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B-62281 December 27, 1946

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The Honorable, The Secretary of State.

My dear Mr. Secretary:

Reference is made to your letter of December 6, 1946, as follows:

"The Philippine Rehabilitation Action of 1946 (Public Law 370, 79th Congress), approved April 30, 1946 consists of six titles, one of which, Title III, provides for the "Resteration and Improvement of Public Property and Essential Public Services'. Included in Title III is a training program, the principal purpose of which is to provide technical training by various agencies of the United States Government so that the people of the Philippiness may be enabled to rehabilitate themselves from the ravages of a war in which they gave so much to hastem final victory. The Act provides that all trainees shall be designated by the President of the Philippines.

"The Department of State has been charged with the responsibility for the coordination of the Philippine training program and will utilize for this purpose the facilities of the Interdepartmental Committee on Seientifie and Cultural Cooperation, which has had seven years' experience with similar programs carried out in cooperation with the American republies.

"Title III provides that 'As a manifestation of good will to the Filipine people, there are hereby authorized to be appropriated, (1) the sum of $120,000,000, to be allocated from time to time, but not later than the fiscal year 1950, by the President of the United States among the various programs set forth in sections 302, 303, 304, and 306, and (2) such additional sums as may be necessary to carry out the purposes of sections 306 to 311, inclusive.'

"Section 311 (c) of the Act provides: 'Wherever in this title the training of Filipines at the expense of the United States Government is authorized, the head of the bureau or agency under whose supervision or control the training is given, ***** and under such regulations as may be adopted from time to time may provide for the payment of all expenses incidental to such training (underscoring supplied), including, but not limited to, actual transportation expenses to and from and in the United States, allowances for tuition, educational fees, and subsistence.'

"The 'Third Deficiency Appropriation Act, 1946' approved July 23, 1946 (Public Law 521, 79th Congress), as amended by the 'First Supplemental Appropriation Act, 1947' (Public Law 663, 79th Congress), makes appropriations to the

Department of State 'for all expenses necessary to carry out the provisions of titles III and V' of the legislation under reference, and provides 'that the Secretary of State, or such official as he may designate, is authorized to transfor from any of the foregoing amounts to any department or independent establishment of the Government for participation in the foregoing programs, sums for expenditure by such department or establishment for the purposes hereof, and sums so transferred shall be available for expenditure in accordance with the provisions hereof and, to the extent determined by the Secretary of State, in accordance with the law governing expenditures of the department or establishment to which transferred.'

"Definitive steps have now been taken by the several agencies concerned, in cooperation with the Department of State, to implement the program for the training of Philippine citizens.

"Questions have arisen concerning the expenditure of funds for certain items which, although not specifically provided for in the enabling legislation or the appropriation, are considered to be essential 'expenses incidental to' the training contemplated by the law. The items in question are as follows:

"Entertainment. Experience in the administration of the training program under the appropriation 'Cooperation with the American Repubies' has clearly demonstration the desirability of limited expenditures for occasional entertainment of the visitors. It has been found that such gesture of friendliness contributes substantially to the success of the program in that it results in a personal relationship and mutual understanding which cannot otherwise be realized. It contributes also to the creation of good will, which is one of the essential purposes of the Philippine program, as evinced by See. 301 which authorizes the appropriation of money 'as a manifestation of good will to the Filipine people.' It is desired to ascertain whether the appropriation for the Philippine rehabilitation program is legally available for expenditures of this kind.

"Uniforms and clothing. In connection with certain of the training programs it will be necessary for the trainees to be provided with special-purpose clothing such, for example, as uniforms, overalls, work aprons, et estera. It is also considered necessary to provide general- purpose clothing adaptable to the elimate of this country. This need arises out of the following facts: (1) by reason of difference in elimate each trainee will find it necessary to purchase a complete wardrobe which will be of little value to him upon his return to the Philippines. This places a heavy burden on the trainees, many of whom will be men of mature years who will have to assume the burden of maintaining their families in the Philippines while undergoing training in the United States; (2) neither the Philippine Government nor the individual trainees are financially able to bear the cost of this additionally requirement; (3) without adequate clothing the trainees will be subject to serious handicaps, if not actual illness. The question is whether the appropriation is available for this purpose.

