

General Counsel

27 June 1952

Acting Assistant Director (Personnel)

CIA Authority to Make Excepted Personnel Appointments under  
Section 10, P. L. 110

1. I have read your memorandum of 23 June 1952, subject: CIA Authority to Make Personnel Appointments. I am particularly interested in your tentative conclusion that ". . . it appears that CIA has legal authority under P. L. 110 to make personnel appointments without looking to any other laws or procedures as a source of authority."
2. With regard to paragraph 2 of your memo, I would suggest that the Civil Service Commission already has accepted that CIA is by statute excepted from the "competitive service" established by the Civil Service Act of 1883, as amended (22 Stat. 403). Evidence that the Civil Service Commission has reached such conclusion of law in construing P. L. 110 is found in CSC Pamphlet 2 (Jan. 1951), Appendix to Part 6, which describes all positions in Central Intelligence Agency as excepted by statute from the competitive service and cites Sec. 10 of the Act of June 20, 1949, P. L. 110, 81st Congress, as the basis for such legal conclusion.
3. To the best of my knowledge and belief, the Personnel Office has never requested nor prompted a request of the Civil Service Commission to rule upon the legal question of the effect of P. L. 110 upon the applicability of the Civil Service Act of 1883, as amended, to CIA. (Files of your office may include material pertinent to this). If this is so, it would appear that P. L. 110 was construed by the CSC in the normal exercise of its responsibility to determine the extent of and limitations upon its own authority.
4. I am aware, as I am sure you are, that subsequent to enactment of the National Security Act of 1947, CSC, responding to request initiated in the office of the then Secretary of Defense, Designate, did include all positions in CIA on Schedule A under Civil Service Rule VI. Historically, this was the basis for excepted appointments to CIA and, as a practical matter, it continued to be used as the basis for such appointments even after enactment of P. L. 110.
5. It would appear, then, that continuation of CIA on Schedule A under CSC Rule VI after enactment of P. L. 110, and particularly in the light of CSC construction of that statute cited above, is

superfluous and does not alter, amend, enlarge or in any manner affect the authority granted the Director by the organic act. Do you concur in this?

6. If the conclusion stated in the preceding paragraph is valid, the CSC should be expected to attempt to delete this Agency from Schedule A as soon as the redundancy would be brought to its attention. For this reason, I specifically do not wish CSC consulted about nor otherwise made cognizant of this matter until all legal and policy ramifications of such action have been explored.

7. I understand a well-recognized rule of law and one followed consistently by the Federal courts to be, generally, that the interpretations and rulings of an official responsible for administration of a statute normally shall be accorded great weight in determining the nature and scope of authority granted by such statute. I request your opinion, therefore, as to whether the now assertion of the right to make excepted appointments under Sec. 10, P. L. 110, will have been compromised by the failure of the Agency to have so construed the statute since 20 June 1949. This point may become important since the Comptroller General, with approval of CSC, asserts the authority to make final determination of whether certain positions are excepted by statute from the Civil Service Act of 1883, as amended, the Classification Act of 1949, as amended, and other general legislation regulating Federal employment.

8. Civil Service Rule 6.1(d) provides that authority granted under Schedule A of Rule VI may, with the concurrence of the agency concerned, be revoked by CSC. It would appear that in spite of the 1949 grant of authority in P. L. 110, the Agency could successfully prevent revocation of the 1947 grant of authority under Rule VI should it wish to do so. Do you concur in this?

9. I request your opinion also as to what would be the legal effect, if any, upon the status of employees currently serving by appointment under authority of Schedule A, Rule VI, in the event that (a) future excepted appointments would be effected under authority of Sec. 10, P. L. 110, and (b) the authority under Schedule A should be revoked.

10. In addition to the Civil Service Act of 1883, as amended, and the Classification Act of 1949, as amended, there are numerous other statutes and Executive Orders providing for the terms and conditions of employment, the rights, entitlements, benefits and obligations of employees arising out of various kinds of employments, and the scope and limitations of the authority of the heads of departments and agencies of Government. Among these are the Veterans' Preference Act of 1944, as amended, (58 Stat. 387), the

Civil Service Retirement Act of May 29, 1930, as amended, (46 Stat. 468), Executive Order 9830 of February 24, 1947, Executive Order 10180 of November 13, 1950, the Federal Employees Compensation Act of September 7, 1916, as amended. There are others. I request your opinion as to whether the now legal effect of any of these upon CIA or any of its employees would be altered if excepted appointments should be made under authority of Sec. 10, P. L. 110, rather than under authority of Schedule A, CSC Rule VI.

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JER:mrf



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