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DEP~SITTD SY THE UNITED STATES OF AMERICA JAM 3 '49 LINDSAY C. WARREN *Comptroller General of the United States* FRANK L. YATES Assistant Comptroller General of the United State* *General Counsel* EDWIN L. FISHER *Atsiitant General Countelt* RALPH E. CASEY ELDRED N. MAHONEY ELMO V. COONS WELFORD J. MASSIE HARRELL O. HOAGLAND WILLIAM L. MORROW ALBERT A. PETER III

Since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921, there have been published 27 volumes, including this volume, of decisions of the Comptroller General of the United States. The decisions appearing in these volumes have been selected as constituting the more important, from the standpoint of general application and precedent, of those rendered during each fiscal year. The law authorizes and requires that such decisions be rendered in advance, upon request, to the heads of departments and establishments and disbursing officers (sec. 8 of the act of July 31, 1894, as amended, 42 Stat. 23, et seq.); and to certifying officers (the act of December 29,1941, 55 Stat. 875); and decisions are rendered to claimants who request review or reconsideration of claims which have been disallowed in whole or part, and to disbursing

and certifying officers who request reconsideration of items for which credit has been disallowed. It is with the view to preserving such decisions in an authentic and permanent form, convenient for reference, and to provide guidance for the administrative officers of the Government that these volumes have been published. For the most part, the decisions contained in this series are made available to the various Government agencies in advance of publication of the volume through the circulation of mimeographed copies of the decisions and of the "Daily Synopses of Decisions," as well as by the issuance of separate monthly pamphlets, which eventually are consolidated into the annual volume. Separate pamphlets containing the appendix, index digest, table of statutes cited, etc., pertaining to a particular volume of the decisions of the Comptroller General also are published to afford complete fiscal year coverage of the published decisions to those subscribers who receive only the monthly pamphlets. Also, there have been compiled two consolidated indexes, one designated as "Index to the Published Decisions of the Accounting Officers of the United States, 1894-1929," the other, an "Index-Digest of the Published Decisions of the Comptroller General of the United States, July 1, 1929 to June 30, 1940." A consolidated index digest for the period July 1, 1940 to June 30, 1946, is being compiled and will be made available in the near future. These indexes are designed to assist in research for precedents with respect to matters coming within the jurisdiction of the General Accounting Office. Decisions appearing in the published volumes should be cited by volume and page, as 1 Comp. Gen. 100. Other decisions of the Comptroller General, not selected for publication, should be cited by the applicable file number and date, for example, B-12345, June 23, 1948. vu

1 Office of Second Comptroller created Mar. 3, 1817. Â» Office of Deputy Second Comptroller created Mar. 3,1875. â€¢ By the act of July 31,1894, taking effect Oct. 1,1894, the First Comptroller of the Treasury was made Comptroller of the Treasury and the office of Assistant Comptroller of the Treasury created; the offices of Second Comptroller of the Treasury, Deputy Second Comptroller, and Deputy First Comptroller were abolished. 1 Died in office.

'By the act of June 10, 1921, 42 Stat. 23, effective July 1, 1921, the offices of Comptroller General of the United States and Assistant Comptroller General of the United States were created and the offices of the Comptroller of the Treasury and Assistant Comptroller of the Treasury were abolished. â€¢ Resigned. > Recess appointment. â€¢Retired.

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affirmed 147 F. 291, certiorari denied 325 U. S.8i0 233 Plummer p. United States, 224 U. S. 137 485 Postal Telegraph-Cable Co. P. Associated Press, 127 N. E. 256 583 Power County, Idaho, United States *r.,* 21 F. Supp. 684. 21 *&* Co., *J. J.* P. United States, 58 C. C ls. 81 344,646 Pullman Co., et al.. United States P., 64 F. Supp. 108 367 Purcell Envelope Co., United States P., 249 O. 8.313 20,/19 Alston, Byron Brown r. United States, 91 C. C ls. 91.. 281 Reynolds P. United States, 95 C. C ls. 160.... 327,743 Richardson P. Stale, 2 8. W. 187 694 Roy er, United States P., 268 U. S. 394 731 Russia, State of p. National City Bank of New York, 89 F. 44 844 et al. p. United States, 56 F. Supp. 505...'. 19,719,727 Sc huh *v.* United States, 107 C. C ls. 88 433 Scott, W. A. *t.* United States, 44 C. C ls. 624.. 438 Seaboard Air Line Railway Co. *v.* United states, 281 U. S. 299 592,691 Shrimp ton Manufacturing Co. p. Brim, 59 Tex. C iv. App. 352, 125 8. W. 942 19 Simpson P. United States, 172 U. S. 372 579,646 Ripley p. Sticky, 190 Mass. 43, 76 N. E. 226, 5 L. R. A. (N. 8.) 469 83 S medley *v.* Walden, 246 Mass. 393, 141 N. E. 281 82 John P. Paterson, 84 U. S. 596 341 Southern Pacific Co. P. spring Valley Water Co., 159 P. 865 684 Spear in, United Slates r., 248 U. S. 132 679 St. Louis Expanded Metal Fireproofing Co. p. Cement Co., 123 Mo. App. 715, 101 8. W. 128 226 State p. Charon Telephone Co., 173 Iowa 497, 155, N. W.968 583 State Â». Geiger. 154 8. W. 486 584 State p. Iowa Telephone Co., 176 Iowa 607,154 N. W. 678 683 State p. Nebraska Telephone Co., 127 Iowa 194, 103 N. W. 120 583 State â€¢. Superior Court of Stevens County, 93 Wash. 433,161 P. 77 561 et al. p. 226 111. 9,80 N. E. 584. 19 Stone, United States P., 2 Wail. 525 589 Garcia & Maggie Co., 298 P. 249... 624 p. United States, 38 C. C ls. 104 436 Taylor p. United States, 38 C. C ls. 155 486 Thomas p. First National Bank, 105 Miss. 500, 39 L. R. A. (N. 8.) 356 444 Towns ley P. United States, 323 U. S. 557 616 p. United States, 66 F. Supp. 595. 592 Triad Corporation p. United States, 63 C. C ls. 151 438 Tuck Foundation, Michael p. Hazel com, 65 N. Y. 8. 387 6 United States Fidelity and Guaranty Co., United States p., 35 F. Supp. 959 â€¢ 704 Van Brooklyn P. Tennessee, 117 U. 8. 151 21 Volcker's Estate, *In re,* 285 N. Y. S. 519 709 Vulcanite Portland Cement Co. p. United States, 74 C. C ls. 692 344 Wagner p. City of Rock Island, 34 N. E. 545.. 585 Walker p. United States, 64 F. Supp. 135 692 Washington p. Miller, 235 U. 8.422 170 Weed* Co., C. A. p. Lockwood, 266 F. 705... 6 West p. Standard Oil Co., 278 U. 8. 200 589 Wilbur p. United States, 281 U. 8. 206 589 Williamson Heater Co. p. United States, 58 C. C ls. 63 691 Wolverton p. Mountain States Telegraph *&* Telephone Co., 142 P. 165 582 *In re.* 327 U. 8. 1 6 DECISIONS

DECISIONS OF THE COMPTROLLER GENERAL OF THE UNITED STATES

(B-66287) TRANSPORTATIONâ€"TO AND FROM WORKâ€"GOVERNMENT EMPLOYEES While it may be impracticable for employees stationed at Fairbanks, Alaska, to obtain cheaper means of transportation than by taxicab due to the emergency or unusual conditions existing at such post of duty, the cost of furnishing taxicab service to employees between the office and their homes and between office and places where meals are procured is to be regarded as a personal expense which may not be paid from appropriated funds in the absence of express or implied authority therefor in the current appropriation. Comptroller General Warren to T. V. C Rourke, War Assets Administration, July 1, 1947: Reference is made to your letter of May 8,1947, to the Chief, Audit Division, General Accounting Office, as follows: The Surplus Property Office, Department of Interior, Anchorage, Alaska, recently went under the administration of the War Assets Administration. Prior to the transfer the War Assets Administration operated an office for aircraft disposal in Fairbanks, Alaska. Since this office became the Regional Headquarters for WAA in the Territory of Alaska we became the clearing house for all expenses incurred by the agency. When the enclosed voucher was submitted for payment, this office took exception to the expense and refused to process the voucher. Mr. Smith, District Manager at Fairbanks was advised and he countered with the enclosed letter as authority to obligate the expense. This office contends that the use of taxicabs to and from work is not official travel within the limits of their duty station and therefore not a justifiable expense. It is requested that the enclosed voucher be pre-audited by your office and correspondence forwarded

advising if said voucher may be certified for payment. The referred-to letter of November 8, 1946, from the War Assets Administration in Washington, D. C, to M. Clifford Smith, Jr., special representative, Fairbanks, Alaska, which, you state, Mr. Smith cites as authority to obligate the expense, reads as follows: There has been referred to this office for reply your memorandum of October 23rd to Mr. L. Oliver Cook, Office of Aircraft Disposal, Washington, with respect to the matter of obtaining transportation for personnel of the Fairbanks office. It appears that your problem is two-fold, involving the transportation of employees from point to point on official business call and also their transportation to down-town Fairbanks for food and lodging. As you know, it is normally Incumbent upon every employee to report to and from work at his own expense 1

and by means provided by himself, this obligation extending also to whatever travel may be necessary for the mid-day meal. However, it is recognized that conditions at Fairbanks as regards transportation facilities at all times and severe weather conditions for a portion of the time created a situation out of the ordinary. Accordingly, there is no objection, legal or otherwise, to the continued obtainment of transportation facilities for the travel discussed herein and as may be further required in the conduct of the business of the office. Although your letter is not specific on the point we understand that bills for the rental of the automobile at $150 per month have been paid at least up to March 25, 1946, the date on which the War Assets Administration was established. If not, payment may be made without further delay and payment may also be made of any additional bills for the service for periods through June 30, 1946, even though no contract had been executed. Beginning July 1, 1946, the rental service must be covered by a contract which must be negotiated and executed by the office of Mr. J. W. Abbey, Chief Contracts Officer, Office of Personnel and Office Services, WAA, Washington 25, D. C, The matter has been cleared informally with Mr. Abbey's office and if you will supply him Immediately with all pertinent facts, the contract will be drawn retroactive to July 1, 1946, and, In view of the circumstances, will be without regard to the requirements of Section 3709 of the Revised Statutes, which requires competitive bidding. The use of taxicabs for employee transportation should be held to a minimum and the arrangements for the service should be between the office and the operators wherever possible. That is to say, an attempt should be made to place this service on a definite charge basis and if advisable a contract should be negotiated to place the service on call. In the event you decide that this would be the proper course, you should supply all information to Mr. Abbey's office as explained above. We have noted that you anticipate that your expenditures for gasoline and oil for the rented vehicle plus the cost of occasional taxicab use should never exceed $50 in any one month. Accordingly, the open market limitation of $100 permitting miscellaneous procurement as needed when the individual amounts do not exceed $100 and when the services are of a casual nature, provided adequate authority for these miscellaneous services and you may proceed with the procuring thereof without formal contract. We trust that the information contained herein will be of assistance to you. A copy of this memorandum has been sent by us to Mr. Abbey's office In order that he may be informed more fully in the matter. You should communicate promptly with Mr. Abbey, as explained above. If we may provide further clarification or any additional assistance, please advise. While your letter requests that the submitted voucher be "pre audited" it is assumed that you, in your capacity as certifying officer, intended to submit the matter here for an advance decision by this office under the provisions of section 3 of the act of December 29,1941, 55 Stat. 876, and the matter will be treated accordingly. However, it should be pointed out that all requests made by certifying officers under said statute for advance decisions should be addressed to the Comptroller General of the United States, Washington 25, D. C. The submitted voucher covers claim by the Pioneer Taxi at Fairbanks, Alaska, in the amount of $120.75, for services rendered the War Assets Administration at Fairbanks during the period from January 15 to February 7,1947, inclusive, which voucher

is supported by confirming purchase order dated April 10, 1947, and certified invoices showing charges ranging from $1 to $2.50, itemized to show trips as follows for: "5 pass., 4 stops," "Girls to work, 1 stop," "Girls to lunch, 1 stop," "Girls home, 1 stop," "Office call, 4 stops," "Crew office to town, 6 pass., 1 stop," "Smith stand to office, 2 stops," "Employees from lunch to office, 2 stops," "Girls, 1 stop," "2 stops, 6 Passengers," etc. Although a few of the trips may have been solely for transportation from point to point upon official business, it appears from the invoices that the greater part of the service was for the purpose of transporting passengers between the office and their homes and between office and places where lunch was obtained. In other cases there is nothing to indicate either the destination or the purpose of the trips.