"Insurance and certain payments in connection with death. In order to give full effect to one of the basis objectives of the law, the manifestation of good will to the people of the Philippines, it is patently necessary to protest the trainees against the hazards of accident, illness, and death. Accordingly, it is desired to ascertain whether the appropriation is available for (1) the payment of premiums for health and accident insurance, and (2) the actual cost of

preparing and transporting to their former homes the remains of trainees who may die while in, or in transit to or from, the United States under the authority of the legislation in reference.

"Reference is made in this connection to this Department's letter dated April 20, 1946, and year reply, B-49269, dated April 27, 1946, regarding the transportation of the remains of a deceased student, Nativided Calve H., of Panana, who had proceeded to the United States under the program of cooperation with the American republies. Whereas it was decided in the case cited that 'there is nothing in the appropriation provisions ***** authorizing the use of the appropriated funds for payment of expenses of the character here proposed *****', the Third Deficiency Appropriation Act, 1946, makes appropriations 'for all expenses necessary to carry out the provisions of Titles III and V' of the Philippine Rehabilitation Act. Under this authority and to assure a manifestation of good will to the Filipino people', as contemplated by the enabling legislation, it is the Department's view that it will be necessary for this Government to make provision for the eventuality of death.

"Utilization of services of a private non-profit institution. It has been suggested that the services of a private non-profit institution might be utilized, in the discretion of each training agency, for the performance of certain administrative functions incident to the training program. It is desired to ascertain whether the appropriation is available for (1) the payment of a fee to a private non-profit institution for services rendered, and (2) the advance of funds to such an institution to cover actual expenses incident to training such, for example, as travel expenses, monthly allowances, et estera.

"Initial allowances of $25.00 for travel. Travel and allowances of trainees under the Philippine program are governed by Department Regulation No. 1, Code of Federal Regulations, Title 22, Chapter 1, Part 28, dated August 21, 1944. 'Payments to and an behalf of participants in the cultural-cooperation program', as amended on page 12044 of the Federal Register of October 16, 1946, copies of which are attached. Paragraph 28.4 (e) provides for 'An allowance of $25.00 for the first month or fraction thereof while engaged in traveling from his home to the United States, commencing on the day of departure, in addition to all other allowances.' It is the Department's opinion that under the bread authority and intent of the Philippine Rehabilitation Act and of the appropriation language, this allowance may properly be paid to recipients of training grants. Before authorizing such payments, however, it is desired to have an expression of your view, I shall very much appreciate your early consideration of the several matters referred to herein."

By provisions of Title III of the Philippine Rehabilitation Act of 1946, 60 Stat. 126, 136, as a manifestation of good will to the Filipine people, various agencies of the United States were authorized to provide technical training to Filipines, and by provisions of the Third Deficiency Appropriation Act, 1946, 60 Stat. 600, 621, as amended by the First Supplemental Appropriation Act, 1947, 60 Stat. 910, 916, moneys for carrying out the program were appropriated to the Department of State.

Section 311(e) of the enabling act provides that the head of the bureau or agency supervising or controlling the training, under such regulations as may be adopted from time to time, "may provide for the payment of all expenses incidental to such training, including, but not limited to, actual transportation expenses to and from and in the United States, allowances for

tuition, educational fees, and subsistence," and the proviso contained in the appropriation acts, authorizes transfers to the departments or agencies concerned from the sums appropriated, stating that "sums so transferred shall be available for expenditure in accordance with the provisions hereof and, to the extent determined by the Secretary of State, in accordance with the law governing expenditures of the department or establishment to which transferred." In this connection, it is observed that the regulations referred to in your letter are subject to modification to cover special circumstances and become applicable to the various agencies involved only if adopted by them.

