TAB

ER 2-3494

The Honorable Lindsay C. Warren
Comptroller General of the United States
Washington, D. C.

Dear Sir:

In connection with the amendments to the Classification Act of 1949 contained in P. L. 201, 82d Congress, approved 24 October 1951, your office has raised a question concerning the authority of this Agency to adopt the provisions of Section 6(a) of P. L. 201. In line with the discussions between officials of your office and representatives of this Agency, pertinent factors pertaining to this problem are presented herewith.

The Classification Act of 1949, P. L. 429, 81st Congress, provides in Section 202 thereof that the Act (except title XII) shall not apply to the Central Intelligence Agency. The legislative history of the exemption of CIA from provisions of that Act is pertinent. When the Act was being considered in the Congress as H.R. 4169 this Agency was advised by the Counsel for the Committee on Post Office and Civil Service that CIA had been eliminated from the bill upon representations by the Civil Service Commission that CIA had requested the Commission to be eliminated from the provisions of the proposed Classification Act. However, up to that time, no official representations had been made to the Civil Service Commission on the matter by CIA. The House Committee on Post Office and Civil Service stated it would be guided by our wishes in the matter.

a. Prior to submitting a report on H.R. 4169 a proposed draft of the report was forwarded to the Bureau of the Budget. By letter, dated 9 June 1949, the Bureau of the Budget advised that there would be no objection to the submission of the proposed report to the Committee.

b. The Honorable Tom Murray, Chairman, House Committee on Post Office and Civil Service, was advised on 14 June 1949, of the Agency views on H.R. 4169 as follows:

"After very careful study, we have concluded that it would be preferable for this Agency to have the complete exception granted by Section 202(13). Our

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primary reason in enforcing this exception is one of security. It is felt that thorough knowledge of the Agency's organization and operational programs is necessary for the establishment of job positions. This would place in the hands of other than CIA personnel information which is closely restricted even within the Agency, to those officials intimately concerned with the particular operations in progress."

Our letter further stated that the Agency expected to adhere to the provisions of the bill and suggested inclusion of the following language:

"the Director of Central Intelligence is authorized to employ, for services in the District of Columbia or elsewhere, such number of employees of the various classes recognized in this act to perform the functions of the Central Intelligence Agency, as may be appropriated for by Congress from year to year, and in so doing he shall adhere to the standards, classes and grades set forth herein."

It was also pointed out in the letter that the Bureau of the Budget had no objections to the proposals contained in the Agency letter of 14 June 1949.

It should be noted that the Committee on Post Office and Civil Service informed CIA that it would not include in H.R. 4169 the suggested language that the Director of Central Intelligence should adhere to the standards, classes and grades set forth in the bill, since the Committee did not wish unnecessarily to restrict the Agency and took the position that the Director had adequate authority under the CIA Act of 1949 to adopt administratively pertinent parts of H.R. 4169.

Of further interest in this connection is the exchange of correspondence between this Agency and the Civil Service Commission concerning the matter of Civil Service Commission audit of jobs within CIA under the Classification Act. By letter dated 30 June 1949, the Agency requested advice as to the official position of the Civil Service Commission on the provisions of Section 7 of the Central Intelligence Agency Act of 1949 and the desires of the Commission as to future action in connection with

audit, classification and establishment of positions in the Agency. In response the Civil Service Commission advised on 8 August 1949 that, based on Section 7 and Section 10(b) of the CIA Act of 1949, the Agency was not required as a matter of law to follow the Classification Act of 1923, as amended, and that the Commission therefore was not required to enforce that Act within the Agency. That letter from Civil Service Commission also stated as follows:

> "We are gratified to learn that notwithstanding the legal conclusion stemming from the terms of the statute, you intend, as an administrative policy, to follow the basic philosophy and principles of the Classification Act, the Civil Service Commission's allocation standards, the pay scales, the within-grade salary advancement plans, and the pay rules of the Classification Act, as they may be amended from time to time, in substantially the same manner as the Classification Act provides.
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> "Under these conditions, we are glad to offer our services as a source of information, advice, and the certification of advisory allocations when you desire such action. We appreciate the soundness of your administrative policy with respect to position-classification and salary standardization. Within our resources, we will do all we can to aid you."

