

for leave exceeding four months must be referred to the War Department.

"The direction, on the other hand, to proceed to a particular place, there to await orders, how long to remain there, to attack, to retreat, or to do any other specified thing, belongs to the officer in charge.

"That the assignment was made at the request of the officer can make no difference. The pay is regulated by the position, and not by the manner or influence by which the position is acquired."

In the case of *Fitzpatrick v. United States* (37 Ct. Cl., 332), the facts were that Fitzpatrick, a cadet at Annapolis, Md., received leave of absence to go to his home in New Orleans. He had paid his own traveling expenses there, and ultimately, on the expiration of his leave, his expenses back to Annapolis. While in New Orleans, and before the expiration of his leave of absence, he was ordered to Philadelphia, Pa., and placed on temporary duty in the League Island Navy Yard, and when such duty was performed he was ordered back to his home in New Orleans.

The question involved in that case was whether Fitzpatrick in performing travel under said order from New Orleans to Philadelphia, was entitled to receive mileage from New Orleans to Philadelphia, or only mileage for the distance from Annapolis, Md., to Philadelphia.

The court held that he was entitled to receive mileage for said travel from New Orleans to Philadelphia.

Paragraph 1482, Army Regulations of 1901, provides:

"An Army officer on leave of absence ordered to temporary duty involving travel without troops, will receive travel allowances from place of receipt of order to place of performance of duty and return."

In the Fitzpatrick case the court says:

" * * * there is a principle which has long been recognized both by the accounting officers, the departments, and the courts, which is, that the expiration of a leave of absence finds the officer, in legal contemplation, at his post. It necessitates a hard rule, viz, that where an officer's prescribed leave of absence is shortened, perhaps practically destroyed, he likewise loses his traveling expenses, if the public exigency requires his return to duty. The court understands the principle to be too well established to be disregarded or changed. An officer takes his leave of absence at his own risk; it is not granted for the benefit of the Government; if the Govern-

ment wants his services before his leave expires it must have them, and the officer who takes the risk of that must bear the loss of his personal traveling expenses."

In the present case Colonel Roberts, before the expiration of his leave of absence, was ordered to proceed to his home, there to await retirement from active duty. He obeyed the order and performed the journey, and it is stated in the order that: "The travel enjoined is necessary for the public service."

The home of the officer, to which he was ordered, is not a military station within the meaning of Par. 1483, Army Regulations of 1901, to which reference is made, and I am of opinion said regulation has no application to this case. (See *United States v. Phisterer*, 94 U. S., 219.)

Upon the facts stated, I am of opinion, and so decide, that for said journey Colonel Roberts is entitled to receive mileage from Fort Sam Houston, Tex., the place where he received said order, to his home at Lakeville, Conn., and if the account is otherwise correct, you are authorized to direct that he be so paid.

RENT OF BUILDINGS FOR USE OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA.

The provision in the act of June 22, 1874, that no contract shall be made for the rent of any building, or part of any building, in Washington, to be used for the purpose of the Government until an appropriation therefor shall be made "in terms" by Congress, is applicable to the government of the District of Columbia.

(*Comptroller Tracewell to the Commissioners of the District of Columbia, August 7, 1903.*)

In your communication of July 30, 1903, you refer to the provision in the act of June 22, 1874 (18 Stat., 144), that—

"hereafter no contract shall be made for the rent of any building, or part of any building, in Washington, not now in use by the Government, to be used for the purposes of the Government until an appropriation therefor shall have been made in terms by Congress,"

and request my decision of the question of the extent, if any, to which this provision is applicable to the government of the District of Columbia.

This provision is contained in an act making appropriations to supply deficiencies in appropriations for "the service of the Government," and contains appropriations for the executive, legislative, and judicial branches of the Government, including the Territories and the District of Columbia. I think therefore it is permanent, general legislation applicable to all branches of the Government.

