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B-34946 June 9, 1943

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Price Administrator, Office of Price Administration

My dear Mr. Brown:

I have a letter of the General Counsel of your office dated June 4, 1943, wherein it is pointed out that in communication with the enforcement of the Emergency Price Control Act of 1942 (Public Law, 421, 56 Stat. 23), by the terms of section 205 56 Stat. 33, thereof the Price Administrator is required to engage in litigation in the various State courts where it will be necessary to pay certain court costs and incidental expenses, such as fees and mileage to subpoenaed witnesses, deposits to cover anticipated fees and costs, and premiums for bonds for security for costs and appeal bonds. The said letter requests a decision (1) as to the availibility of the appropriation under the control of your office for the payment of such expenses of litigation, and (2) as to whether the payment thereof in advance of the services rendered would be precluded by section 3648 of the Revised Statutes. With respect to the latter question there is suggested an analogy between the present matter and the sutuation in the decision of this office dated October 5, 1927, 7 Comp. Gen. 269, to the Director, United States Veterans' Bureau. In that case the Director of the Veterans' Bureau was authorized by section 21 of the World War Veterans' Act, as amended (44 Stat. 790, 791, 792) to intervene in certain guardianship proceedings and, in connection with such litigation in State courts, was confronted with the requirements of the laws of certain States that filing fees, witness fees, and court costs be paid in advance. It was stated in said decision that:

"It may be assumed that the appropriation was made with knowledge of the fact that in some jurisdictions at least the State laws require payment in advance of certain fees and court costs; and it is not to be assumed that the intervention provided for under section 21 of the World War veterans' act as amended, was intended to be authorized only in jurisdictions, if any, where no fees or court costs are required to be paid or deposited in advance.

"It must have been the intention of the Congress in providing for the intervention of the director as authorized in the said section 21, as amended, and in making the appropriation, supra, that payment of the court costs should be made in accordance with the practice prevailing in the States where the suits or legal proceedings had to be instituted notwithstanding the provision of secton 3648, Revised Statutes. Accordingly, the authorization and the appropriation may be regarded as exempting these court costs from the inhibition of the provisions of the said section 3648. Otherwise, the clearly announced

purpose of the subsequent enactments would be defeated.

"Answering specifically the question presented, I have to advise that in jurisdictions where payment or deposit of filing fees, witness fees, court costs, etc., is required to be made in advance, such payment or deposit may be so made under the appropriation herein mentioned, notwithstanding the provisions of section 3648, Revised Statutes."

It is observed from the pertinent provisions of section 205 of the Emergency Price Control Act of 1942, supra, set forth in your letter, that the Congress has imposed upon the Price Administrator the duty of enforcing the provisions of said act by initiating litigation, and, under certain circumstances, by intervening in pending proceedings, not only in the Federal courts but, also. in the various State courts. Therefore, in view of the broad terms of the current appropriation for salaries and expenses of your office (Public Law 678, 56 Stat. 711) authorizing the expenditure of funds "For all necessary expenses of the Office of Price Administration in carrying out the provisions of the Emergency Price Control Act of 1942 (Public Law 421)," it may be held that the said appropriationis available for the payment of the necessary court costs, fees, and other expenses incident to litigation in the State courts. With respect to the furnishing of bonds for security for costs and appeal bonds, when the United States selects the forum by instituting suit in a State court, and when it is determined that an appeal is required, it would seem that it must abide by and conform t the provisions of the State statutes the same as any other litigant. Since, as you point out, in some jurisdictions it has been held that the giving of a bond is a jurisdicitonal prerequisite to the filing of suit, and to an appeal t the State courts (see, also, Carter v. Chambers, 5 So. (2d) 46; Campbell v. Hollier & Sons, 4 So. (2d) 101; DeVilliers v. Whitebird, et al., 105 P. (2d) 1055), the conclusion is justified that the United States or its officers must give such bond; and it likewise may be held that the appropriation here involved is available for the payment of premiums for bonds for security for costs and appeal bonds where the same are required.

Insofar as the payment of the court costs and incidental expenses above referred to may involve the inhibition against the advance of public moneys contained in section 3648 of the Revised Statutes, it is at once apparent from the similarity of the factual situations involved that a disposition of that question may be made in the latter of the same principles upon which the decision in 7 Comp. Gen. 269, referred to in your letter, was decided. Here, as there, and agency of the Government is authorized by the Congress to resort to litigation in State courts in connection with the performance of the duties with which it is charged; here, as there, the Government agency is confronted with the necessity of advancing certain fees and court costs in compliance with the requirements of the State laws; and here, as there, it is reasonable to assume that in authorizing the agency to participate in suits or legal proceedings in State courts, the Congress intended that payment of court costs should be made as required by the State law, notwithstanding the provisions of section 3648, Revised Statutes.

Applying the rationale of that decision to the instant case, and in specific answer to the questions presented, I have t advise that, so far as this office is concerned, where, in connection with litigation in State courts, payments of fees and other items of expense, such as referred to in your letter, are required by State law to be made in advance, no objection will be interposed to such payments under the appropriation heretofore mentioned.

Respectfully,

Lindsay C. Warren Comptroller General of the United States