In order to determine if there had been any legislative consideration of the retroactive feature of P. L. 201 as it might affect those agencies, such as CIA, which are exempted from the Classification Act of 1949, the problem was discussed with the Honorable Tom Murray, Chairman, Committee on Post Office and Civil Service. He advised that no consideration was given to the matter in view of the Bureau of the Budget position that such agencies had sufficient authority to establish individual compensation schedules. However, he did state that there was no intent that the retroactive feature should be denied to those agencies.

Broad authority was granted to this Agency by the Congress in the CIA Act of 1949. Pertinent provisions are quoted below:

> "Sec. 10.(a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including—
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> "(1) personal services, including personal services without regard to limitations on types of persons to be employed...

"(2) supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director.

"(b) The sums made available to the Agency may be expended without regard to the provisions of the law and regulations relating to the expenditure of Government funds;..."

It is submitted that these statutory provisions afford ample legal authority for CIA to adopt the effective date set forth in section 6(a) of P.L. 201. In drafting the CIA act it was recognized that all problems which would arise in the future could not be provided for specifically in permanent legislation. Also, CIA has no annual appropriation act through which specific provision could be made for new situations. Consequently, Section 10(a)(2) was designed to permit the Director of Central Intelligence to approve, for CIA, expenditures otherwise authorized at a later date by law and regulations. In addition, to provide for those situations not otherwise authorized by law or regulation the Agency was authorized by law or regulation the Agency was authorized by Section 10(b) of the CIA Act to expend funds without regard to provisions of law and regulations relating to the expenditure of Government funds.

In addition to basic legal authority, the propriety of applying the salary increases in accordance with Section 6(a) of P.L. 201 is demonstrated by the history set forth above of the Agency policies and the related commitments to the Congress, the Bureau of the Budget and the Civil Service Commission. Further support is contained in 30 Comp. Gen. 356 of 20 February 1951. In that case there was recognition of the authority of the Secretary of the Navy to approve certain retroactive payments of compensation, provided the Secretary of the Navy determined it to be consistent with the public interest to do so. It was determined by your office in that case that retroactive payment of the bonus which was arrived at through collective bargaining between the maritime unions and shipping operators became a "practice" of the maritime industry within the meaning of Section 202(8) of the Classification Act of 1949. In the instant case the "practice" or precedent has been dignified to the extent of becoming official policy of the United States Government with respect to its classified employees through approval of P. L. 201.

The Agency is now confronted with this anomalous situation. The Bureau of the Budget did not recommend and the Congress did not specifically include CIA in P. L. 201 since they both assumed that CIA had the necessary authority under P. L. 110 to approve administratively the compensation under P. L. 201. This approach was adopted with full knowledge that the Agency had gone on record many times stating that it was, as a matter of policy, adhering

to the classification standards and compensation schedules of the Classification Act of 1949. Because of that policy, however, this Agency did not wish to adopt prior to the final approval date of P. L. 201 any increase of compensation which might not be consistent with the specific provisions of the amendments to the Classification Act of 1949. To deny to our employees the retroactive feature of P. L. 201 would be contrary to the general intent of Congress and the known policy of this Agency to place its employees on an equal footing with other employees in the classified service.

Pursuant to the above-mentioned statement that this Agency would follow the Classification Act, pay schedules and standards, there have been issued internal regulations within the Agency stating that the Classification Act salary schedules will be followed. The present regulation within CIA provides as follows:

> "Although the Agency is exempt from the provisions of the Classification Act of 1949, the Agency shall adhere to the provisions of this Act insofar as possible. Basic classification principles and compensation schedules will be followed in order to assure that employees receive equality of compensation for work performance."

If at this time the Agency were to follow P. L. 201 only prospectively, its employees could argue with justice and logic that the Agency was violating its contract with its employees by not applying the retroactive aspects of P. L. 201.

In applying the compensation schedules provided in P. L. 201 to employees of this Agency, I feel it just and proper to adopt the provisions of Section 6(a) making the Act effective as of the first day of the first pay period which began after June 30, 1951, and for this purpose I intend to rely on the authority contained in Section 10 of the CIA Act of 1949. I should like your opinion whether there is any legal objection to this proposal.

Sincerely,

W. B. Smith
Director

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