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10 February 1950

MEMORANDUM FOR: ADFC

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SUBJECT: Travel Expenses - [REDACTED]

REFERENCE:

(a) Memorandum to L. R. Houston fr [REDACTED], dtd 10 Jan 1950, subj: [REDACTED]

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(b) Memorandum to [REDACTED] fr [REDACTED], dtd 20 May 1949, subj: Travel Expenses - Mr. [REDACTED]

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(c) Letter to Mr. [REDACTED] fr DGI, dtd 9 March 1949, ref: O-8898

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(d) Letter to Mr. [REDACTED] fr [REDACTED] ADFC, dtd 8 March 1949

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(e) Letter to [REDACTED] fr Personnel Officer, dtd 16 March 1949

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1. The attached file contains pertinent material concerning the claim of [REDACTED] for reimbursement of travel expenses from Tucson, Arizona, to Washington, D. C. This matter was brought to the Legal Staff personally by [REDACTED] of OGC without a formal referral. Because of some unusual aspects, it is being brought herewith to your attention. A strictly legal review of this claim requires its denial as the travel performed was to accept an initial appointment. It is a fundamental rule for government employment that presence at the first official post of duty is a condition of acceptance of employment and, therefore, travel to that post is a personal responsibility for which the government cannot be obligated. This rule has been repeatedly set forth by the Comptroller General and has not, to our knowledge, been questioned. The only exceptions are for intermittent consultants and WOC employees, in accordance with the specific provisions of Section 5 of Public Law 600 of the 76th Congress. By an extension of the theory behind these exceptions, the Director has authorized, in certain cases, payment of transportation for persons brought in solely for interview and return. The Comptroller General, however, has ruled that temporary appointments not intermittent in nature cannot be brought within these exceptions. A legal opinion on the instant case is set forth in reference (a).

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2. There are circumstances, however, which have caused this office to give the case detailed and extended consideration to make sure that there is no alternative from a legal point of view, and to consider what possible avenues of relief are opened. The circumstances are as follows. Originally there appears to have been uncertainty as to what was wanted of [redacted] and whether he would take the task contemplated. As you know, OPG had been given authority to bring a limited number of individuals to Washington for interview, paying their way in and return (memorandum of 25 January 1949, from OSI to ADPC). Use of this authority was considered to determine [redacted] views. However, [redacted] had in mind a project which would take several months. The problem was discussed with me by Mr. [redacted] about the time of Dr. [redacted] arrival, and I suggested that a temporary appointment would be appropriate (reference (b)). Furthermore, on 8 March two letters went out -- one from the Director, reference (c), requesting the University of [redacted] to give Dr. [redacted] four months leave of absence to work with us; and reference (d), signed by yourself, stating also that we wished to engage him for the temporary period of four months, but in addition offering to reimburse him for travel to Washington, D. C., and return, plus per diem while here. As stated, we believe this commitment was unauthorized in view of our remarks in paragraph 1 hereof. On 16 March the Personnel Officer invited Dr. [redacted] to Washington for interview and stated that reimbursement would be made for the round-trip with per diem during time spent for the purpose of interviewing (reference (e)).

3. Dr. [redacted] left Tucson on 17 March and arrived on 20 March. On 23 March he was given a Personal Service Contract, effective that date, as a temporary consultant until 30 June 1949. This was later extended to 31 December 1949

4. It is quite obvious that [redacted] had every reason to believe he would be reimbursed for the round-trip. The letter of the Personnel Officer (reference (e)), by itself, might have been sufficient to put him on notice that only travel for interview purposes would be paid, but is not sufficiently precise to overcome commitments made in other official correspondence. (I understand from the Personnel Officer that subsequent letters have been more precise as to conditions under which payment would be made.)

3. We are quite sure that the Comptroller General would deny this claim, but are not prepared to give an opinion of what the results might be if the claim were pressed to the Court of Claims. For your information, our reasoning in this respect is as follows: The Comptroller General has uniformly taken a most rigid attitude on acts by agents of the government. He has repeatedly stated that where an act in fact is unauthorized, the appearance of authority is immaterial and the act is the act of the individual, not of the government through its agent. We are not quarrelling with this adamant stand as we feel, by and large, it is necessary to proper administration of the cumbersome business of government. With respect to the Court of Claims, however, we feel, although frankly we do not have such basis for the thought, that they might apply a more normal doctrine of agency, so that if there is a cloak of apparent authority, the Court might hold the government to a commitment even though in fact it was unauthorized. Certainly to a reasonable individual it would appear that an Assistant Director of this Agency would have ample authority to make such a petty administrative commitment as is here involved, and we feel that is precisely what happened in this case. While we are very reluctant to put aside a clear opinion of the Comptroller General, which would apply but for the fact that unvouchered funds were used, we feel that the Agency has created a claim that might be good in equity. Since the case probably will not, and certainly should not, be placed before the Court of Claims, there would be no objection from this office if the Director saw fit to authorize payment on your recommendation.

Signed J. C. Asp 10 Feb '50
LAWRENCE R. HOUSTON
General Counsel
Legal Staff