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B-45198 October 27, 1944

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The Honorable, The Secretary of State.

My dear Mr. Secretary:

I have your letter of October 17, 1944 (reference BF), as follows:

"Public Law 365 - 78th Congress, entitled 'Department of State, Justice, and Commerce Appropriation Act, 1945' approved June 28, 1944, Contains the following language under the heading of Contingent Expenses, Foreign Service' funds for establishment and maintenance fo commissary service'. Similar language has been included under the same heading in each annual appropriation act for the Department of state since 1935.

"Heretofore circumstances have not made it necessary to maintain a commissary service but the Department is now confronted with extraordinary conditions which make it necessary to aid both certain old established offices abroad and those currently being reestablished in liberated areas in obtaining necessary food, clothing, medical supplies, and other similar articles.

"It is planned to ordinarily obtain such commodities through the Procurement Division of the Treasury Department and to charge such purchases to the appropriation 'Contingent Expenses, Foreign service' by the media of transfer and counter warrants issued by the Procurement Division on completed purchases. The articles so purchased for the benefit and use of Diplomatic and Foreign Service Officers and clerks will be paid for in full by the recipients and it is proposed to deposit the recipts in the United states Treasury as reimbursements to the appropriation originally charged.

"The language in the Appropriation Act quoted above was drafted with the procedure outlined in mind and the budget estimates presented to the Congress for the fiscal year 1945 contained no funds for this particular purpose as it was intended that all expenditures in connection with the maintenance of a commissary service would be fully reimbursed and thus the appropriation would not be impaired. In drafting the Appropriation Act, the use of the words 'maintenance of commissary service' was intended to provide authorization for making reimbursements to the appropriation instead of depositing all receipts from this source to the credit of 'Miscellaneous Receipts' as contemplated in R. S. 3617, (C. G. 18:375).

"In carrying out the provision of the Act for the 'establishment and maintenance of commissary service' the Department wishes to obtain your opinion as to

whether there is sufficient authority of law to proceed in the manner hereinbefore outlined which in effect would establish a revolving fund for a commissary service within the appropriation 'Contingent Expenses, Foreign Service'.

"In view of the extreme importance of this matter and the need for urgent section it is hoped that you may favor us with an early and favorable reply."

The language in question firrst appeared in the Department of State Appropriation Act, 1935, approved April 7, 1934, 48 Stat. 529, 533, under the appropriation heading, 'Contingent Expenses, Foreign Service', and, of and by itself, does not import authority for reimbursing the appropriation involved with the receipts derived from the operation of the commissary service, 'which in effect would establish a revolving fund' within the appropriation, as suggested in your letter. And not only is such authority not contained in express language in the appropriation act in which it first appeared-or in any of the subsequent annual appropriation acts-but an examination of the legislative history thereof fails to disclose any support for the proposition that the Congress intended such language to ahve such effect. The provision for 'funds for establishment and maintenance of commissary service' was introduced as an amendment on the floor of the House of Representatives and the scope and purpose thereof was explained-quoting from page 1871 of the Congressional Record, Volume 78, Part 2, 73d Congress, 2d Session-as follows:

"Mr. Oliver of Alabama. Teh addition of this language is intended to make it possible to establish and maintain a commissary service for the personnel in Moscow and for the personnel of such consulates as may be established outside of Moscow.

"From the best information obtainalbe the committee felt it was essential that the United States should obtain and ship to Russia many foodstuffs and supplies of various kinds essential to the American personnel assigned there. It is proposed to acvance from this appropriation allotted sums from time to time to an employee of the Government responsible under bond with which to purchase needed supplies fro use of the personnel, which in turn would be sold at cost plus expenses to the personnel on assignment in Russia and reimburse the amount advanced. It is not contemplated that there would be any material permanent expense to the Government arising from this procedure."

Apparently, nothing more was sought to be shown by the sponsor of the amendment than that the establishment and maintenance of the commissary service would result in no ultimate expense to the Government. The accounting mechanics of the matter-that is, whether reimbursement was to be made t the appropriation charged with the expenditrues or whether the receipts from operation of the commissary service were to be doposited and covered into the Treasury fo the United states as miscellaneous receipts under the provisions of section 3617 and 3618, Revised Statutes-were not discussed or considered at that time. Neither does it appear that such phase of the matter received any consideration at any other time by the Congress.

It is pertinent to note that the commissary service provision has been a recurring item in each annual appropriation act for the Department of State since the fiscal year 1935, thus tending to negative the contention that a revolving fund was contemplated as a medium for handling transactions relating thereto.

The question whether moneys collected to reimburse the Government for expenditures previously made should be used to reimburse the appropriations from which the expenditures are made or should be covered into the general fund of the Treasury as miscellaneous receipts ofgen has been before the accounting officers of the Government and it uniformly has been held that in the absence of an express provision in a statute to the contrary, such collections should be covered into the Treasury as miscellaneous receipts. see 16 Comp. Gen. 195, at page 196, and the decisions cited therein. The Congress has made no express provision for the disposition of receipts derived through the operation of the commissary service authorized in the annual appropriations "Contingent Expenses, Foreign Service"; hence, following the precedents referred to above, I have to advise that the funds collected through the operation of a commissary service would be for depositing and covering into the Treasury as miscellaneous receipts.

However, it has been informally represented to this office that, in the event it should be held that specific statutory authority is required for the establishment of a revolving fund in the manner indicated in the letter quoted above, your Department intends to present the matter forthwith to the Congress, but that, in view of the urgent need for immediate action, it is desired to proceed presently in the manner outlined in your letter pending action by the Congress on the request for such legislation.

In view of the representations made I have to advise that this office will interpose no objection to the handling of the commissary service transactions in the manner proposed until such time as the matter may be acted upon by the Congress but in no event may such practice be followed beyond December 31, 1944, without the express authority of law therefor.

Respectfully,

Comptroller General of the United States.