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B-97772, May 18, 1951

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MAJOR ARTHUR A. STIEFEL, FD:

THERE HAS BEEN CONSIDERED YOUR LETTER OF AUGUST 10, 1950, REFERRED TO THIS OFFICE BY INDORSEMENT OF THE CHIEF OF FINANCE, REQUESTING DECISION WHETHER PAYMENT PROPERLY MAY BE MADE ON A VOUCHER FORWARDED THEREWITH IN FAVOR OF LIEUTENANT COLONEL MELVIN A. HOHERZ, AGD, FOR PER DIEM AND TRANSPORTATION EXPENSES INCIDENT TO TRAVEL FROM WASHINGTON, D.C., TO JACKSONVILLE, FLORIDA, AND RETURN, PERFORMED DURING THE PERIOD FROM JULY 23 TO 25, 1950, IN CONNECTION WITH HIS APPEARANCE AS A WITNESS IN THE CASE OF THE UNITED STATES V. JOHN L. GAMMON.

WHILE NOT SHOWN IN THE RECORD PRESENTED WITH THE SUBMITTED VOUCHER, IT IS ASSUMED THAT COLONEL HOHERZ PROCEEDED TO JACKSONVILLE IN RESPONSE TO A SUBPOENA OR REQUEST BY A UNITED STATES ATTORNEY OR OTHER OFFICIAL OF THE DEPARTMENT OF JUSTICE FOR HIS APPEARANCE IN THE INDICATED ACTION. IT IS STATED ON THE VOUCHER THAT HE LEFT HIS RESIDENCE IN ARLINGTON, VIRGINIA, AT 4 P.M., ON JULY 23, 1950, AND PROCEEDED FROM WASHINGTON, D.C., TO JACKSONVILLE, ARRIVING AT 10 P.M. ON THAT DATE. UPON THE COMPLETION OF DUTY AT JACKSONVILLE, HE DEPARTED THEREFROM AT 11:30 A.M. ON JULY 25, 1950, AND RETURNED TO WASHINGTON AT 3:30 P.M. ON THE SAME DAY. TRAVEL FROM WASHINGTON TO JACKSONVILLE AND RETURN WAS PERFORMED BY COMMERCIAL AIRCRAFT AT THE OFFICER'S PERSONAL EXPENSE. CONFIRMATORY ORDERS (CORRECTED COPY) OF JULY 27, 1950, OFFICE OF THE ADJUTANT GENERAL, ISSUED BY ORDER OF THE SECRETARY OF THE ARMY, CONFIRMED THE NECESSITY FOR THE TRAVEL PERFORMED BY COLONEL HOHERZ IN PROCEEDING ON JULY 23, 1950, BY COMMERCIAL AIRCRAFT FROM WASHINGTON, D.C., TO JACKSONVILLE, FLORIDA, ON TEMPORARY DUTY TO APPEAR AS A WITNESS IN THE CASE OF THE UNITED STATES V. JOHN L. GAMMON, AND RETURN ON JULY 25, 1950, TO HIS PROPER STATION, AND AUTHORIZED THE PAYMENT OF A PER DIEM OF $9 INCIDENT THERETO, AS AUTHORIZED BY ARMY REGULATIONS 35 3920, JANUARY 11, 1950, ATTENTION BEING INVITED TO PARAGRAPH 74, ARMY REGULATIONS 410-5 "WITH REFERENCE TO REIMBURSEMENT TO THE DEPARTMENT OF THE ARMY FROM THE DEPARTMENT OF JUSTICE." IT IS NOT SHOWN THAT THE CASE INDICATED WAS ONE INVOLVING THE DEPARTMENT OF THE ARMY WITHIN THE MEANING OF THE ACT OF OCTOBER 5, 1949, INFRA. THE OFFICER'S CLAIM FOR THE TRAVEL INVOLVED IS FOR REIMBURSEMENT OF THE COST OF AIR TRANSPORTATION FROM WASHINGTON TO JACKSONVILLE, AND RETURN, $88.32, TAXI FARES IN THE AGGREGATE OF $7, AND PER DIEM, $20.25 (2 1/4 DAYS AT THE RATE OF $9), TOTALING $115.57.