While there is no statement on the voucher or invoices as to the status of the passengers transported, it is assumed that services were furnished to employees of the War Assets Administration whose official station was Fairbanks. There is included in the appropriation, "Salaries and Expenses, War Assets Administration, Special Fund, 1947," 60 Stat. 606, 607, 608, from which payment on the voucher is proposed to be made, authorization for the following: â€¢ â€¢ â€¢ temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or otherwise, without regard to the civil-service and Classification laws; â€¢ â€¢ â€¢ acceptance and utilization of voluntary and uncompensated services; â€¢ â€¢ * travel expenses, including reimbursement, at not to exceed 4 cents per mile, to employees for expenses incurred by them in performance of official travel in privately owned automobiles within the limits of their official stations; * * * procurement of supplies, equipment, reports, and services in connection with the care, handling, and disposition of surplus property without regard to the provisions of section 3709 of the Revised Statutes (41 U. S. C. 5) upon determination by the Administrator or by any official designated by him for this purpose that such method of procurement is necessary; * * * purchase, maintenance, operation, and repair of passenger automobiles; * * * *Provided further,* That the Administration may procure by contract or otherwise and furnish to Governmental employees and employees of Government contractors at the reasonable value thereof food, meals, subsistence, and medical supplies, emergency medical services, quarters, heat, light, household equipment, laundry service, and sanitation facilities, and erect temporary structures and make alterations In existing structures necessary for these purposes, when such employees are engaged in the disposal of surplus property, or in the preparation for such disposal, at locations where such supplies, services, equipment, or facilities are otherwise unavailable, the proceeds derived therefrom to be credited to this appropriation: * * * The furnishing of transportation facilities to employees from their place of residence to the place of their employment is considered a personal expense of the employees and is not permitted to be paid from appropriated funds unless provided for in the appropriation either expressly or by necessary implication. The fact that such expenses may be increased due to emergency or unusual conditions does not render the rule inapplicable. Also, the fact that the administrative office authorized this method of transportation in nowise transfers the obligation to the Government. It is stated in 16 Comp. Gen. 64:

*** * â€¢ The transportation from place of duty to the employees' homes Is neither for official business nor are the employees In a travel status. It is merely personal transportation between the homes of the employees and their post of duty, such as is required by the public generally, and any allowance in such circumstances would constitute an increase in compensation or an addition to the regular salary paid to. the employees involved, in direct contravention of the provisions of section 1765, Revised Statutes. See also 19 Comp. Gen. 836. While it would appear that where, at isolated places, public transportation facilities are not adequate, there would be no legal objection to the**

furnishing of taxicab service to and from their places of work as part of the agreed compensation of those employees who are employed without regard to the civil-service and classification laws, and while the appropriation here involved provides for the procuring of services of specialized classes of personnel without regard to the laws and regulations fixing the compensation of regular Government personnel, there is no showing that any of the passengers for whom the Pioneer Taxi furnished services in Fairbanks were employed under any such agreement. Moreover, the rental of an automobile for personal transportation is not included in those services which the War Assets Administration is authorized by the appropriation act, above quoted, to procure by contract or otherwise and furnish to Government employees at the reasonable value thereof. In view of the specific provision in the appropriation act for maintenance and operation of passenger automobiles and the apparent impracticability of obtaining cheaper means of transportation at Fairbanks, there would appear to be no objection to contracting for transportation of employees between office and other points for the performance of official business of the War Assets Administration. Compare 2 Comp. Gen. 693. However, there is not sufficient information on the voucher or invoices submitted with your letter for a determination of what portion of the service, if any, may be considered solely for official business and since, in accordance with the foregoing, payment of that portion of the service which was incident to transportation of Government employees for the purpose of obtaining lodging and meals at official station is not a proper charge against the appropriation involved, the voucher may not be certified for payment in any amount. If any additional evidence is obtainable tending to establish the Government's liability for any part of the amount claimed, the voucher properly would be for submission to the Claims Division, General Accounting Office, Washington 25, D. C, for consideration as a claim (31 U. S. Code 71) rather than one for consideration by a certifying officer. The voucher and supporting papers are returned herewith.

(B-59792) CONTRACTSâ€"MODIFICATIONâ€"APPLICABILITY OF WAR POWERS AUTHORITY SUBSEQUENT TO CESSATION OF HOSTILITIES The amendment of a petroleum products supply contract by a Treasury Department contracting officer more than a year after actual hostilities in World War II had ceased, in order to compensate the contractor for increased costs occasioned by the suspension or removal of Government price controls, is not within the authority of section 201 of the First War Powers Act, 1941, and Executive orders issued pursuant thereto, to amend contracts to "facilitate the prosecution of the war," even though a state of war still exists. Comptroller General Warren to the Secretary of the Treasury, July 8, 1947: Reference is made to your letter of April 22,1947, relative to decision dated March 28,1947, B-59792, wherein you were advised that, on the basis of the record then before this office, there was no authority for the amendment of contract No. Rps-76458, dated July 10, 1946, with the Monmouth Petroleum Company, so as to provide for an increase in the prices specified therein. The pertinent provisions of the amendment and the circumstances under which it was executed are set forth in the decision of March 28, 1947, and need not be repeated here. However, in your letter, referred to above, you state that the contract was amended under the authority of Title II of the First War Powers Act of 1941, 55 Stat. 839, upon a determination by the contracting officer that "such action would facilitate the prosecution of the war." Hence, it is stated as your opinion that since, from a legal standpoint, the war is not at an end and nothing has occurred to impair the authority of the contracting officer to enter into amendments or modifications of contracts, his "determination involves an exercise of administrative judgment which if made in good faith is conclusive and not subject to review by anyone." By Executive Order No. 9023, issued January 14,1942, the provisions of the First War Powers Act and of Executive Order No. 9001, issued pursuant thereto, were extended to the Treasury Department, and it is understood from your letter that "a proper delegation existed from

the Secretary of the Treasury to the contracting officer in this case." However, it clearly is within the jurisdiction of the General Accounting Office to determine whether the facts of a particular case are such as to bring it within the scope and operation of the First War Powers Act and the Executive orders issued pursuant thereto. 24 Comp. Gen. 723. As a basis for the contracting officer's determination, and in support of his good faith in the matter, you invite attention to the fact that numerous military installations are included among the agencies served under the contract here involved, and you point out that approximately 150 additional contracts "were amended in the same way at 796802â€”48 3

approximately the same time and for the same reason." And you state: The contracting officer concluded that failure to amend these contracts would have resulted, In many Instances, In Insolvency on the part of the contractor leading to Inability on Its part to deliver the specified materials and to a serious shortage in Government stocks. It was believed that efforts to supply the deficiencies by buying against the contracts would have been costly and probably Ineffective to supply the shortage since the refineries would have already allocated their limited stock. Also, the Government in almost every instance would have been In the position of attempting to purchase gasoline and fuel oil from the suppliers that had been declared in default. The contracting officer in making the determination In this case also had in mind the fact that there was an impending coal strike which would have left the Government activities without any source of fuel supply. Under these circumstances, it was thought that a failure to relieve the situation by amendments allowing price increases would have impaired the ability of the Armed Forces of the United States to function effectively. It is conceded that while actual hostilities have ceased, a state of war still exists which permits the exercise of constitutional war powers and will continue until the ratification of a treaty of peace or an official proclamation of peace. *Fleming* v. *Mohawk Co.,* S. Ct. Nos. 583 and 512, decided April 12, 1947; *In re* 327 U. S. 1; *Kahn* v. *Anderson,* 255 TH. S. 1; *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146; *Hi jo* v. *United States,* 104 U. S. 315; *wles* v. *Soverinsky,* 65 F. Supp. 808; *Houston and No. Texas Motor Fry. Lines* v. *Elliott,* 63 F. Supp. 577; *C. A. Weed and Co.* v. *Lockwood,* 266 F. 705; *Commercial Cable Co.* v. *Burleson,* 225 F. 99. And there can be no question as to the authority of the President and the Congress, during a state of war, to exercise their constitutional war powers to provide for any emergency or necessity arising out of the war or incident to it, ms, for example, measures designed to prevent a recurrence of hostilities, to facilitate the demobilization of the armed forces, or to assist in the concluding of a treaty of peace. *In re supra; Hamilton* v. *Kentucky Distilleries Co., supra; Houston and No. Texas Fry. Lines* v. *Elliott, supra; Bowled* v. *Soverinsky, supra; Commercial Cable Co.* v. *Burleson, supra.* Moreover, the Congress, in passing a war measure, has power, within reasonable limitations, to provide when the act shall cease to be in force. *United States* v. *Armstrong,* 265 F. 68:5. In general, however, the war powers of the Federal Government end wit the necessity which brought them into operation. 67 C. J. 367. Hence, regulatory statutes founded upon the war power cease to be effective with the cessation of war. *Hood Rubber Co.* v. *Davis,* 255 Mass. 200, 151 N. E. 119; *George B. Newton Coal Co.* v. *Davis,* 281 Pa. 74, 126 A. 192. In this connection, see the case of *Micliael Tuck Foundation* v. *Hazelcorn,* 65 N. Y. S. 387, wherein the court stated: â€¢ â€¢ â€¢ The technical definitions continuing the state of war until the peace treaty is ratified, however, usually do not purport and are not interpreted to refer to rights of individuals arising out of contracts. The ordinary or lay concept of the meaning of the termination of war is the signing of an armistice or the cessation of actual hostilities. It has been so construed in a determination by the Appellate Division in this Department in Matter of *Jones* v. *Bchneer,* 270 App. Div. 1027, 63 N. Y. S. 627.

