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B-56866 April 22, 1946

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Date: 1946-04-22

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Price Administrator, Office of Price Administration

Dear Mr. Porter:

There has been considered your letter of March 27, 1946, as follows:

"Under the Emergency Price Control Act of 1942, the administrator is charged with the responsibility for the administration and enforcement of the Act, among the purposes of which are ' . . . to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hording, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency . . .' (Quoted from section l (a) of the Act). Section 201 (c) provides that 'The administrator shall have authority to make such expenditures . . . as he may deem necessary for the enforcement of this Act'. To assist in securing evidence of violation of the Act, the 1946 appropriation for this agency, found in the Second Deficiency Appropriation Act, 1945, authorizes 'not to exceed $100,000 for test purchases . . . . . of commodities, services, or ration currency for enforcement purposes ....'

"The most effective and in some cases the only method of securing evidence of large scale violations is for a special agent to establish an identity as a buyer for a large concern. After the special agent has been accepted as a bona fide buyer under his assumed identity, it is possible to make a test purchase which will clinch the case. In maintaining such an identity, however, the special agent must observe the amenities of his role by occasionally paying for the meals and other expenses of the suspected violator or violators and by securing hotel accommodations of the type and at locations usual to the industry involved. such expenditures may be made either at the special agent's official station or while in a travel status. While the employee may receive incidental benefit from the meals and hotel accommodations in the latter case, they are frequently in excess of the subsistence expenses of an employee performing ordinary official duties, and the per diem allowance is clearly inadequate. If such expenditures are permissible, they will be made only in important cases and will be approved by a responsible official only when fully justified and explained.

"In view of the purpose of the Act and the authority granted to the administrator with respect to expenditures, as outlined above, it appears that the cost of securing evidence may properly be paid from the CPA appropriation;

however, because of the unusual nature of the expenses, we would appreciate your decision in the matter. If your decision is favorable, please advise also whether the expenditures must be listed in detail on the reimbursement voucher and supported by receipts."

In addition to the provisions of law quoted in your letter, there are for consideration the provisions of section 202(a) of the Emeregency Price Control Act of 1942, as amended by section 105(a) of the Stabilization Act of 1942, 58 Stat. 637, as follows:

"Sec. 202. (a) The Administrator is authorized to make such studies and investigations, to conduct such hearings, and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder."

Also, there is for consideration that portion of the Second Deficiency Appropriation Act, 1945, which provides:

"Salaries and expenses: For all necessary expenses of the Office of Price Administration in carrying out the provisions of the Emergency Price Control Act of 1942, as amended by the Act of October 2, 1942 (50 U.S.C. App. 901), and the provisions of the Act of May 31, 1941 (55 Stat.236), as amended by the Second War Powers Act, 1942 (50 U.S.C. App. 622), and Acts amending or supplementing such Acts, and all other powers, duties, and functions which may be lawfully delegated to the Office of Price Administration * * *."

In decision dated February 18, 1943, B-32240, to the then Price Administrator, it was pointed out that it has been held by the accounting officers of the Government that specific authority to make purchases of goods in order to procure evidence of violations of law is not necessarily required if general provision has been made in the appropriation involved for expenses necessary to the enforcement of such law and such purchases are necessary to the enforcement.

That decision involved the availability for the purchase of controlled commodities of moneys appropriated in the First Supplemental National Defense Appropriation Act, 1943, 56 Stat. 711 for the Office of Price Administration. Notwithstanding, the general language of the appropriation, specific mention of funds for "the securing of evidence of violations by purchase or otherwise," in the original bill had been stricken out by the committee prior to reporting the bill to the House with the explanation appearing in the committee report that "Authority for the purchase of evidence of violations of the law is eliminated." The omitted words were not restored prior to the time that the bill became law. It was stated in said decision that in view of the action taken by Congress, this office would not feel warranted in sanctioning expenditures in conflict with such action.

Authority for making such purchases was not specifically given until the enactment of the Second Deficiency Appropriation Act, 1944, 58 Stat. 597, 600- which included:

"* * * not to exceed $50,000 for test purchases of commodities, services, or ration currency for enforcement purposes, authorization in each case to have approval prior to purchase of this Administrator or the regional administrator in the region in which the purchase is contemplated * * *."

During the legislative consideration of the appropriation, attention was directed to that provision at the hearings on the bill (Hearings Before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Congress, Second Deficiency Appropriation Bill for 1944, page 400). The committee report contained the following:

"* * * Provision is also made for the use of not to exceed $25,000 for test purchases of commodities, services, or ration currency for enforcement purposes. In order that this fund and authority may not be applied to petty violations the committee has required that in every case of its use prior authority for the purchase shall be obtained from either the Administrator or the regional administrator of the region in which the purchase is contemplated. * * *" (House Report No. 1660, 78th Congress, 2d Session)

The amount of $50,000 instead of $25,000 was agreed upon in conference between members of the Senate and the House. (House Report No. 1745, 78th Congress, 2d Session).

It is apparent from the foregoing that the original congressional objection to the use of funds for the securing of evidence of violations has been mitigated to the extent indicated in the provision of the act quoted above which provision is similar to the one appearing in the current appropriation for the Office of Price Administration, Second Deficiency Appropriation Act, 1945, 59 Stat 414 as follows:

"* * * not to exceed $100,000 for test purchases, without regard to section 3648, Revised Statutes, and the Act of December 29, 1941 (31 U.S.C. 529 and 82b), of commodities, services, or ration currency for enforcement purposes, authorization in each case to have approval prior to purchase of the Administrator, regional administrator, or the district director in the region or district in which the purchase is contemplated * * *."

It is a well-established principle in the construction of acts making appropriations that where an appropriation is made for a particular object, by implication, it confers authority to incur expenditures which are necessary to its execution or appropriate or incidental thereto, unless there be another appropriation which makes more specific provision for such expenditures, or unless they are prohibited by law. 17 Comp. Gen. 636; 14 id. 335; 7 id. 213; 6 id. 619; 4 id. 917.

In view of the foregoing, I will not be required to object to expenditures such as those indicated in your letter if they are necessary to the effective execution of the express authority conferred upon you, such expenditures to be charged against the $100,000 made available for test purchases and as to be authorized and approved as required by the appropriation act. Expenditures should be listed in detail on the reimbursement voucher, supported by receipts whenever practicable. When not practicable to secure a receipt, a certificate to that effect stating the reason for not furnishing such receipt should support the voucher.

Respectfully,

(Signed) Frank L. Yates Comptroller General of the United States.