Payment for the items which you state "are considered to be essential 'expenses incidental to the training contemplated by the law," and as to which a decision is requested, is not specifically in the enabling legislation or appropriations; and the congressional hearings, reports, etc., contain no substantial information as to the legislative intent with respect thereto. Hence, questions as to their propriety must be resolved in the light of the general language employed and on the basis of the objectives sought to be achieved as a whole.

The express provision that the expenses payable shall not be limited to those enumerated as "actual transportation expenses to and from and in the United States, allowances for tuition, educational fees, and subsistence," clearly indicates that the phrase "all expenses incidental to such training" was employed in a bread sense. Also, although no particular significance appears to attach to the expression "As a manifestation of good will to the Filipine people," since the funds appropriated were directed to be employed in promoting specific programs manifesting such good will, the Congress, in providing for the payment of "all expenses" incident to the training program, undoubtedly had knowledge of and took into consideration the destitution wrought by the war in the Philippines and the consequent impoverished condition of many of its people.

However, although determination of what constitutes "all expenses incident to such training" was left largely to the administrative officials, appropriations made in general terms for specific purposes usually are construed as available only for expenses reasonably and necessarily incident to the accomplishment of such purposes, and then only if the particular item of expense is not specifically prohibited by same general statute.

Generally, expenses of "entertainment" are of doubtful necessity and indefinite relationship to official activities, and this office has hold consistently that expenditures for that purpose must be specifically authorized. See 5 Comp. Gen. 455. There is found no indication of a legislative intent that any part of the appropriation for training should be used for "entertainment." Hence, I am constrained to hold that funds appropriated for carrying out the training are not available for occasional entertainment of a recreational mature merely as a gesture of friendliness, such as is proposed.

Since the Filipine trainees are not "employee of the United States" in the usual sense of that term, the rule that, in the absence of specific provision therefor, items of personal equipment and clothing may not be purchased is not necessarily for application. To the extent that special purpose clothing, including uniforms and other furnishings, is a requirement of the program, the nature and quality thereof is a matter primarily for administrative determination. On the other hand, the furnishing of complete wardrobes in instances where the apparel normally worn by the individual would be sufficient, or of any apparel for use irrespective of the requirements of the program would

appear to be a matter personal to the trainee. In this connection, in the case of Merchant Marine trainees (section 306b), and Coast and Goodetie Survey trainees (section 310), employment in training is contemplated and the trainee reasonably may be expected to provide for personal necessities out of the allowances or compensation received. In either case, the furnishing of special clothing for the protection of trainees, necessitated by the nature of the program, would appear to be authorized. See section 13 of the act of August 2, 1946, 60 Stat. 806.

The hazards of accident, illness and death accompany an individual wherever he goes, and protection against them usually is regarded as personal to him. Consequently, I have to advise that the use of public funds to protect against such hazards would not be proper in the absence of specific authorizing legislation. The provisions of section 311(e), authorizing payment of "actual transportation expenses to and from and in the United States," do not appear sufficiently specific to include the expenses of preparing and transporting to their former homes the remains of trainees who may die while in, or in transit to or from, the United States. The reasoning followed in my decision of April 27, 1946 (B- 49269), to you, in connection with the appropriation for the cultural cooperation program between the American Republies, is applicable.

The matter of utilizing the services of a private non-profit institution for the performance of certain administrative functions relating to the training program is discussed so generally in your letter as not to admit of a categorical answer. However, assuming the propriety of utilizing the services of such an organization, there would be no objection to the payment of a fee for services actually rendered. However, the legislation in question does not authorize advances of money such as are prohibited generally by the provisions of section 3648, Revised Statutes, as amended.

The initial allowances of $25 to recipients of training grants accrues as a part of the training grant on the day of departure from the Philippines and no objection is perceived thereto.

Respectfully,

Comptroller General of the United States