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B-78217 July 21, 1948

Number: B-78217

Date: 1948-07-21

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Mr. Oce Thompson,

Financial Clerk, United States Senate.

Dear Mr. Thompson:

I have your letter of July 8, 1948, as follows:

"In accordance with the Legislative Reorganization Act of 1946, there is appropriated annually in the Legislative Branch Appropriation Act a certain sum for clerical assistance to the Vice President of the United States at rates of compensation to be fixed by him.

"It has been assumed--and I think it was the intent of Congress--that the aggregate rates of compensation so fixed should not exceed per annum the total of the appropriation, which is the method required by law to be followed in Senators' offices. In other words, it would not be permissible to fix rates of annual compensation that would exhaust the appropriation in less time than twelve months.

"Would this be in agreement with your opinion?

"Also, is there any limitation--maximum or minimum--on the annual rate of compensation that may be fixed for any such person on the Vice President's payroll?

"If the annual rate so fixed exceeds $10,330 (assuming it could be exceeded), would there be any benefits under the various pay increase Acts, including Public Law 900, approved July 3, 1948?"

The appropriation for electrical assistance to the Vice President, not of June 14, 1948, Public Law 643, 62 Stat. 423, is worded as follows: "For clerical assistance to the Vice President, at rates of compensation to be fixed by him, $32,385."

31 U.S.C. 665 provides:

"No executive department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such

appropriations unless such contract or obligation is authorized by law. Nor shall any department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of the authorized by law, except in cases of sudden emergency involving the less of human life or the destruction of property, purposes, except appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without references to the amounts annually appropriated therfor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations are made; and all such apportionments shall be adhered to and shall not be waived or modified except upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment, but this provision shall not apply to the contingent appropriations of the Senate or House of Representatives; and in case said apportionments are waived or modified as herein provided, the same shall be waived or modified in writing by the head of such executive department or other Government establishment having control of the expenditure, and the reasons therefor shall be fully set forth in each particular case and communicated to Congress in connection with estimates for any additional appropriations required on account thereof. Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less than $100 or by imprisonment for not less than one month."

As the foregoing statute specifically excepts from some of its provisions only the contingent appropriations of the Senate and House of Representatives, it otherwise would appear applicable to all other appropriations. See in that connection, 27 Op. Atty. Gen. 584, holding that provisions contained in the U.S. Code, supra, applicable to the Government Printing Office--an arm of the Legislative Branch of the Government. Accordingly, it would not be permissible to fix the compensation of the respective employees of the Vice President at such rates as would cause the total of the above appropriation to be exceeded. Thus, I am in agreement with your expressed opinion.

As the Vice President is authorized by the appropriation act, supra, to fix the rates of compensation of the individual employees, there would appear to be no minimum or maximum limit upon the salaries which may be so authorized so long as the total compensation paid such employees comes within the total sum appropriated for services of such employees, but specifically answering the question posed in the concluding paragraph of your letter you are advised that any employee whose salary is fixed at $10,330 or more per annum would not be entitled to any benefits under the provisions of the pay acts of 1945, 1946, or 1948. 25 Comp. Gen. 601.

Respectfully,

Acting Comptroller General of the United States