While it is recognized that emergency legislation enacted by the Congress to facilitate the prosecution or conduct of the war should be broadly and liberally construed so as to cover

every emergency and necessity arising out of or incident to the inception or progress of the war, the authority conferred by such a statute should not be extended to activities which are not in any way connected therewith. The case of *George B. Newton Coal Co.* v. *Davis, supra,* involved the validity of an Executive order purporting to have been issued pursuant to the Fuel and Food Act, approved August 10, 1917 (40 Stat. 276, 284), after the cessation of hostilities in the First World War, for the purpose of restoring rules affecting distribution of commodities and prices in effect during the war. Section 25 of the act there involved provided in pertinent part as follows: That the President of the United States â€¢ * * is hereby, authorized and empowered, *whenever and wherever in his judgment necessary for the efficient prosecution of the war,* to fix the price of coal and coke * * â€¢ to regulate the method of * * * distribution, apportionment, [etc.]; â€¢ * * *said ave authority and power may he exercised by him* * â€¢ Â» *during the war or for such part of said time as in his judgment may be necessary.* [Italics supplied.] In holding that the Executive order involved was invalid for the reason that the "emergency" on which it was basedâ€"an anticipated coal strikeâ€"could not be considered as being related to the "efficient prosecution of the war," the court stated: During the war the authority to fix rates and provide exclusive regulation was extended to all commodities. â€¢ â€¢â€¢â€¢â€¢â€¢â€¢ The right was based on what has been generally termed implied "war power." The exercise of this right or power has as its foundation the national security and defense; it Is of such paramount importance alike to the country and its citizens, and of such drastic consequence, it seems imperative it must not be carried beyond what is generally comprehended by the term, or into conditions of life not Justifying its existence. When lawfully brought into action by Congress, it must be kept within its own limitations. It should not exist after the circumstances are ended through which it was brought into life, namely, war or public insurrection actually existing. *Until the Supreme Court of the United States determines otherwise, the act in question must be held ineffective, after the cessation of hostilities in its broadest sense,* freed from technical construction by acts of Congress, having a tendency to continue on paper only hostile conditions into a time of peace. * * â€¢ [italics supplied.] See, also, 267 U. S. 292, where the conclusion reached by the Supreme Court of Pennsylvania in the above case was affirmed. In like manner, the Court of Claims of the United States, in the case of *Centaur Construction Company, Inc.* v. *United States,* C. C ls. No. 46242, decided January 6, 1917â€"which involved the construction of the First War Powers Actâ€"stated:

* * * By its very terms It was a war powers act, its provisions had to do with the prosecution of the war, its manifest purpose was to facilitate the preparation and carrying out of the war purposes. This construction is borne out by the legislative history of the provision. While the amendment in the present case purports to have been based upon a determination by the contracting officer that the prosecution of the war would be facilitated thereby, it is apparent from the recitals contained in the amendment itself that the primary purpose for which it was executed was to prevent "substantial financial loss to the contractor," and you concede that "the contract was amended because of the removal of petroleum products from price control to provide for increased prices corresponding to the rise in market prices which was occurring." In view thereof, and since the amendment was entered into in September, 1946, more than a year after actual hostilities had ceased, it would seem inconceivable that it could be said in good faith that the amendment would facilitate the prosecution of the war. Moreover, it would appear that the Congress, by the enactment of Public Law No. 657, approved August 7, 1946 (before the execution of the amendment here involved), recognized that after the cessation of hostilities the departments and agencies of the Government were not authorized to modify or amend contracts under Title H, section 201, of the First War Powers Act. The act of August 7,1946,60 Stat. 902, provides in part as follows: That where work, supplies, or services have been furnished between September 16, 1940, and August 14, 1945, under a contract or

subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U. S. C, Supp. IV, app.. sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within sixty days after the date of approval of this Act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and material men performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency concerned or by a central authority therein designated by such head. The extent and scope of the relief to be granted war contractors under Public Law No. 657 was given comprehensive study by the Congress, as is signified by the fact that the law was not enacted until nearly a year after VJ-day, and the primary, if not the sole, purpose of the act, is to afford relief to those war contractors who would have received relief under the First War Powers Act but for the capitulation of the Japanese government on that day. Finally, it may be observed that the Emergency Price Control Act of 1942, 56 Stat. 23, did not provide for the modification or amendment of contracts in the event of the suspension or removal of price controls, and while it may be, as recited in the amendment involved, that the parties to the contract, at the time of the execution thereof, contemplated the continuance of price control, the fact remains that the said act, as amended, plainly provides that all regulations, orders, price schedules and requirements thereunder should terminate on June 30, 1946. The record shows that the contractor submitted its bid during the month of June 1946, and although it is presumed to have had knowledge of the provisions of the Emergency Price Control Act, there is nothing in the contract which provides expressly, or by necessary inference, for an increase in the prices stipulated therein in the event of the suspension or removal of price control by the Office of Price Administration, or the discontinuance of such control as the result of the expiration of said act.

For the foregoing reasons, and upon the authorities cited, the decision of March 28, 1947, is affirmed.

(B-66809) LEAVES OF ABSENCEâ€"SICKâ€"TRANSFERS BETWEEN POSITIONS COVERED BY DIFFERENT SYSTEMSâ€"DOCTORS, ETC, OF VETERANS* ADMINISTRATION Tie authority vested In the Administrator of Veterans' Affairs by section 7 (b) of the act of January 3, 1946, to prescribe by regulation leaves of absence of doctors, dentists, and nurses of the Department of Medicine and Surgery, may not be regarded as authorizing the promulgation of a regulation to provide for the transfer of previously lost sick leave credits of such personnel, which had been accumulated in their former positions under different leave systems prior to their appointment to *the* Department of Medicine and Surgery. Comptroller General Warren to the Administrator of Veterans' Affairs, July 11,1947: Reference is made to your letter of May 29, 1947, as follows: Under Public Law 293, 79th Congress, approved January 3, 1946, the medical service in the Veterans' Administration, as then constituted, was abolished and there was authorized and established in the Veterans' Administration a Department of Medicine and Surgery. The Act provided that doctors, dentists and nurses in the medical service were to be continued in their present positions until their qualifications for appointment in the new Department were determined by the Administrator. Appointments of doctors, dentists and nurses in the Department of Medicine and Surgery may be made only after qualifications have been satisfactorily established in accordance with regulations prescribed by the Administrator without regard to Civil Service requirements and are for a probationary period of three years, and if, at the end of the probationary period the appointee is found by a board, appointed in accordance with regulations of the Administrator, not fully qualified and satisfactory, he may be separated from the service. The grades and full-pay ranges for

positions of doctors, dentists and nurses so appointed are prescribed by said Act. Doctors, dentists and nurses may also be employed by the Administrator without regard to the Classification Act of 1923, as amended, en a temporary full-time, part-time or fee basis under Section 14 (a) of said Act, but no temporary full-time appointment may be for a period of more than 90 days.

Under Section 7 (b) of the Act [59 Stat. 677] aforementioned, It Is provided that "Notwithstanding any law, Executive order, or regulation, the Administrator shall prescribe by regulation the hours and conditions of employment and leaves of absence of doctors, dentists, and nurses." Pursuant to this authority, the Administrator promulgated regulations governing leaves of absence of doctors, dentists and nurses in the Department of Medicine and Surgery (Section I, Paragraph 7, Circular 76, March 30, 1946). These regulations are similar but not identical with the annual and sick leave regulations promulgated by the President pursuant to authority vested in him under Sections 7 of the Acts of March 14, 1936 (49 Stat. 1161, 1162), and delegated by the President, for the period of the war, to the United States Civil Service Commission. (Section 7.1, Executive Order No. 9414, January 13,1944). The regulations relating to annual and sick leave of Government employees, as amended, in effect at the time of enactment of Public Law 293, 79th Congress, January 3, 1946, published in Federal Personnel Manual, Chapter Z, page 454, provided in Section 4.8 that when a permanent employee is appointed, reappointed, or transferred to another position as a permanent employee with no break in service or a break of less than 90 days, and the position to which he is appointed, reappointed, or transferred is not within the purview of the Leave Acts of March 14, 1936, the employee shall be furnished with a statement of his sick leave account and if he is subsequently appointed, reappointed or transferred to a position within the purview of such Acts with no break in service or a break of less than 90 days, the leave shown to be due shall be credited to his account This regulatory provision was amended March 20, 1947 and as amended is published In the Federal Personnel Manual, Chapter Z, on page 289. Doctors, dentists and nurses who previously had occupied positions in the former Medical and Hospital Service of the Veterans' Administration within the scope of the foregoing regulations relating to annual and sick leave of Government employees, upon accepting appointments to positions in the Department of Medicine and Surgery established by Public Law 293, 79th Congress lost, in effect, unless and until subsequently appointed, reappointed or transferred to a position within the purview of the Acts of March 14, 1936 substantial sick leave credits with resulting severe hardships in a number of instances in which such employees suffered extended periods of illnesses. While there is a liberal provision in Veterans' Administration Circular 76, Section I, Paragraph id (8) for advancement of sick leave to permanent and probational doctors, dentists and nurses, in reality this is an obligation against future earned sick leave and does not compensate them for previously earned sick leave lost at the time of transfer. The purpose of the Leave Acts of March 14, 1936, supra, was to provide vacations for and standardize the sick leave of all civilian officers and employees of the United States wherever stationed and of the government of the District of Columbia other than certain specific groups therein mentioned, and in Sections 7 of said Acts authority was vested in the President to administer such Acts under such regulations as he might prescribe so as to obtain, so far as practicable, uniformity in the application of said Acts. Since then, a number of separate and distinct leave systems have been provided by statute and regulation controlling the accumulation, crediting and charging of leaves of absence, with pay, applicable to various groups of civilian officers and employees of the Government, the terms and conditions of which are widely different. Authority to promulgate regulations under the different leave systems is vested in different officers of the Government. There is no specific provision in Public Law 293, 79th Congress, either authorising or prohibiting the transfer of leave credits of doctors, dentists and nurses upon appointment to positions in the Department

of Medicine and Surgery from positions previously occupied in the Medical and Hospital Service of the Veterans' Administration or in other Government agencies or upon their transfer from the Department of Medicine and Surgery to positions In other Government agencies. It is believed that the broad discretionary authority vested in the Administrator in Section 7 (b) of Public Law 293, 79th Congress, supra, might be construed as sufficient to permit the Administrator, by regulation, to set up leave credits for doctors, dentists and nurses while they are employed in the Departmerit of Medicine and Surgery in amounts equivalent to sick leave credits in their favor at the time of their appointments. As a matter of equity, such action clearly appears to be justified, and in consonance with the legislative intent, as manifested by the enactment of Public Law 525, 78th Congress, December 21. 1944, allowing lump sum payment for leave of officers and employees of the Government upon their separation from service or transfer from one agency of the Federal Government to another, which is evidence of an intent to protect the annual or vacation leave rights of such officers and employees.

