

SECRET

19 June 1947

*File:
Legal
Decisions*

MEMORANDUM FOR CHIEF, SPECIAL FUNDS

Subject: [REDACTED]

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1. Returned herewith is personnel action request for promotion of the above subject. This request (in three copies) was forwarded by your memorandum to this office, dated 5 June 1947. You state that the Personnel Review Committee disapproved the request, but the minutes of the Personnel Review Committee show the disapproval was overruled by the Assistant Director, GIG. You inquire whether disbursements effected as a result of this personnel action request would constitute legal payment. It is indicated from the papers attached that the action was addressed to the Personnel Review Committee as of 29 May 1947, indicating the effective date of the promotion as 1 March 1947. This office on several occasions has advised members of the Personnel Review Committee concerning the propriety of retroactive personnel action requests, including promotions.

2. The Comptroller General has ruled consistently that a salary increase may not be retroactive and can only be effective upon the date on which administrative action is taken [25 Comp. Gen. 601, 20 Feb. 1946]. That opinion states:

"It has been held in numerous decisions of this office that administrative changes in salary rates may not be made retroactively effective in the absence of a statute specifically so providing, and that the effective date of salary changes resulting from administrative action exclusively is the date on which the action is taken by the administrative official vested with proper authority." (Underlining provided).

There are many decisions of the Comptroller General to the same effect which we feel unnecessary to cite or quote here.

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3. It is the opinion of this office that in this case the promotion of [REDACTED] from P-4 to P-5, effective 1 March 1947, at this time is not authorized and any payments effected as a result of such promotion would be illegal and

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improper. In your memorandum of 5 June 1945 you inquire further as to what action and/or approvals are necessary to establish the proposed action as a legal one. In view of the decisions, it appears there is no action or approval which could establish a retroactive promotion as authorized or could legalize the disbursements resulting therefrom.

4. Although the Director, CIG, may authorize expenditures for objects of a confidential nature for which no accounting is required, there must first be an obligation in order for the Director to approve the expenditure. However, in this type of case where the disbursement would be, in effect, a mere gratuity, it is believed that the approval of the Director, CIG, for such a disbursement would not be appropriate.

LAWRENCE R. HOUSTON
General Counsel

LRE/ml1

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cc: 

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