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B-70395 October 30, 1947

Number: B-70395

Date: 1947-10-30

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Administrator, Federal Security Agency.

My dear Mr. Ewing:

I have your letter of October 16, 1947, requesting a decision as to whether, in view of the provisions of section 3648, Revised Statutes, the Public Health Service, in connection with research fellowships awarded by it to individuals, may make payments of tuition and related fees directly to colleges and universities at the time of enrollment, or otherwise, as may be provided by the rules of the institution for its students generally.

The pertinent provisions of section 3648 of the Revised Statutes (31 U.S.C 529), as amended by section 11 of the act of August 2, 1946, 60 Stat. 309, are as follows:

"No advance of public money shall be made in any case unless authorized by the appropriation concerned or other law. and in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rednered, of the articles delivered previously to such payment."

The Public Health Service Act, approved July 1, 1944, 58 Stat. 682, (42 U.S.C. Section 201 et. seq.), as amended by the act of July 3, 1946, 60 Stat. 422, provides, in pertinent part, as follows:

"Sec. 208(d) In accordance with regulations, individual scientists, other than commissioned officers of the Service, may be designated by the Surgeon Generla to receive fellowships, appointed for duty with the Service without regard t the civil-service laws and compensated without regard to the Classification Act of 1923, as amended, may hold their fellowships under conditions prescribed therein, and may be assigned for studies or investigations either in this country or abroad during the temms of their fellowships.

* * *

"209(h) Individuals appointed under section 208(d) shall ahve included in their fellowships such stipends or allowances, including travel and subsistence expenses, as the Surgeon General may deem necessary to procure qualified fellows.

* * *

"Sec. 301. Teh Surgeon Generla shall conduct in the Service, and encourage, cooperate with, and render assistance to other appropriate public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstratins, and studies."

In carrying out the foregoing the Surgeon General is authorized to-

"(c) Establish and maintain research fellowships in the Service with stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the assistance of the most brilliant and promising research fellows from the United States and abroad;

* * *

"Sec. 402. In carrying out the purposes of section 301 with respect to cancer the Surgeon General, through the National Cancer Institute and in cooperation with the National Cancer Advisory Council, shall-

* * *

(d) provide fellowships in the Institute from funds appropriated or donated for such purpose; * * *"

Paragraphs 61.9 and 61.10 of existing regulations promulgated by the Surgeon General under authority of section 215(b) of the said act of July 1, 1944, (12 F.S. 6199, September 16, 1947; 32 id. 6526, October 3, 1947) provide:

"61.9 Benefits. Individuals awarded fellowships shall be intitled to

"(a) A stipend as fixed by the Surgeon General for the fellowship.

"61.10 Tuition and ohter expenses. Separate allowances may be granted for actual tuition costs and related fees, as authorized by the Public Health Service. Payment of such costs and fees may be made by the Service directly to the institution or facility concerned."

In decision of May 1, 1946, B-56585, to the Administrator of Veteran's Affairs, Veterans' Administration, concerning advance payments of tuition and other allowable charges to be made by the veterans' Administration to educational institutions for vocational training authorized by the act of March 24, 1943, 57 Stat. 43, and for education or training authorized by the Servicemen's Readjustment Act of 1944, 58 Stat. 284, it was stated, as follows:

"The primary purpose of section 3648, Revised Statutes, is obvious.. Teh danger inherent in a payment of moneys prior to the rendition of services incident to an agreement or contract, is the possibility that the contractor will refuse to make refund of amounts not earned due to discontinuance or interruption of a veteran's education or training (a) when he withdraws from the institution at the request of the institution or the Veterans' Administrator as a result of unsatisfactory reports of conduct or progress; (b) when he abandons his course without proper notice to the Veterans' Administrator as a result of unsatisfactory reports of conduct or progress; (b) when he abandons his course without proper notice to the Veterans' Administration; (c) when the course of training is interrupted due to illness or death of the enrollee, or by reason of

his negligence or misconduct."

However, It was held in said decision that, in view of the broad authority vested in the Administrator to carry out the provisions of the pertinent statutes, payment in advance of tuition and other similar fees for such purposes might be regarded as within his administrative discretion. But, it was suggested that, prior to any advance payments, in order to avoid the possibility of loss to the United States, it would appear desirable that, wherever possible, agreements or contracts, be entered into with the educational institutions involved whereby they would agree to make proper refund of unearned tuition and other similar fees for services contemplated but not rendered due to the discontinuance or interruption of an enrollee's education or training for any cause whatsoever.

Similarly here, in view of the broad authority vested in the Surgeon General by the relevant statutes, quoted above, there is substantial basis for the view that the manner of payment of tuition and related fees for the enrollees is within his descretion. As your letter points out, the allowance for tuition could, under the regulations, be paid directly to the individual at the time of matriculation without any conflict with the prohibition against advance payment. Accordingly, I have to advise that, if it be determined by the Surgeon General that payments for tuition and related fees directly to the institutions at the time of enrollment is necessary to carry out the purposes of the statutory provisions concerned, no objection will be interposed to such payments from available appropriations. However, as stated in the decision of May 1, 1946, B-56585, supra, it is suggested that any agreements or contracts with the institutions with respect to the payment for tuition and related fees provide-wherever possible-for refund of the unearned protion thereof in the event of discontinuance interruption of an enrollee's matriculation under the fellowships in question.

Respectfully,

(Signed) Lindsay C. Warren Comptroller General of the United States.