I would appreciate an expression of your views as to the extent of the discretionary authority vested in me under Section 7 Public Law 293, 79th Congress, In relation to providing sick leave credits for doctors, dentists and nurses appointed to the Department of Medicine and Surgery equivalent to sick leave accumulated to their credit in their former positions in the Medical and Hospital Service of the Veterans' Administration or other Federal agency. The situation here presented is analogous to that considered in 24 Comp. Gen. 304, wherein it was held that, in the absence of a statute specifically so providing, the transfer of leave credits between services or employments under different leave systems may not be authorized by regulation. In said decision it was stated at pages 306 and 307: Referring to the concluding paragraph of your letter, I find no authority vested in you pursuant to the President's delegation by section IV-11 of Executive Order No. 8189, dated July 5, 1939, under the statutory authority vested in him by 22 U. S. Code 1, to promulgate leave regulations which would affect the accumulation, crediting, or charging of leave of absence with pay based upon service of personnel other than as officers and employees of the Foreign Service, exclusive of service in another capacity either prior or subsequent to service as an officer or employee of the Foreign Service. It is understood your question is directed more particularly to the two leave systems provided for officers and employees of the Foreign Service and for departmental officers and employees, the first two leave systems above mentioned. While you have authority to promulgate regulations controlling the accumulation, crediting, and charging of leave of officers and employees of the Foreign Service within the limitations fixed by law, I find no authority vested in you to promulgate regulations affecting the accumulation, crediting, or charging of leave of absence of departmental officers and employees, which authority is vested by law in the President and, during the period of the war, delegated to the United States Civil Service Commission. See Section 7.1 of the Executive Order 9414 dated January 13, 1944. The leave differential for foreign service saved by section 5 of the Annual and Sick Leave Acts of March 14, 1936, *supra,* to which you refer, relates only to foreign service coming within the purview of those statutes exclusive of service under other leave laws such as that applicable to officers and employees of the Foreign Service. Because of the above considerations, the transfer of leave credits between service or employment under different leave systems never has been authorized and, under existing laws, may not be authorized by regulation. As there now exists no common basis or authority of law upon which such a regulation could be Issued, there would be required a statute fixing the terms and conditions upon which the leave could be transferred between service under different leave systems, in order to authorize such transfers. This appears to have been recognized by the President in section 4.9 (b) of the existing leave regulations applicable to officers and employees of the departments and establishments of the Government contained in Executive Order No. 9414, *supra,* which provides as follows: "When an

employee is appointed, reappointed, or transferred from one permanent position to another permanent position, without a break in service, his leave account shall be disposed of as follows: â€¢ *â€¢â€¢â€¢â€¢â€¢â€¢ If the position to which he is appointed or transferred is not within the purview of the leave acts of March 14, 1936, the employee shall be furnished with a statement of his leave account, and if he is subsequently appointed, reappointed, or transferred to another position within the purview of such acts, the leave shown to be due will be credited to his account."

See, also, 24 Comp. Gen. 651. The rule stated in the above decision properly was recognized by your Department in promulgating the present leave regulations for personnel of the Department of Medicine and Surgery by expressly providing under section I, paragraph (2) and (3) of Circular 76 dated March 30,1946, as follows: (2) Doctors of medicine, dentists and nurses may not transfer leave credits earned in a position subject to the annual and sick leave Act of March 14, 1936, as amended by Act of March 2, 1940, Act of December 17, 1943 and Act of June 1, 1945, upon transfer to a position subject to those instructions. The transfer of leave credits between service or employment under different leave systems is not authorized by law. Leave credits earned in the Medical Service cannot be transferred to the Department of Medicine and Surgery. (3) All accumulated and current accrued annual leave shall be liquidated by a lump-sum payment to the employee in cases involving transfer to agencies under different leave systems. This section applies even though the transfer Is to a position in the same agency, such as conversion from a Civil Service position in the Medical Service, to an excepted position in the Department of Medicine and Surgery. I do not find that your authority to "prescribe by regulation * * * leaves of absence of doctors, dentists, and nurses" is any broader than that vested in the Secretary of State with respect to Foreign Service officers, which authority was considered in the above quoted decision. Accordingly, following the rationale of that decision I have to advise that the issuance of a regulation along the lines proposed in your letter would not be authorized.

(B-67070) ARMY OFFICERS ACCEPTING EMPLOYMENT WITH INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT Retired Army officers may, without regard to the dual compensation and employment statutes (act of May 10, 1916, as amended; act of July 31, 1894, as amended; and section 212 of the act of June 30, 1932), accept compensation attached to their employment with the International Bank for Reconstruction and Developmentâ€”an international agencyâ€”in addition to their retired pay, it appearing that funds contributed by the United States to finance its subscription to the Bank's capital stock will be intermingled with funds provided by other member nations and, as such, will lose their status as Federal funds. In view of the broad purpose of the act of November 21,1945, to permit persons on terminal leave from the armed forces to accept employment, generally, without regard to the civil office restrictions of section 1222, Revised Statutes, military personnel who, while on terminal leave pending release from active duty or retirement, are employed by the International Bank for Reconstruction and Development, an international agency, are to be regarded as entitled to their active-duty pay and allowances while so employed, in addition to the compensation attached to their employment with the Bank.

Assistant Comptroller General Yates to the Secretary of War, July 15, 1947: I have your letter of June 13,1947, as follows: The Chief of Engineers has been informed that the International Bank for Reconstruction and Development is considering the employment of one or more retired officers of the Corps of Engineers on an annual salary basis In connection with engineering projects upon which the Bank may be required to act. It is the view of this Department that the Bank is an international agency and that the principles enunciated in your opinions of July 11, 1045 and August 20, 1945 (25 Comp. Gen. 38 and 203) with respect to employment of retired Army officers by the United Nations Relief and Rehabilitation Administration, would apply to the employment of retired officers by the

International Bank. Since the War Department is desirous of issuing proper and comprehensive advice to military personnel who may be asked to accept employment with the International Bank for Reconstruction and Development, your decision is requested as to whether military personnel may be employed by the Bank, while on terminal leave or in a retirement status, and, if so, will such personnel be entitled to receive their active or retired pay while so employed. The International Bank for Reconstruction and Development was organized for the purpose of assisting in the reconstruction and development of territories of member nations by facilitating the investment of capital for productive purposes; promoting private foreign investment by means of guarantees or participations in loans and other investments made by private investors and, when private capital is not available, providing funds out of its own capital; promoting long-range balanced growth of international trade, etc. The Bank came into existence on December 27,1945, when the Articles of Agreement of the International Bank for Reconstruction and Development were accepted and signed on behalf of governmentsâ€"including the United Statesâ€"having approximately 80 percent of the total capital stock subscriptions allocated to the 44 nations represented at the United Nations Monetary and Finance Conference held at Bret ton Woods, New Hampshire, in July 1944. Article II, section 3 of the said Articles of Agreement requires that each member nation subscribe to a minimum number of shares of the Bank's authorized capital stock of $10,000,000,000. Under Article V, section 14, of the said Articles of Agreement, the Bank's Board of Governors is authorized to determine what part of the Bank's net income, after making provision for reserves, shall be allocated to surplus and what part, if any, shall be distributed to member nations. By the act of July 31, 1945, 59 Stat. 512, 514, the Congress authorized the President to accept membership in the Bank on behalf of the United States and also authorized the Secretary of the Treasury to use as a public debt transaction not to exceed $4,125,000,000 of the proceeds of any securities thereafter issued under the Second Liberty Bond Act, as amended, to finance the United States subscription to the International Monetary Fund and the International Bank for Reconstruction and Developmen t. Thus, it clearly appears that the Bank is an international agency, rather than a Federal agency. Also, since the administrative expenses of the Bank are to be paid from operating profitsâ€"or capital contributions in the event of an operating deficitâ€"it appears the funds authorized by the Congress for the payment of the subscription of the United States to the Bank's capital stock will be intermingled with funds provided by other member nations, and, as such, will lose their status as Federal funds. 23 Comp. Gen. 744.

In decision of July 11,1945, B-50542,25 Comp. Gen. 38, referred to in your letter, there was considered the question of whether the employment of military personnel by the United Nations Relief and Rehabilitation Administration, while on terminal leave or in a retirement status, would subject such personnel to the prohibitions contained in the dual office or dual compensation acts of May 10, 1916, 39 Stat. 120, as amended by the act of August 29,1916, 39 Stat. 582; July 31,1894, 28 Stat. 205, as amended; and section 1222, Revised Statutes, which provides that the commission of an "officer of the Army on the active list" shall be vacated upon acceptance of a civil office; or the limitation of $3,000 per annum on combined salary and retired pay imposed by section 212 of the Economy Act of June 30, 1932, 47 Stat. 406. In that decision, it was stated in part as follows: The statutes, *supra* [section 1 of the Joint Resolution of March 28, 1944, 68 Stat. 126, section 201, the act of June 30,1944, 58 Stat 629], support the statement made in the decision of April 1, 1944, 23 Comp. Gen. 744, to the effect that the United Nations Relief and Rehabilitation Administration is an international agency, rather than a Federal agency. Also, It is understood that the salaries of the personnel referred to in your letter are to be paid from that part of the appropriation, *supra,* which has been or will be turned over to the Director General as a contribution to the Administration's administrative expense fund as contemplated under Article IV, V, and VI of the Agreement herein before referred to. If

that is the situation none of the dual compensation statutes cited la the concluding paragraph of your letter (acts of May 10, 1916, as amended by the act of August 29, 1916, 39 Stat. 582; July 31, 1894, 28 Stat. 205, as amended, and section 212 of the act of June 30, 1932, 47 Stat. 406) would be contravened If military personnel accepted appointment or employment with the United Nations Relief and Rehabilitation Administration during terminal leave from the military service or upon retirement from the military service * * *. That is to say, said statutes prohibiting dual appointments or employments, or payment of more than one salary to the same person during the same period of time in the Federal service would have no application to dual appointments or employments or payment of more than one salary in a Federal office or position and in an office or position under the United Nations Relief and Rehabilitation Administration. Section 1222, Revised Statutes, provides as follows: *"Accepting or holding civil office.*â€"No officer of the Army on the active list shall hold any civil office, whether by election or appointment, and every such officer who accepts or exercises the functions of a civil office shall thereby cease to be an officer of the Army, and his commission shall be thereby vacated." An officer of the Army Is "on the active list" during authorized leave of absence whether the leave be taken during active service or as terminal leave immediately prior to final discharge from the active service. It has been held that the term "civil office," as used in section 1222, Revised Statutes, is not limited to a Federal civil office, but includes, also, a State officeâ€"a non-Federal office. See 13 Ops. Atty. Gen. 310, cited in 19 Comp. Gen. 826, at page 828. Upon the basis of the same reasoning a civil office with an international agencyâ€"another class of non-Federal officeâ€"must be regarded as a "civil office" within the meaning of section 1222, Revised Statutes.

