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B-75978 June 1, 1944

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The Honorable, The Secretary of the Army

My dear Mr. Secretary:

Reference is made to your letter of December 30, 1947, proposing to relieve--under the provisions of the act of December 13, 1944, 58 Stat. 800--Colonel Carl Witcher, F.D., symbol 210-846, of responsibility for $175 advanced on January 4, 1939, by Colonel W. M. Dixon to James H. Jesson, supervisory mechanic formerly employed by the Soil Conservation Service, Civilian Conservation Corps, Department of Agriculture, which amount has not been recovered.

It is stated in the said letter that accountability for the funds was transferred from Colonel Carl Witcher on June 30, 1942, and that you have determined "in connection with the herein described physical loss in the amount of one hundred seventy-five dollars ($175), that Colonel Dixon and Colonel Witcher were serving in the line of duty and that the loss occurred without fault or negligence on their part." The manner in which the deficiency occurred is stated in the letter as follows:

"On 4 January 1939, Colonel Dixon advanced funds in the amount of one hundred seventy-five dollars ($175) to Mr. James H. Jesson, a supervisory mechanic with the Soil Conservation Service, CCC, Department of Agriculture. Mr Jesson terminated his Federal employment without making an accounting for the funds. Efforts to effect collection have been unsuccessful. The loss in the amount of one hundred seventy-five dollars ($175) is reflected in the September 1947 accounts of Colonel Carl Witcher, F.D."

The records of this Office show that the advance was made to Mr. Jesson under the provisions of the Subsistence Expense Act of 1926 and that, because of such advance, and of his obtaining amounts in excess of those due for official travel by means of submission of fraudulent travel vouchers during the period September 1, 1937, to June 30, 1941, and of his unauthorized use of a Government-owned automobile for personal business, he became indebted to the United States in the sum of $635.87, in addition to possible liability for damages and forfeitures under sections 231-233 and 235, Title 31 United States Code. In addition, he made himself subject to prosecution for violation of certain provisions of the Criminal Code. However, at the time of termination of his services, on January 16, 1942, there apparently were due him credits of $137.22, on account of unpaid salary, and $658.48 to his credit in the Civil Service Retirement and Disability Fund. By letter dated September 13, 1944, this Office reported the details of

the indebtedness to the Attorney General, the credits being mentioned but no set-off action taken pending advice as to the result of the criminal proceedings which had been instituted and, also, in order not to prejudice any action that the Attorney General might take under 31 U.S.C. 231-233 and 235.

The act of December 13, 1944, 58 Stat. 800, provides:

"That the General Accounting Office shall relieve any disbursing officer of the Army charged with responsibility on account of loss or deficiency while in the line of duty, of Government funds, vouchers, records, or papers, in his charge, where such loss or deficiency occurred without fault or negligence on the part of said officer: Provided, That the Secretary of War shall have determined that the officer was in the line of his duty, and the loss or deficiency occurred without fault or negligence on his part: Provided further, That the determination by the Secretary of War of the aforesaid questions shall be conclusive upon the General Accounting Office: And provided further, That this Act shall be applicable only to the actual physical loss of Government funds, vouchers, records, or papers, and shall not include deficiencies in the accounts of disbursing officers of the Army resulting from illegal or arroneous payments."

The reason advanced for the passage of the aforesaid law was to authorize relief to disbursing officers for losses of funds, vouchers, etc., under accidental circumstances beyond their control and without their fault or negligence such as losses by fire, ship sinkings, thefts or physical losses resulting from enemy action or otherwise. This Office recommended in letters addressed to the Congressional Committee considering the bill and to the Bureau of the Budget that there be included language specifying that the act be applicable only to actual physical loss of funds, vouchers, records or papers and that it should not include deficiencies in the accounts of disbursing officers resulting from illegal or erroneous payments. Language to such effect was specifically included in the law as finally enacted.

The deficiency in the account in the instant case appears to be one resulting from a payment voluntarily made by the disbursing officer in the course of his duties and not to be a physical loss of such funds caused by accidental or fortuitous circumstances beyond the control of a disbursing officer for which the act was intended to provide a means of relief. Accordingly, on the present record, the matter does not appear one in which relief properly may be granted the involved disbursing officer under such act. However, as indicated above, the Government is in possession of an amount sufficient to liquidate the entire principal amount of the indebtedness of Mr. Jesson without considering his possible liability for fines, forfeitures or penalties because of his fraudulent or wrongful acts and no reason appears, if the status of the collection proceedings instituted by the Department of Justice are such as to make the action feasible, why $175 of the amount of deposit in the retirement fund may not be applied against his indebtedness for the travel advance, such fund apparently having been pledged for that purpose. Accordingly, I have instructed the Claims Division of the General Accounting Office to ascertain whether the status of the collection proceedings is such as would permit application of $175 of the amount in the retirement fund against the indebtedness by reason of the travel advance and, if so, to take such action promptly, which action will result in relieving the deficiency in the disbursing officers' accounts.

The Department will be notified further in the matter at a later date.

Respectfully,

Acting Comptroller General of the United States