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OGC Has Reviewed

General Counsel

5 December 1949

Deputy Budget Officer

Application of Comptroller General's Decision B-90432

1. A review has been made in response to your suggestion of the Comptroller General's Decision of 15 November 1949 (B-90432) which was in reply to the Director's letter of 2 November 1949 requesting a decision as to whether or not CIA might establish certain positions with grades and salaries equivalent to those in General Schedule grades 16, 17 and 18 as provided by the Classification Act of 1949.

2. The Comptroller General's reply quotes Section 9 of Public Law 110 (the CIA Act) as a limitation upon what appears to be otherwise unrestricted authority of the Director of CIA to establish positions with salaries and responsibilities comparable with those provided by the Classification Act of 1949 for General Schedule grades 16, 17 and 18 without regard to any limitation as to number. It will be noted that while Section 9 of Public Law 110 provides for the employment of not more than three persons in the professional and scientific field, "—each such position being established to effectuate those scientific intelligence functions relating to national security", the Comptroller General states that if the positions to be established comparable to General Schedule grades 16, 17 and 18 "involve professional or scientific duties" they would be subject to the limitations of Section 9 of the CIA Act. He also indicates in his concluding remark that there is no legal objection to the establishing of such positions in this Agency "for other than professional and scientific duties". It is probable that the Comptroller General intentionally refrained from qualifying his answer by not referring to that portion of Section 9 of the CIA Act which specifies the nature of the functions involved in the three grade P-9 positions authorized at not to exceed \$15,000 per annum.

3. On page 1073 of the Congressional Service applicable to the 81st Congress covering the period 25 May through 23 June 1949, there appears in connection with the Senate and House Reports on the CIA Act the following comment relative to Section 9 of the Act:

"These three positions are established for the employment of outstanding men in the scientific field of foreign scientific intelligence".

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Reference is also made to similar legislation passed by the previous Congress for comparable positions in the National Military Establishment. A review of the Legislative history of the establishment of a total of 45 positions by the 80th Congress in the Office of the Secretary of Defense and the Departments of the Army, Navy and the Air Force was made. Explanations as to the need for such personnel appear to place emphasis on the scientific field relating to research and development work. These positions were necessary over and beyond those normally required or authorized by the Military Establishment in performing its regular functions due to unavailability of qualified personnel at normal salary rates. The Director of CIA, in submitting the proposed CIA Bill to the Director of the Bureau of the Budget on 15 December 1948, attached comments explaining portions of the Bill and with respect to Section 9 makes the following statement:

"These three positions are established for the employment of three outstanding men in the scientific field for the coordination and evaluation of foreign scientific intelligence". (underscoring supplied)

It was also pointed out that it had been impossible to secure high caliber personnel at current Government pay standards.

4. While the reasons for the Comptroller General's failure to present a more complete treatment of the legislative intent and/or interpretation of what was meant by "professional and scientific field" it does appear that there is a good basis for concluding that Section 9 of the CIA Act only restricts the authority of the Director in establishing so-called super grades in those instances where the positions are such that pertinent functions and duties indicate they are for the purpose of effectuating those scientific intelligence functions relating to national security. In this connection it should be pointed out that Section 9 is so worded that the personnel occupying any of the three positions could be either "scientific" or "professional" from the standpoint of qualifications. It appears therefore that administrative determination within CIA to establish super grades as authorized in Decision B-90432 must, of necessity, be governed by the nature of the function and duties surrounding the office and position concerned, i.e. an electronics engineer in the Communications Branch could not be given a Grade 16 since the position he occupied would come within the provisions of Section 9 of the CIA Act. On the other hand, the Assistant Director, CSO, in a civilian capacity, could conceivably be given a super grade since his job requires the qualifications of one who coordinates, directs, plans, supervises and administers certain functions and activities of the Agency. While it is realized that at the time Section 9 was incorporated in the proposed CIA Act, it was intended to utilize the three grade P-9 provided by Section 9 for only professional and scientific personnel in connection with OSI

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activities, it is not believed that such an assumption can be followed under the terms of the CIA Act, the Classification Act of 1949 and/or the Comptroller General's Decision to the Director of 15 November 1949.

5. Based on the above observations and conclusions, it is believed that with the exception of the Office of Scientific Intelligence, the Director of CIA can issue an order in conformance with Decision H-90432 establishing by position super grades for all of the Assistant Directors and/or Deputy Assistant Directors (except OSI) and for Administrative, Support and other Staff Chiefs. This authority would also appear to include the Office of the Executive, the Legal Staff, Inspection and Security, and other organizational units of the Agency such as the Coordination, Operations and Policy Staff and the Advisory Council. Such an order which would establish the comparable General Schedule grades and salaries by positions should affirmatively state that the three grades P-9 positions established by the CIA Act are allocated to the Office of Scientific Intelligence and will be approved in each instance by the Civil Service Commission in conformity with Section 9.

6. If the conclusions reached in the preceding paragraph are sound, there would appear to be no obstacle to the Director issuing the necessary order within the limitations indicated.



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APPROVED:

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E. R. Saunders, Budget Officer

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cc: Executive ✓
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