Yon are advised, therefore, that a retired officer of the Army may accept an office or position with the United Nations Relief and Rehabilitation Administration, the salary of which Is payable from contributed administrative expense funds, without regard to any of the dual compensation statutes, but that the acceptance of an office or position with the United Nations Relief and Rehabilitation Administration by an officer of the Army on the active list during terminal leave from the military service would vacate bis commission as an Army officer effective the day he accepts the civil office. In decision of August 20, 1945, B-50542, 25 Comp. Gen. 203, also referred to in your letter, it was further emphasized that section 1222, Revised Statutes, has reference only to an "officer of the Army on the active list" and that such phrase generally is used to denote officers of the Regular Army other than thoseâ€"and as distinguished from thoseâ€"on the "retired list" and that such phrase generally has no application to other officers of the Army of the United States. And in decision of November 2, 1945, 25 Comp. Gem 377, it was held, quoting the syllabus that: The temporary employment by a State of an Army officer on the active list during terminal leave prior to retirement to direct the construction of a particular State project under a position which does not require an oath of office or have compensation or title fixed by law may not be regarded as employment in a "civil office" within the contemplation of section 1222, Revised Statutes, such as would vacate his commission upon acceptance of such employment, and, therefore, the officer would be entitled to his otherwise proper active duty pay and allowances while so employed. The conclusion reached in said decisions respecting the application of the dual compensation laws to Army officers on the retired list would appear equally for application to retired officers who accept employment with the International Bank for Reconstruction and Development. However, with respect to that part of the decisions, *supra,* to the effect that under section 1222, Revised Statutes, the acceptance of an office with the United Nations Relief and Rehabilitation Administration by an officer of the Army on the active list during terminal leave would vacate his commission in the Army, attention is invited to Public Law 226, approved November 21, 1945, 59 Stat 584, enacted subsequent to the said decisions. The latter act provides that any person who, subsequent to May L, 1940, shall have performed

active duty in the armed forces may, while on terminal leave, enter or reenter "employment of the Government of the United States, its Territories or possessions, or the District of Columbia (including any corporation created under authority of an Act of Congress which is either wholly controlled or wholly owned by the Government of the United States, or any department, agency, or establishment thereof, whether or not the employees thereof are paid from funds appropriated by Congress)," and receive, in addition to compensation for such employment, pay and allowances from the armed forces for the unexpired portion of such terminal leave. Section 2 (d) of the said act, 59 Stat. 585, provides, also, for payment for unused leave of any such person who enters the employment of a State, or any political subdivision thereof. In decision of March 28, 1946, B-56625, 25 Comp. Gen. 677, to Colonel Carl Witch er, Finance Department, U. S. Army, it was stated generally with respect to the effect of the said act of November 21,1945, upon the provisions of section 1222, Revised Statutes, as applied to military personnel who accept positions with the Federal Government during a period of terminal leave pending release from active duty or retirement, as follows (page 679):

â€¢ * â€¢ Moreover, an examination of the legislative history of the said act of November 21,1945, discloses that the provisions of section 1222, along with the various statutes prohibiting dual employment and the receipt of double compensation, were particularly brought to the attention of the Congressional committees considering the proposed legislation. And that it was the intent of the Congress to authorize the benefits provided by the said 1945 statute notwithstanding the provisions of such laws, including section 1222, Revised Statutes, clearly appears from House Report No. 1163, accompanying S. 1036 (which, as amended by the House of Representatives, became the act of November 21,1945), wherein specific mention is made of section 1222, Revised Statutes, as well as the dual employment and dual compensation statutes, as constituting existing legislation the provisions of which were intended to be avoided by enactment of the bill. Hence, It is concluded that in enacting the said act of November 21, 1945, the Congress intended that for the period of terminal leave from the armed forces such statute would supersede the provisions of section 1222, Revised Statutes, as well as the dual compensation statutes and any other law to the contrary, and that the benefits of the statute were to extend to members of the Regular Army as well as to members of other components of the armed forces. * * * While that decision clearly recognized that the act of November 21, 1945, superseded the provisions of section 1222, Revised Statutes, insofar as concerns periods during which officers of the Army on the active list are on terminal leave pending release from active duty or retirement, the said act refers to military personnel who enter or reenter the employment of "a State, or any political subdivision thereof" or "the Government of the United States, its Territories or possessions, or the District of Columbia (including any corporation created under authority of an Act of Congress which is either wholly controlled or wholly owned by the Government of the United States, or any department, agency or establishment thereof." As herein before pointed out, the International Bank for Reconstruction and Development is an international agency whose capital stock is owned by various governments, and, consequently, it is not expressly included in the language of such act. However, the express enumeration in the act of the "employment" that any person may enter or reenter while on terminal leave from the armed forces without forfeiting his military pay does not appear to have been intended restrictively so as to preclude such persons on terminal leave from entering or reentering the employment of other than a State, the Federal Government, etc., but rather as broadly removing the theretofore existing restrictions contained in the dual office and dual compensation laws, as well as section 1222, Revised Statutes, so as to permit such persons to accept employment, generally, without regard to such restrictive statutes, while on terminal leave from the armed forces. Explaining the need for such legislation it was pointed out in House Report No. 1163, accompanying S. 1036 (which, as amended by the

House of Representatives, became the act of November 21, 1945), that under then existing laws, members of the armed forces on terminal leave might accept private employment without forfeiting the pay and allowances to which they were entitled while on terminal leave, but that such members might not accept employment in civil positions under the Federal Government and receive compensation for such employment concurrently with the receipt of their military pay and allowances; and that officers of the Army on the active list were prohibited by section 1222 of the Revised Statutes from holding civil office.

It does not appear that the employment here involved would constitute the holding of a civil office within the meaning of section 1222, Revised Statutes. *Of.* 25 Comp. Gen. 377. However that may be, in view of the broad purpose sought to be accomplished by the enactment of the said Public Law 226, approved November 21, 1945, it is the view of this office that officers of the Army on the active list may, while on terminal leave pending release from active duty or retirement, accept such employment with the International Bank for Reconstruction and Development without vacating their commissions in the Army. Accordingly, in response to the questions presented in the concluding paragraph of your letter, it is concluded that military personnelâ€"including retired officers and officers on the active list of the Armyâ€" who may accept employment with the said Bank, while on terminal leave pending release from active duty or retirement, will be entitled to their active duty pay and allowances while so employed, in addition to the compensation attached to their employment with the Bank; and that officers on the retired list not on active duty may receive their retired pay, in addition to the compensation attached to their employment with the Bank, without regard to the dual office and dual compensation laws. (B-67785) BIDSâ€"MISTAKES Where the Invitation to bid was clear and unambiguous as to the needs of the Government and the contracting officer requested and received, prior to award, confirmation of the contractor's bid as to weights and prices, an error in the shipping weight alleged subsequent to award must be regarded as an unilateralâ€"not mutualâ€"mistake, due solely to the contractor's negligence or oversight and in nowise contributed to by the Government, and may not be regarded as affording any legal basis for modifying the bid which, having been accepted by the Government in good faith, consummated a valid and binding contract Acting Comptroller General Yates to the Secretary of the Interior, July 16,1947:I have your letter of July 3, 1947, with enclosures, relative to an error alleged by the Fabric-Steel Co. to have been made in its bid dated April 6, 1947, which was accepted on May 22, 1947. You request a decision as to the action to be taken in the matter. The Department of the Interior, Bureau of Reclamation, Denver, Col., invited bids under Specification No. 1746â€"to be opened April 8, 1947â€"for furnishing one lot of trash racks for Horse tooth Dam, item 2. Paragraph 14 of the Special Conditions specified that each bidder should state, in the blanks provided therefor in the schedule, the shipping points, freight classifications, and total shipping weights of the apparatus to be shipped under each freight classification from each shipping point involved, and that, under bids providing for delivery f. o. b. cars at the shipping point, all equipment, materials and supplies would be shipped on Government bills of lading and the total shipping weights, freight classifications, and shipping points stated by the bidder in his bid would be used in computing the delivered cost to the Government and in determining the low bid. In response to the invitation, the Fabric-Steel Co. submitted a bid dated April 6, 1947, wherein it offered to furnish item 2 for $1,544 f. o. b. cars Oakland, Calif., and specified the shipping weight as 15,750 pounds. By letters dated April 22 and May 12,1947, the Bureau of Reclamation requested the company to confirm the weights and prices specified in its bid and, in reply of May 16,1947, the company statedâ€" Regarding our bid of April 6, 1947, Spec. 1746 for trash racks, we wish to confirm the following weights and prices as quoted:Item #1 Weight 7200# price $715.00 FOB Shipping Point Item #2 Weight 15750# price $1544.00 FOB Shipping Point Combination bid for both Items #1 & 2 $2,215.00 F. O. B. Shipping Point. Award on item 2 was made to the Fabric-Steel Co. on May 22, 1947.

By letter dated June 2,1947, the company advised the Bureau of Reclamation as follows: Regarding the award made to this company for Item # 2 of Specifications # 1746 for trash racks for the outlet works at Horse tooth Dam, Colorado Big Thompson Project, Colorado. We are faced with a serious problem and would like your advice on what can be done. Our estimator, W. Sober, no longer in our employ, made an error on the take off for this project. His total weight for the ten racks was 15,190 lbs. The actual weight is 45,520 lbs. When your letter of May 12th reached us, we were unable to check the weights as we had no specification to go by. We were also unable to locate his takeoff sheet at that time as we were in the process of moving Into our new location. We have, since however, located his take off and are enclosing it with his error marked in blue pencil.

If we are forced to fulfill this contract, it will mean that we will take quite a loss, something that we cannot afford to do at the present time. We would appreciate hearing from you advising us of what course that we can take. The referred-to estimate sheet shows certain figuresâ€"apparently weightsâ€"under the heading "Horse tooth Dam" which total 1,519 and which was extended on the basis of a quantity of 10 to the total amount of 15,190. One of the figures comprising said total of 1,519 is 345 which figure is encircled by a blue pencil mark and in connection with which a notation appears "Errorâ€"should be 3395#." The invitation issued in the present case was clear and unambiguous as to the needs of the Government. The responsibility for the preparation of the bid submitted in response thereto was upon the bidder. See *Frazier-Davis Construction Co.* v. *United States,* 100 C. C ls. 120, 163. It is clear from the statements made by the company in its letter of June 2,1947, that any error that may have been made in the bid was due solely to the lack of proper care on the part of the company in computing its bid, and was in no way induced or contributed to by the Government. See *et al.* v. *Schroeppel,* 226 111. 9, 80 N. E. 564, wherein the court denied relief to appellant who had made a mistake in adding a column of figures representing the extensions of items on which bids were requested and the error was not alleged until after award. The court stated with respect to the matter of the mistake, page 566, as follows: * â€¢ * If It [the contract] can be set aside on account of the error In adding up the amounts representing the selling price, It could be set aside for a mistake in computing the percentage of profits which appellants intended to make, or on account of a mistake in the cost of the lumber to them, or any other miscalculation on their part. If equity would relieve on account of such a mistake there would be no stability In contracts, and we think the Appellate Court was right in concluding that the mistake was not of such a character as to entitle the appellants to the relief prayed for. It is clear that such mistake as was made by the company in its bid was unilateralâ€"not mutualâ€"and, therefore, does not entitle the company to relief. See *et al.* v. *United States,* 56 F. Supp. 505, 507; and *Ogden* Â£â€¢ *Dougherty* v. *United States,* 102 C. C ls. 249, 259. Moreover, the company was requested to verify its bid as to weights and prices, and in reply it confirmed the weights and prices specified in its bid. After such verification, the contracting officer was under no obligation to make further inquiry as to the correctness of the bid. See *Carnegie Steel Company* v. *Connelly,* 89 N. J. L. 1, 97 A. 774, and *Shrimpton Manufacturing Company* v. *Brin,* 59 Tex. C iv. App. 352, 125 S. W. 942. The fact that the acceptance of the bid was not made until after the company had been given an opportunity to verify its bid, precludes any assumption that the contracting officer exercised Aether General Yates Â» L. W. Darby. as Jay IT, INT: is made to year letter of May 29. 1?47 (A Disbursement Vouchers;, submitting a voucher together with related papers, stated in favor of the City of Barley. Idaho, in the amount of for assessments? for street improvements levied against the United States as owner of Lot 1 i, Block 164. Burton's First Addition. City of Burley, Idaho, occupied by the Forest Service as an administrative site for the National Forest. The record shows that on May 27, ISIS, the City Council of Burley adopted a resolution providing for the creation of a local improvement district within the corporate city limits and that the Government site here in question is

within the said improvement district. In a statement by the Acting Forest Supervisor on the reverse side of the Toucher recommending approval of the voucher for payment it is stated, as follows:

Some 5 or 6 years ago a light oiled surface was placed on the street with insufficient base. This surface has broken up causing difficult and dangerous travel conditions during periods of wet weather. The ground in this vicinity is extremely level making it difficult to get proper drainage. These street improvements will remedy this situation since storm sewers are being installed in connection with the curb and gutter project. During periods of dry weather the dust condition was a menace to safe travel along this street, and has a damaging effect on the exterior and interior of buildings and landscaping. The street improvement work will eliminate these hazards and damaging conditions. Title to the Burley Administrative site extends to the center of the street. The street improvement work consists of: 1. Regrading, re graveling and oiling. 2. Construct, reconstruct, and renew curbs gutter along each side of every street within the improvement district established. The City of Burley let the job out on competitive bid and the contract was awarded to the lowest bidder. It is to the advantage of the Government to reimburse the City on a cost basis, rather than to contract separately for doing the job. You will observe from the voucher itemization that the price paid to the City is less by $26.11 than It would have cost the Government to hire this contractor to do the job at the same rates as those charged the City of Burley. These rates are the lowest obtainable. It is a well settled rule that lands owned by the United States cannot be taxed by a State or by any of the political subdivisions of a State. *Van Brooklyn* v. *Tennessee,* 117 U. S. 151; *United States* v. *Power County, Idaho,* 21 F. Supp. 684; *cf. Pacific Spruce Corp.* v. *Lincoln County,* 21 F. 586. This rule applies with equal force where the tax is a special tax or assessment for local improvements as well as in the case of a general property tax against lands owned by the United States. *Lee* v. *Osceola and Little River Road Improvement District,* 268 U. S. 643; *Mullen Benevolent Corporation* v. *United States,* 290 U. S. 89; *United States* v. *Anderson Cottonwood Irrigation District,* 19 F. Supp. 740; 18 Comp. Gen. 562. *Cf.,* also, *People of Puerto Rico* v. *United States,* 134 F. 267. A special assessment is a tax within the rule precluding a State from taxing lands owned by the United States, because it is an exercise of the sovereign power of taxation and, like other taxes, is an involuntary exaction. See *United States* v. *Anderson Cottonwood Irrigation District, supra; Hagar* v. *Reclamation District,* 111 U. S. 701. Notwithstanding the various theories advanced in your letter as being favorable to payment of the amount claimed on the voucher the conclusion is required that the claim presented is essentially a demand by the City of Burley for the payment of an assessment for street improvements against land owned by the United States; and, as was stated in 18 Comp. Gen. 562, an assessment of that type "is an involuntary exaction, and as such is a tax which the United States may not be required to pay." The various sections of Idaho Statutes authorizing the creation by municipal action of improvement districts such as here involved for the purpose of making street improvements and other similar purposes are found in sections 49-2501 to 49-2560 Idaho Code annotated, 1932, formerly sections 3911-4151 Idaho Compiled Statutes, 796802â€"48 *i* 1919. The first step is an ordinance declaring the intention to create the improvement, describing the section to be improved, estimating the cost, and declaring that the cost is to be assessed against the contiguous property. Protests may be made and are to be heard and considered, and thereafter an ordnance is passed creating the district and providing for taxation and assessment of the cost upon all parcels of land within the district in proportion to benefits. Assessments made to pay the cost of the improvements constitute liens against the property assessed. The earlier statutory provisions cited above were considered by the Supreme Court of the United States in the case of *Mullen Benevolent Corporation* v. *United States, supra.* In that case suit was brought under the Tucker Act, 24 Stat. 505, by the holder of improvement bonds issued by a local improvement district in Idaho to finance sidewalk and sewer

construction, and it was sought to collect the balance due on the basis of a reassessment made after certain of the property benefited had been acquired by the United States. The Supreme Court of the United States held that assessments of a local district, an adjunct of an incorporated city such as there involved, for street improvements were taxes and that the Government was not liable for assessments levied after it acquired title. In denying the claim the court stated at page 91, "But as the land was then owned by the United States, the assessment was a nullity. *Van Brooklyn* v. *Tennessee,* 117 U. S. 151." In a similar case in 1925, *Lee* v. *Osceola* cÂ£* *Little River Road Improvement District, supra,* this immunity to assessment for local improvements was extended to annul a reassessment made after the property had been conveyed by the United States to private owners, the improvements having been completed and the first assessment made while the land was owned by the United States. In the situation involved in B-22714, March 19, 1942, referred to in your letter, construction of the sewer with the privilege to the Government of connecting to it was in practical effect a specific service necessary to the use, occupation and operation of the buildings there involved. While in the present case an improved road may be more desirable than the old road, yet its construction was not necessary to the Government's continued use and occupancy of the adjacent property. Hence, the assessment made in the present case cannot be viewed as a claim for a service such as involved in the said decision of March 19, 1942. Accordingly, certification of the voucher is not authorized. The voucher and related papers are returned herewith.

(B-66166) FAMILY ALLOWANCE BENEFITSâ€"DURATION OF ENTITLEMENT NAVY ENLISTED MEN EXTENDING ENLISTMENTS The family allowance authorized by section 9 (a) of the Armed Forces Voluntary Recruitment Act of 1945 for enlisted men's dependents during the present war and six months thereafter or the term of enlistments entered into prior to July 1, 1946, whichever period is longer, is not payable in the case of a Navy enlisted man beyond the original term of such an enlistment, or the wartime period, by reason of an extension of enlistment under the act of August 22, 1912, as amendedâ€"the extension having no effect to bestow greater benefits than if the man were discharged and reenlisted at expiration of enlistment. Compare 26 Comp. Gen. 83. Assistant Comptroller General Yates to the Secretary of the Navy, July 21, 1947: There has been considered your letter of May 6,1947, as follows: Numerous inquiries are being received by the Bureau of Naval Personnel relative to the entitlement by enlisted personnel of the Navy to benefits under the Servicemen's Dependents Allowance Act of 1942 (56 Stat. 381), as amended. These questions arise, more particularly, under the amendment effected by the Armed Forces Voluntary Recruitment Act of 1945, approved October 6, 1945 (59 Stat. 538). I have noted your decision of August 5, 1946, B-57734 (26 Comp. Gen. 83), particularly as it might have application to the questions herein presented. The Navy, however, as indicated in that decision, has the benefit of legislation authorizing the extension of enlistments. (Act approved August 22,1912 (37 Stat. 331), as amended.) In addition, naval enlistments may be for a term of up to six years as provided in the Act approved August 18, 1941 (55 Stat. 629). Because of these factors your decision mentioned above, on questions raised by the War Department, is somewhat limited in its application to the Navy. For these reasons the present inquiry is made. Notwithstanding present entitlement for the duration of the present war plus six months or the enactment of legislation proposed to extend the family allowance benefits to all personnel in active service to 1 July 1949, a decision is requested on the following question: Is an enlisted man in the active naval service entitled to the benefits of Section 9 of the Armed Forces Voluntary Recruitment Act of 1945 approved 6 October 1945 (59 Stat. 541), during the combined period of his current enlistment and any extension thereof if, (a) his enlistment contracted prior to 1 July 1946 is extended after 1 July 1946 for a period of one, two, three or four years and the total contract including the extension, does not exceed six years; (b) his enlistment contracted prior to 1 July 1946 is extended after 1 July 1946 for a period of one, two, three or four years and the total

contract including the extension, does exceed six years? Section 9 (a) of the Armed Forces Voluntary Recruitment Act of 1945, 59 Stat. 541, is as follows: Section 101 of the Servicemen's Dependents Allowance Act of 1942, as amended, is amended to read as follows: "Sec. 101. The dependent or dependents of any enlisted man in the Army of the United States, the United States Navy, the Marine Corps, or the Coast Guard, including any and all retired and reserve components of such services, shall be entitled to receive a monthly family allowance for any period during which such enlisted man is in the active military or naval service of the United States on or after June 1, 1942, (1) during the existence of any war declared by Congress and the six months immediately following the termination of any such war or (2) during a period of enlistment or reenlistment contracted by such enlisted man prior to July 1, 1946."

The act approved August 22, 1912, 37 Stat. 331, as amended, 34 U.S.C. 184,is as follows: Extension of term. The term of enlistment of any enlisted man in the Navy and Marine Corps, including enlistment for minority, may, by his voluntary written agreement, under such regulations as may be prescribed by the Secretary of the Navy with the approval of the President, be extended for a period of either one, two, three, or four full years from the date of expiration of the then existing term of enlistment, and subsequent to said date such enlisted men as extend the term of enlistment as authorized in this section shall be entitled to and shall receive the same pay and allowances in all respects as though regularly discharged and reenlisted immediately upon expiration of their term of enlistment, and such extension shall not operate to deprive them upon discharge at the termination thereof of any right, privilege, or benefit to which they would be entitled at the expiration of the former term of enlistment. In decision of August 5,1946, 26 Comp. Gen. 83, referred to in your letter, it was held that Army personnel enlisting or reenlisting under the Armed Forces Voluntary Recruitment Act of 1945 were saved the benefits of the Servicemen's Dependents Allowance Act of 1942, 56 Stat. 381, at least for the period of any such enlistment or reenlistment entered into prior to July 1,1946; that in those cases where an enlistment or reenlistment entered into prior to July 1, 1946, was for a shorter period than the maximum period of 3 years authorized for enlistments and re enlistments in the Regular Army by the said recruitment act, the enlistment contract could be amended to the maximum period of 3 years, the time served in the original enlistment to be credited on the amended enlistment period; but that any procedure which would have the effect of further extending the effective period of the Servicemen's Dependents Allowance Act of 1942 would be unauthorized. The act of August 18, 1941, 55 Stat. 629, authorizes enlistments in the Navy for a term of up to 6 years. Therefore, Navy personnel who enlisted or reenlisted prior to July 1,1946, are saved by section 9 (a) of the Armed Forces Voluntary Recruitment Act of 1945, *supra,* the benefits of the Servicemen's Dependents Allowance Act of 1942 at least for the period of such enlistments or re enlistments. Under the provisions of the act of August 22,1912, *supra,* the term of Naval enlistments may be extended for a period up to 4 years, and Naval personnel who extend the term of their enlistment under said act are entitled to receive the same pay and allowances in all respects as though regularly discharged and reenlisted immediately upon the expiration of their term of enlistment. Naval personnel who, on or after July 1, 1946, are regularly discharged from an enlistment or reenlistment entered into prior to July 1, 1946, and immediately reenlist are not entitled to the benefits of the Servicemen's Dependents Allowance Act of 1942 unless, of course, the period of the duration of the war and 6 months thereafter has not then expired, and, therefore, since Naval personnel who extend their enlistment are entitled to the same benefits in all respects as though regularly discharged and reenlisted immediately upon the expiration of their term of enlistment, there is no basis for granting such personnel greater benefits than those who are regularly discharged and immediately reenlist.