SECTION 1823(A) OF TITLE 28, U.S.C. AS AMENDED BY THE ACT OF OCTOBER 5, 1949, 63 STAT. 704, PROVIDES AS FOLLOWS:

"ANY OFFICER OR EMPLOYEE OF THE UNITED STATES OR ANY AGENCY THEREOF, SUMMONED AS A WITNESS ON BEHALF OF THE UNITED STATES, SHALL BE PAID HIS NECESSARY EXPENSES

INCIDENT TO TRAVEL BY COMMON CARRIER, AND IF TRAVEL IS MADE BY PRIVATELY OWNED AUTOMOBILE MILEAGE AT A RATE NOT TO EXCEED 7 CENTS PER MILE, TOGETHER WITH A PER DIEM ALLOWANCE NOT TO EXCEED $9 IN LIEU OF SUBSISTENCE UNDER REGULATIONS PRESCRIBED BY THE ATTORNEY GENERAL. SUCH EXPENSES FOR APPEARING AS A WITNESS IN ANY CASE INVOLVING THE ACTIVITY IN CONNECTION WITH WHICH SUCH PERSON IS EMPLOYED SHALL BE PAYABLE FROM THE APPROPRIATION OTHERWISE AVAILABLE FOR TRAVEL EXPENSES OF SUCH OFFICER OR EMPLOYEE UNDER PROPER CERTIFICATION BY A CERTIFYING OFFICER OF THE DEPARTMENT OR AGENCY CONCERNED."

THE PURPOSE OF SUCH STATUTORY PROVISIONS IS TO PROVIDE AUTHORITY FOR REIMBURSEMENT OF TRAVEL EXPENSES OF ALL OFFICERS AND EMPLOYEES OF THE GOVERNMENT, INCLUDING MILITARY PERSONNEL, (22 COMP.GEN. 1074) REQUIRED TO TRAVEL IN RESPONSE TO SUMMONSES TO APPEAR AS WITNESSES FOR THE GOVERNMENT, AND FUNDS FOR THE PAYMENT THEREOF-- OTHER THAN EXPENSES IN CASES INVOLVING THE ACTIVITY IN CONNECTION WITH WHICH THE WITNESS IS EMPLOYED-- ARE MADE AVAILABLE FOR THE FISCAL YEAR 1951 BY THE PROVISIONS OF THE DEPARTMENT OF JUSTICE APPROPRIATION ACT, 1951, 64 STAT. 616, AND ARE PAYABLE BY THAT DEPARTMENT.

PARAGRAPH 7D, ARMY REGULATIONS 410-5, CITED IN THE CONFIRMATORY ORDERS OF JULY 27, 1950, WHICH APPARENTLY IS RELIED UPON AS AUTHORITY FOR THE PAYMENT PROPOSED, IS, IN PERTINENT PART, AS FOLLOWS:

"D. REIMBURSEMENT FROM DEPARTMENT OF JUSTICE.-- THE TRAVEL ORDERS WILL STATE THAT REIMBURSEMENT WILL BE OBTAINED FROM THE DEPARTMENT OF JUSTICE FOR ALL TRAVEL AND SUBSISTENCE EXPENSES, UNLESS THE CASE IN CONNECTION WITH WHICH THE TESTIMONY OF THE WITNESS IS DESIRED RELATES TO ACTIVITIES OF THE WAR DEPARTMENT, IN WHICH CASE LETTERS REQUESTING ATTENDANCE WILL SO INDICATE. EXCEPT AS SET FORTH IN G BELOW IN THE CASE OF TRANSPORTATION REQUESTS, A UNIFORM PROCEDURE HAS BEEN ADOPTED FOR EXPEDIENCY WHEREBY TRAVEL AND ATTENDANCE EXPENSES ARE PAID FOR BY THE WAR DEPARTMENT, AS PROVIDED IN E AND F BELOW, REIMBURSEMENT THEREFOR BEING SECURED LATER FROM THE DEPARTMENT OF JUSTICE. ***"

