this appropriation" in the proviso apply to the consolidated appropriation or apply only to the additional appropriation.

An apparent ambiguity existing, the intent of the Congress in the matter must be ascertained, under established rules of statutory construction, and given effect. The proviso first appeared as a Senate Committee amendment to H.R. 7672 the bill enacted into law as the Second Supplemental National Defense Appropriation Act, 1943. The only direct reference to its provisions during the consideration of the bill by the Congress was -- as pointed out in the opinion of the General Counsel of your commission, dated October 27, 1942, a copy of which was transmitted with your letter -- the statement made by Mr. Cannon (Chairman of the House Committee on Appropriations, Chairman of the Sub-Committee on Deficiencies, and spokesman for the managers on the part of the House participating in the conference on the bill), who submitted the conference report on the bill to the House of Representatives. Said statement is contained in the explanation of the report by Mr. Cannon (88 Cong. Rec. 8779), as follows:

"On the question of confirmation by the Senate of all employees under the War Manpower Commission whose salaries are $4,500 or over, the House receded in favor of the Senate amendment."

With respect to this statement, Congressman Ramspeck asked -- "Is that provision limited to this particular appropriation?" Mr. Cannon replied - - "It is limited to the War Manpower Commission and is limited to the remainder of this fiscal year and to the amount carried in the bill."

While such statement appears to have been an extemporaneous answer and as such probably not entitled to controlling weight in construing the intent of the Congress -- especially since it is with reference to a Senate amendment and is without support elsewhere in the legislative history -- nevertheless it is evidence indicative of the basis upon which the Congress considered the applicability of the proviso, and there appears to be nothing in the legislative history of the provision indicating that the words "this appropriation" was to include funds previously appropriated for the War Manpower commission. See, in this connection, Hills v. United States, 55 F. (2d) 1001, modifying 50 F. (2d) 302.

Furthermore, to hold that the proviso is applicable, also, to the funds appropriated in the First Supplemental National Defense Appropriation Act, 1942, might well produce results such as are described in the opinion of the General Counsel of your commission, as follows:

"*** If the proviso were construed as applicable to the original appropriation, the result might be to change the status of all employees earning $4,500 or more at the time of the passage of the Second Supplemental National Defense Appropriation Act, 1943. Thus, persons appointed by the War Manpower Commission in reliance upon the original appropriation for the fiscal year 1943, might not be entitled to compensation for their services under their appointments unless appointed by the President by and with the advice and consent of the Senate. The appointments of such employees, which were entirely valid when made, would in effect be nullified and their right to compensation between the time when the Second Supplemental National Defense Appropriation Act, 1943, became effective and such later date as their appointments were made and confirmed by the Senate, would be cast into serious doubt. Obviously such a construction of the proviso would be greatly disruptive of the work of the War Manpower Commission and unduly and unfairly prejudicial to the rights of employees appointed in good faith."

Obviously, if such far reaching results had been intended -- extending to such a degree as possibly to be in derogation of the war effort of the Commission -- it is to be presumed that more specific language would have been used to show such intent. Accordingly, under all the circumstances appearing it is concluded that the words "this appropriation" in the proviso under consideration were intended to include only the additional amount appropriated by the Second Supplemental National Defense Appropriation Act, 1943.

However, the holding in the preceding paragraph -- which, in effect, is in accordance with the administrative understanding of the matter -- would not necessarily require that the funds appropriated by the Second Supplemental National Defense Appropriation Act, 1943, for the War Manpower Commission, be set up in a separate account under a separate limitation. The provision in the additional appropriation that the funds appropriated thereby should be "consolidated with" the previous appropriation of the War Manpower Commission, clearly contemplated the setting up and maintenance of only one account. Therefore, the action heretofore taken by this office in the matter appears to have been correct. However, in view of the administrative difficulties which you state have arisen and since, as represented in your submission, it will be difficult if not impossible from an administrative standpoint to maintain proper control of expenditures under the proviso if the funds are handled under one consolidated account, I am today issuing instructions for the setting up of a separate limitation account for the funds appropriated for the War Manpower

Commission by the Second Supplemental National Defense Appropriation Act, 1943. It is assumed there will be furnished, upon request, such reports and data as may be required for adjustments in the accounts after such separation of the funds.

Respectfully,

Comptroller General of the United States