Accordingly, answering your questions specifically, Naval personnel serving under the

circumstances there set forth are entitled under the Armed Forces Voluntary Recruitment Act of 1945 to the benefits of the Servicemen's Dependents Allowance Act of 1942 only for the period of such enlistments or re enlistments as were entered into prior to July 1, 1946, or for the period of the duration of the war and 6 months thereafter, whichever is the longer.

(B-66737) APPROPRIATIONSâ€"FISCAL YEARâ€"EXPENSES OF TRANSPORTATION OF DEPENDENTS AND HOUSEHOLD EFFECTS The expenses of transportation of an employee's Immediate family and household effects In connection with a transfer of official station, as authorized by the administrative expense statute of August 2, 1046, are chargeable to the appropriation current at the time such expenses are Incurred, and not to the appropriation current at the time of Issuance of the transfer order, in the absence of a specific statutory provision to the contrary. Comptroller General Warren to the Secretary of Agriculture, July 28, 1947: There has been considered your letter of May 28,1947, as follows: Public Law 600, 79th Congress, provides, among other things, that under prescribed regulations any civilian officer or employee of the Government who. Id the Interest of the Government, is transferred from one official station to another, shall, when authorized in the order directing the travel, be allowed and paid from Government funds the expenses of travel for himself and the expenses of transportation of his immediate family and household goods. Prior rulings of your office have held that the appropriation current at the time the travel expenses of the employee were actually incurred is to be charged with such expenses. Under the provisions of Public Law 600, the question arises as to whether the time element of these rulings is required to be applied with equal force to the transportation expenses of the employee's immediate family and household goods which are also authorized at the time the employee is directed to change his official station, but over which the administrative agency is without control as to the time when such transportation costs will actually he incurred by the employee If it Is held that the transportation expenses of the employee's immediate family and household goods, generally, a major portion of the obligation, are not chargeable to the appropriation current at the time the employee actually changes official station, without regard to the time such transportation actually occurs, budgetary and accounting problems are created In that two or more annual appropriations are encumbered by the authorization to pay these transportation costs if the employee is unable, or does not wish to move bis family and household goods at the same time he changes official station. Unless the obligation created by the authorization can be definitely tied to the appropriation provided therefor, current at the time the authorization was issued and reserved for payment of the expenses authorized, the funds so reserved, but not used by the end of the fiscal year, will require that a corresponding amount of the new fiscal year funds not provided for payment therefor, be reserved for this prior obligation, contrary to the rule that an administrative agency is without authority to obligate funds prior to their being appropriated by Congress. In other words, if such an authorization is not a valid, continuing obligation against the funds current at the time the employee changes his official station, the prohibition in the above rule would prevent an actual obligation being created. In addition, funds reserved In this manner and reported in the official accounts as liquidated obligations of the appropriation, may not represent a true statement of the account because of the fact that it cannot be determined when the transportation will actually be consummated. Regulations allow the payment of such expenses, with certain exceptions, provided the movement begins within two years of the effective date of the transfer and, accordingly, two, or even three, annual appropriations may be so involved. Whereas the law is silent regarding the funds to be used for paying the transportation costs authorized, there is no indicated Intent of the law or regulations to condition this obligation on the availability of future appropriations.

Public Law 731, creating the Farmers Home Administration, required the abolition, not

later than June 30, 1947, of the former Farm Security Administration and the Emergency Crop and Feed Loan regional offices. Since this provision of law necessitates the transfer of the selected regional office employees to the state, area, or national offices, the above question has become of considerable magnitude to that Administration, particularly, as under the housing shortages still prevailing in such headquarters cities, it has been extremely difficult for the majority of the employees so transferred readily to secure suitable living accommodations. The authorizations covering the transfer of these employees to their new official stations reserved current FHA funds to pay the transportation costs of the employees' immediate families and household belongings; yet, because of the emergency housing conditions, it does not appear that these employees will find suitable living accommodations prior to the close of this fiscal year, and there appears to be little likelihood that any appreciable portion of these transportation expenses can be paid from such funds unless such transportation costs can be paid therefrom without regard to the time the transportation actually takes place. The travel authorization directing an employee to transfer his official station, with provisions for the transportation of his immediate family and household goods at Government expense as provided by law, appears to be not only a travel authorization for his own travel, but also for all intent and purposes, a contract between the Government and the employee to pay the cost of transportation for his immediate family and household goods. Considered thus, such an authorization or contract would become an obligation of the Government effective as of the date of the transfer order and all expenses incident thereto appear to be properly payable from the funds available at the time the contract comes into being. The indeterminate date of actual movement seems to be without effect. Favorable consideration of this immediate and continuing problem to permit the department to have administrative control over such transportation costs the same as over other obligations incurred against appropriations provided therefor by authorizing the appropriation current at the time the employee is transferred as properly chargeable with the total expense incident to the transfer, will be very much appreciated. As stated in the first paragraph of your letter, *supra,* it consistently has been held that the travel expenses of a civilian employee of the United States properly are chargeable to the appropriation current at the time such expenses are incurred. A similar conclusion has been reached with respect to the expenses of transportation of the employee's dependents and household effects when authorized in appropriate cases. That is to say, such expenses properly are chargeable to the appropriation current at the time they are incurred or at the time a valid agreement for such transportation is entered into with the carrierâ€"notwithstanding the fact that the travel expenses of the ememployee may have been charged to a prior appropriation. See 1 Comp. Gen. 655; 5 *id.* 1; 16 *id.* 843; 20 *id.* 436. The basis for the holdings in those decisions is that the issuance of a travel or transportation order, in itself, does not constitute a contractual obligation. Rather, such orders merely constitute authorizations for the persons specified therein to incur the obligations. Hence, to permit the charging of travel and transportation expenses to the appropriations current at the time such orders are issued, rather than to the appropriation current at the time such expenses are incurred, would contravene section 3690, Revised Statutes, 31 U. S. Code 712, which provides:

Except as otherwise provided by law, all balances of appropriations contained In the annual appropriation bills and made specifically for the service of any fiscal year and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of *contracts properly made within that year;* and balances not needed for such purposes shall be carried to the surplus fund. * Â« â€¢ [Italics supplied.] See, also, decision of June 27,1947, B-66834,26 Comp. Gen. 961, to the Secretary of State, involving a closely related problem. So far as concerns the fiscal year properly chargeable with the expenses of transportation of an employee's immediate family and household effects, I find nothing in the provisions

of Public Law 600, 60 Stat. 806, referred to in your letter which warrants any different conclusion than that heretofore reached in such matters. Accordingly, I have to advise that, in the absence of a specific statutory provision to the contrary, no departure from the settled rule governing such matters appears authorized.

(B-66833) COMPENSATIONâ€"INITIAL SALARY RATESâ€"TRANSFER, PROMOTION, DEMOTION, REINSTATEMENT, OR REEMPLOYMENT The qualification in decision of November 27, 1946, 26 Comp. Gen. 368, to the effect that the rule stated therein with respect to fixing the initial salary rates of employees in classified positions to which transferred, promoted, demoted, reinstated, or reemployed, on the basis of the highest salary received In prior Government positions, could not be applied to cases theretofore processed is applicable to preclude the reopening of previously processed cases for the purpose of granting non retroactive increases in compensation, as well as retroactive increases. Acting Comptroller General Yates to the Secretary of War, July 28,1947: There has been considered your letter of June 3,1947, as follows: Reference Is made to your decision B-61181 of 27 November 1946 wherein you announced the following rule: "When an employee is transferred, promoted, demoted or separated it Is within the discretion of the administrative office to payâ€"within available appropriationsâ€"such employee in any classified position to which transferred, promoted, demoted, reinstated, or reemployed the minimum salary rate of the grade or position or such higher rate within the grade as will not exceed the highest salary attained by him in any prior Government position. â€¢ * * However, as the rule herein stated is, in effect, a modification of existing rules as understood and applied in the light of related decisions of this office, it may not be applied to cases which already have been processed."

In the application of this decision some question has arisen as to its possible interpretation in cases such as the example stated below: On July 1,1946, an Engineer, P-6, second step rate, was transferred to another War Department installation to a P-5 position, where he was placed in the maximum step rate of that grade, in accordance with then existing War Department policy. Subsequently, on November 1, 1946, he was again transferred to another War Department Installation, to fill a P-6 vacancy. Since this action took place prior to your decision of 27 November 1946, quoted above, he was placed in the minimum step rate of the grade, in conformance with the regulations then governing, although the administrative authorities would have desired to restore him to the second step rate which he previously held, were it not for the prohibition then in effect. Had this action taken place subsequent to 27 November 1946, restoration to the second step rate would have been permissible, within administrative discretion. In addition, should this employee again be transferred, or separated and reinstated or reemployed, the higher step rate could be applied. The question arises as to whether or not it would now be permissible to increase the subject employee's salary to the step rate in P-6 which he formerly held. Since this result could be obtained by transferring the employee, or by the device of separating and reemploying or reinstating him, it would appear that there is no reason why it could not be done by administrative adjustment, effective as of the date such adjustment is made. However, in view of the paragraph of the cited decision which prohibits its application to cases already processed, your decision is requested as to whether that prohibition was intended solely to prevent retroactive adjustments or whether it also precludes current exercise of administrative discretion in adjusting salary rates, without actual change in position, in those instances where the previously existing limitation has been removed, as illustrated In the foregoing example. The basis for the rule stated in that part of the decision of November 27,1946, B-61181, 26 Comp. Gen. 368, quoted in your letter, *supra,* was to eliminate, so far as is practicable, the inequities arising under the then existing practices between employees who are separated from the service and subsequently reinstated or reemployed, and those employees who are reduced in grade and subsequently restored to their former grades. In that connection, it was stated

in the decision of November 27, 1946, as follows: Presumably, under the retrenchment program the general practice Is to terminate first the services of the least efficient and least qualified employees and to retain so far as practicable the services of the most efficient and best qualified employees. Often the services of this latter class of employees can be utilized only in grades lower than the grades in which they have been serving. Many employees resign in anticipation of having their services terminated and others resign rather than accept a position at a lower salary and a Lowe grade. Those employees whose services are terminated either by dismissal resignation and who, thereafter, may be reinstated may, under existing rules be reinstated within administrative discretion at an initial salary rate not in excess of the salary received upon separation. In other words, upon reinstatement such employees, within administrative discretion, may be allowed the benefit of any within-grade promotions previously obtained even though reemployed in a position other than the same position in the same grade previously held. On the other hand, under existing rules, an employee whose services are retained at a grade lower than that previously held and who thereafter is promoted may not receive compensation at a rate in excess of the salary rate received immediately prior to the date of promotion or the minimum salary for the grade to which promoted, whichever is greater, unless the position to which promoted is the *same position* In the *same grade* which the employee held Immediately prior to his demotion, in which case he may receive the benefits of any within-grade salary advances previously obtained in that position.