IT APPEARS THAT THE PROCEDURE SET FORTH IN THE QUOTED REGULATIONS CONTEMPLATES THE CHARGING OF A DEPARTMENT OF THE ARMY APPROPRIATION WITH EXPENDITURES FOR WHICH SUCH APPROPRIATION IS NOT AVAILABLE, WITH THE EXPECTATION THAT THE AMOUNT OF SUCH EXPENDITURES WILL BE CREDITED TO THAT APPROPRIATION AT A LATER DATE BY TRANSFER FROM THE PROPER APPROPRIATION. PROCEDURES CONTEMPLATING THE CHARGING OF EXPENDITURES TO OTHER THAN THE PROPER APPROPRIATION WITH A VIEW TO SUBSEQUENT ADJUSTMENT BEING MADE BETWEEN THE APPROPRIATIONS HAVE BEEN REGARDED AS NOT ONLY INCONSISTENT WITH FUNDAMENTAL GOVERNMENTAL ACCOUNTING PRINCIPLES, BUT IN CONTRAVENTION OF SECTION 3678, REVISED STATUTES, WHICH PROVIDES THAT ALL SUMS APPROPRIATED FOR THE VARIOUS BRANCHES OF EXPENDITURE IN THE PUBLIC SERVICE SHALL BE APPLIED SOLELY TO THE OBJECTS FOR WHICH THEY ARE RESPECTIVELY MADE, AND FOR NO OTHERS. 14 COMP.GEN. 103; 26 ID. 902. ALSO, YOUR ATTENTION IS INVITED TO SECTION 604 OF THE GENERAL APPROPRIATION ACT, 1951, 64 STAT. 752, WHICH PROVIDES--

"NO PART OF ANY APPROPRIATION CONTAINED IN THIS CHAPTER FOR 'PAY AND ALLOWANCES' OF MILITARY PERSONNEL SHALL BE TRANSFERRED OR USED FOR ANY OTHER PURPOSE."

AND SECTION 1210 OF THAT ACT, 64 STAT. 765, PROVIDING--

"NO FUNDS MADE AVAILABLE BY THIS OR ANY OTHER ACT SHALL BE WITHDRAWN FROM ONE APPROPRIATION ACCOUNT FOR CREDIT TO ANOTHER, OR TO A WORKING FUND, EXCEPT AS AUTHORIZED BY LAW ***."

IN VIEW OF THE REQUIREMENTS OF THE FOREGOING STATUTORY PROVISION, WHICH WOULD PROHIBIT A DELIBERATE CHARGING FOR REASONS OF ADMINISTRATIVE EXPEDIENCY OF THE WRONG APPROPRIATION WITH THE EXPECTATION OF SUBSEQUENT ADJUSTMENT BY TRANSFER OF FUNDS FROM ANOTHER APPROPRIATION, YOU ARE ADVISED THAT PAYMENT ON THE PRESENT VOUCHER, INVOLVING ITEMS CHARGEABLE ONLY TO FUNDS APPROPRIATED FOR THE DEPARTMENT OF JUSTICE, MAY NOT BE MADE BY YOU FROM DEPARTMENT OF THE ARMY FUNDS AS PROPOSED, BUT THAT COLONEL HOHERZ'S CLAIM IS PROPERLY FOR CONSIDERATION FOR PAYMENT BY A DISBURSING OFFICER FOR THE DEPARTMENT OF JUSTICE. THE VOUCHER AND SUPPORTING PAPERS ARE RETURNED HEREWITH FOR THAT PURPOSE.