

COMPTROLLER GENERAL OF THE UNITED STATES
Washington 25

MAR 8 - 1949

B-83981

Director of Central Intelligence,
Central Intelligence Agency.

Dear Admiral Millenkoetter:

Document No. _____
Review of this document by OIA has
determined that
 OIA has no objection to disclosure
 It contains information of OIA
interest that must remain
classified at TS S (U)
Authority: 58 USC
 It contains nothing of OIA interest
Date 10 MAR 1951 Reviewer [redacted]

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Reference is made to your letter of February 23, 1949, stating that one [redacted] now is holding a position in your agency in P-8; that you consider him qualified as "top coordinator of scientific intelligence" and wish to promote him to P-9 at a salary of \$15,000 per annum, but are not authorized to make appointments in your agency to that grade, and requesting a decision as to whether said employee may be given an appointment by the Secretary of Defense at \$15,000, he having authority to make a limited number of appointments at that salary rate, and immediately be detailed to your agency, with reimbursement to the office of the Secretary of Defense of his entire salary.

The authority relied upon for such an appointment by the Secretary of Defense is the act of June 24, 1948, Public Law 758, section 1 of which provides:

"That the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force (and) respectively authorized to establish and fix the compensation for, within their respective departments, not more than thirteen positions each, and the Secretary of Defense is authorized to establish and fix the compensation for not more than six positions, each such position being established to effectuate those research and development functions, relating to the national defense, military and naval medicine, and any and all other activities of the National Military Establishment which requires the services of specially qualified scientific or professional personnel: Provided, That the rates of compensation for positions established pursuant to the provisions of this Act shall not be less than \$10,000 per annum nor more than \$15,000 per annum, and shall be subject to the approval of the Civil Service Commission." (Emphasis supplied.)

It will be observed that the authority in the Secretary of Defense to make appointments under the above-quoted statute is restricted to "activities of the National Military Establishment." The Central Intelligence Agency was established under section 102(a), Title I, of the act of July 26, 1947, Public Law 353, 61 Stat. 495, 497, as an agency under the National Security Council, while the National Military Establishment was created by section 201(b), Title II, of

NOTE: *(and) -- Copied exactly as quoted in the Decision, even though the Law shows that the word "are" should have been utilized instead of the word "and".

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said act. It thus is apparent that the Central Intelligence Agency is not an activity of the National Military Establishment, even though the functions of the Agency may in a degree be related to some of those in the Establishment. Accordingly, the authority of the Secretary of Defense to make appointments under the above act of June 24, 1948, does not extend to positions under your jurisdiction.

In that connection, there has not been overlooked the provisions of section 601 of the Economy Act of June 30, 1932, as amended by the act of July 20, 1942, 56 Stat. 561, which authorize the furnishing of materials, supplies, equipment, or services between Government departments or agencies. However, said act has no application unless the services to be furnished are a normal function of the furnishing agency. 17 Comp. Gen. 728; 27 Comp. Dec. 409. It appears from your submission that the duties to be performed by [] primarily are for performance under the jurisdiction of your agency and not the Office of the Secretary of Defense. Accordingly, section 601 of the act of June 30, 1932, as amended, affords no authority for the appointment of [] in the manner suggested in your submission.

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While you state that the proposed arrangement is only a temporary expedient because legislation to support the Agency's activities has been introduced which would authorize, among other things, the establishment in your Agency of three such scientific P-9 positions, and while, also, I appreciate the intended purpose of your proposal, I cannot find my way clear to authorize the doing of that indirectly which the law does not authorize directly. See 27 Comp. Dec. 409.

Your submission is answered accordingly.

Respectfully,

/s/ Frank L. Yates, (Acting Comptroller
General of the United States)

Comptroller General
of the United States.

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