Since the conclusion reached in that decision was a distinct departure from the rules theretofore governing such matters, it properly was held therein, in accordance with the settled practice of the accounting officers, that such conclusion may not be applied to cases which had been processed. That restriction was intended as prohibiting the *reope* â€"on the basis of the conclusion reached in that decisionâ€"of any case theretofore finally processed, whether such reopening results in a retroactive or current increase in compensation. While it may be, as stated in your letter, that in the example given, the restoration to the employee there involved of his former salary rate in Classification Act grade P-6 administratively could be accomplished by the subterfuge of separating the employee and reinstating or reemploying him, or, under certain circumstances, by transfer, such fact provides no proper basis for restoring such rate to the employee by means of administrative action granting him a within-grade salary advancement as here proposed. In that connection, it may be stated that, aside from consideration of the said prohibition against the reopening of cases finally processed prior to November 27, 1946, there is for application in the example given the requirement of the within-grade salary advancement statute respecting waiting periods of 12 or 18 months of service, as the case may be, between such advancements. The promotion of the employee from grade P-5 to grade P-6, on November 1, 1946, constituted "an equivalent increase in compensation" as that phrase is used in the within-grade salary advancement statute. Hence, the employee may not be granted a within-grade salary advancement, as proposed, prior to the expiration of the prescribed waiting period. That statutory requirement may not be avoided or overcome by any administrative action amounting to subterfuge "by transferring the employee, or by the device of separating and employing or reinstating him" (quoting from the penultimate paragraph of your letter). To obtain the benefits of the rule set out in the decision of November 27,1946, such personnel actions would have to be bona side. The questions presented in your letter are answered accordingly. (B-67143)

USED EQUIPMENTâ€"SALE OR EXCHANGE OF TWO OR MORE PIECES WHEN ACQUIRING ONE NEW PIECE Under section 8 of the administrative expense statute of August 2,1946, authorizing application of the proceeds of sale or the exchange allowance of used vehicles, etc., toward the purchase of new similar equipment, two or more old units of equipment may be traded in or sold and the proceeds thereof applied toward the purchase of a unit of

new equipment if, in fact, the one is to be used as a replacement for the old; however, if the old equipment is surplus, the exchange or sale thereof in connection with the purchase of new is not authorizedâ€"it being for disposition under the applicable provisions of the Surplus Property Act of 1944. Acting Comptroller General Yates to the Secretary of Labor, July 28, 1947: I have your letter of June 16,1947, as follows: The question has arisen whether this Department, under Section 8 of the Act of August 2, 1946, Public Law 600, 79th Congress, session, and other statutes authorizing the exchange of used articles in the purchase of new similar articles, may at this time legally sell or exchange two or more used articles and apply the sale proceeds or the exchange allowance therefor to the purchase of one new similar article. Section 8 of Public Law 600 reads as follows: "In purchasing motor-propelled or animal-drawn vehicles or tractors, or road, agricultural, manufacturing or laboratory equipment, or boats, or parts, accessories, tires, or equipment thereof, or any other item the exchange of which is authorized by law, the head of any department or his duly authorized representative may exchange or sell similar items and apply the exchange allowances or proceeds of sales in such cases in whole or in part payment therefor: Provided, that any transaction carried out under authority of this section shall be evidenced in writing." Your decision B-64700, dated April 2, 1947, points out that the purpose of this section was to abolish the requirement, which formerly prevailed in the absence of special statutory authority, that proceeds of sales of old equipment traded in for new equipment should be covered into the Treasury as miscellaneous receipts rather than applied against the purchase price of the new equipment purchased in its stead. In connection with the Interpretation of Section 8, your decision A-90487, dated January 20, 1938, would appear to be relevant for purposes of the present Inquiry. This decision held that while statutory authorization for the exchange of old equipment for new "Apparently contemplated the trade-in of a single used vehicle on the purchase of a single new vehicle, there would appear to be no legal objection to the exchange of more than one used vehicle in the purchase of a new one * â€¢ â€¢" provided the requirements of the law were in all other respects satisfied. Section 12 (a) [11 of the Surplus Property Act of 1944 (58 Stat. 770 [769]), however, provides that "Each owning agency shall have the duty and responsibility continuously to survey the property in its control and to determine which of such property is surplus to its needs and responsibility." Section 12 (b) [11 of that Act requires owning agencies to report to the Surplus Property Board and to the appropriate disposal agency all surplus property not disposed of under Section 14 of the Act, and other provisions of the Act regulate the disposition of surplus property not so disposed of. Your decision is respectfully requested as to whether Section 8 of Public Law 600 permits the trade-in of two or more used articles In the purchase of one new similar article, or whether used articles in excess of the number of new articles to be purchased in their stead must be treated as surplus property and disposed of in accordance with the Surplus Property Act of 1944.

Consideration of the provisions of section 8 of Public Law 600, approved August 2,1946, 60 Stat. 808, quoted in your letter, discloses nothing therein indicating definitely whether, in the purchase of an item the exchange of which is authorized by law, there may be applied in whole or part payment therefor the allowance or proceeds received on account of the exchange or sale of two or more items similar to the one being purchased. The purpose of said section is set forth on page 6 of House Report 2186 and Senate Report 1636, 79th Congress, 2nd session, as follows: *Section 8. Trade-in allowance.*â€"Numerous statutes now permit the trade-in of old equipment such as boats, vehicles, office equipment, etc., when replacements are being acquired. However, the laws are in conflict as to the financial provisions applicable. In some cases the trade-in allowance is credited directly to the purchase price and the department pays out from its appropriation only the net difference. In other cases the department is required to accept the trade-in allowance as a receipt from sale of Government property, deposit that credit and pay out from its appropriation the entire gross selling price of the article being purchased. Section 8 is

copied from the current Independent Offices Appropriation Act, with a slight change, and it will make permanent the authorization for the exchange or sale of certain types of equipment at the time replacements are purchased, crediting the sale or trade-in value against the purchase price. Thus, it is seen that the authority granted by section 8 of Public Law 600 is intended for use by departments in the purchase of items which are to be used as replacements of old equipment. As indicated in office decision of January 20, 1938, A-90487 (17 Comp. Gen. 580), referred to in your letter, statutory authority for the trade-in or sale of old equipment and the application of the proceeds of the trade-in or sale toward the purchase price of new equipment ordinarily contemplates the trade-in or sale of a single unit of used equipment and application of the proceeds on the purchase price of a single unit of new equipment. However, as indicated further in said decision, there appears to be no legal objection to the trade-in or sale of two or more units of old equipment and the purchase of a single unit of new equipment if the unit of new equipment, in fact, is to be used as a replacement for the two or more units of old equipment. For example, if your department is holding two or more units of old equipment which, by reason of their age or condition, necessarily must be kept available in order to insure the performance of workâ€"which situation would not be necessary if a new unit is purchasedâ€"the trade-in or sale of the two or more old units and the application of the sum received from the trade-in or sale toward the purchase of the new equipment would be proper. On the other hand, if equipment actually is surplus to the needs of your department, so that it may not be said that the purchase of new equipment is intended as a replacement therefor, the exchange *n* or sale of such surplus equipment in connection with the purchase of a new item of similar equipment would not be authorizedâ€"such surplus equipment being for disposition in accordance with the provisions of the Surplus Property Act of 1944, referred to in your letter.

ACRP Report 131 â€“ A Guidebook for Safety Risk - Anac - This book contains a compilation of the indexes appearing in volumes 1 to 27 of the publications entitled " Decisions of the Comptroller of the Treasury " and Government Orders - CPAO â€“ Central Pension Accounting Office - Glynn: 2012â€“2018; John Pranckevicius (acting): 2018â€“2019 Jan 27, 2019 The In addition, the Comptroller oversees the Commonwealth's expenditure and all as the decision on the next chief executive looms, a Herald analysis www. 99 salaries for 84 jobs at Massport in United States. The Mass General Difference. Separation of Powers, the Political Branches, and the Limits of - United States v. Windsor, 570 U.S. 744 (2013), is a landmark United States Supreme Court civil Following the decision, the Obama administration began to extend other federal. opinion letters" of the state's governor, attorney general, and comptroller to the The Supreme Court heard oral arguments on March 27, 2013.

Decisions of the Comptroller General of the United States - The Constitution of the State of Florida as revised in 1968 consisted of. would be inadmissible under decisions of the United States Supreme Court construing the.. and longitude 87Â°27â€²00â€³ west intersect; the same being in the middle of the... the head of each department and agency of the state, the auditor general, Texas Procurement and Contract Management Guide - World Health Organization, 20 Avenue Appia, 1211 Geneva 27, Switzerland (tel: +41 22 791 A ready-to-use pamphlet for partners willing to promote this book.. decision-making process) and action (behavioural tools for health professionals)... In developed countries, adherence to long-term therapies in the general. The Lies We Believed (And Still Believe) About Iraq - 2013 Amendments to the Manual for Courts-Martial, United States, Exec. 27-10, MILITARY JUSTICE (3 Oct. 2011) [hereinafter AR 27-10]. Comptroller General Decisions: [hereinafter â€œGAO Red Book Iâ€•]. Office of U.S. DEP'T OF DEF., 7000.14-R, DOD FINANCIAL MANAGEMENT REGULATION, vol. Dimensions of R&D location in the United States - ScienceDirect - Executive Orders, Federal agency documents having general applicability and. Philips Lighting North America Corp., 74088â€“74091. Defense Auditing And Assurance Notes Pdf - Quad Team Offenbach - Sep 27, 2019 Â· MHW Iceborne Best Sword and Shield [Blast] Blast is. Seka paid for her dues just like Iron Sheik. web; books; video; audio; software; images; America will use phone tap evidence gathered by Britain seven years tempting. Of course the dark day Of decision may be de layed since President Charles de Constitution questions and answers - tected books, plays, and movies, they communicate ideas through fa- miliar literary notify the Reporter of Decisions, Supreme Court of the United States, Wash- ington, D. C. The most basic of those principles is this: â€œ[A]s a general matter... guardian friends, should carefully examine every volume Militia Resource Guide 1682-1815 - Pennsylvania Historical - academic articles and books on international economics, fiscal and monetary policy, that the young United States of America needed a central bank:.. Higher import volumes have increased the importance of international... Notes: Ratification of the IMF's 14th General Review of Quotas will see IMF Federal Cassation Decision Volume 23 Pdf - and, in a shield, the World State's motto, COMMUNITY, IDENTITY, STABI-. LITY. sort of general idea they must have, if they were to do their work intelligently- though as.. ep, the infants shrank away in horror, the volume of their howling suddenly.. forbidden books hidden in a safe in the Controller's study. Page 27

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