Your doubt as to the applicability of this provision to the government of the District of Columbia probably arises from the fact that said government is a municipal corporation, and from the question, therefore, whether legislative provisions relating to the General Government apply thereto. Undoubtedly the government of the District of Columbia is a municipal corporation, but it is not an independent body acting for itself. It is an agency established by Congress for administering the laws which it enacts for the government of the inhabitants within the territory of the District of Columbia, over which it has exclusive jurisdiction. Its powers are limited, and Congress may at any time alter them or take them away or act directly in any instance, in its own discretion, without the aid of the municipal government. (*Barnes v. District of Columbia*, 91 U. S., 540.) The revenues of the District are required to be covered into the Treasury of the United States, and in general the municipal government can make no disbursements except of moneys appropriated by Congress. Moreover, in expending moneys so appropriated it is subject to restrictions imposed by Congress, either by the language of the appropriation acts or by general laws.

But a difficulty sometimes arises in determining whether general laws are applicable to the government of the District of Columbia. This difficulty does not arise because there is any doubt that said government is a branch of the General Government; it is clear that it is. (*Cox v. United States*, 14 Ct. Cl., 512.) But the difficulty may arise from the peculiar character of the particular legislation. In 1 Comp. Dec., 558, it was held that the provision in section 87 of the act of January 12, 1895 (28 Stat., 622), that all printing for the Executive and Judicial Departments shall be done at the Government Printing Office, is not applicable to the government of the District of Columbia.

But in 3 Lawrence, First Comp. Dec., 305, it was held that

the secretary of the school trustees of the District of Columbia and the clerk to a superintendent of public schools in said District, are persons in the public service within the meaning of section 1765 of the Revised Statutes.

In 5 *id.* it was held that section 5 of the act of June 20, 1874 (18 Stat., 110), which requires that balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years shall be carried to the surplus fund; applies to appropriations made for the expenses of the District of Columbia.

In the same decision it was also held that section 3618 of the Revised Statutes, which requires that all proceeds of sales of public property shall be covered into the Treasury of the United States as miscellaneous receipts, is applicable to the surplus proceeds of the guarantee-fund bonds of the District of Columbia.

In 2 Comp. Dec., 136, it was held that section 3711 of the Revised Statutes, which provides for the weighing or measuring of coal or wood purchased for the public service, is applicable to fuel purchased for the use of the government of the District of Columbia.

In 6 Comp. Dec., 729, it was held that the District of Columbia is a "Government establishment," within the meaning of section 3 of the act of March 15, 1898 (30 Stat., 316), which prohibits the purchase by such an establishment of "law books, books of reference, and periodicals" unless the purchase is specifically provided for by the appropriation from which payment is made.

From the concensus of these decisions I think it must be held that provisions in general statutes which are locally applicable to the District of Columbia are applicable to the government of the District unless the character of the legislation indicates that such was not the intention of Congress. This view is in conformity with the following provision in section 93 of the Revised Statutes of the District of Columbia:

"The Constitution and all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the District as elsewhere within the United States."

The provision in the act of June 22, 1874, *supra*, applies to contracts for the rent of any building in Washington "to be

used for the purposes of the Government." I think it is clear that a building to be used for the purposes of the government of the District of Columbia is to be used for the purposes of the Government, within the meaning of this provision.

It is also to be observed that by section 3 of the act of June 11, 1878 (20 Stat., 103), by which act the existing form of government of the District of Columbia was established, it is provided that the Commissioners of the District of Columbia "shall make no contract, nor incur any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress." It is obvious that the requirement that no contracts shall be made unless "approved by Congress" can not mean that every contract made by the Commissioners must be transmitted to Congress for approval, which approval could only be made by special legislation. Its evident meaning is that the approval of Congress must be previously granted by an appropriation, either expressly or by necessary implication, authorizing the making of the contract. And when this provision is read in connection with the provision relating to the rent of buildings in Washington, I think it is clear that such authorization must be in express terms.

The particular case presented by you is whether you are authorized to rent a building in connection with a detention camp for smallpox patients under the appropriation contained in the act of March 3, 1903 (32 Stat., 973), as follows:

"For the enforcement of the provisions of the * * * act to prevent the spread of contagious diseases in the District of Columbia, approved March third, eighteen hundred and ninety-seven." * * *

I think it is clear that this item of appropriation does not make provision in terms for the rent of any building in Washington, and therefore that its use therefor is prohibited.

It is also to be observed that the same appropriation act makes express provision for the rent of buildings for other purposes.

INCREASE OF PAY FOR EXERCISING A HIGHER COMMAND.

An officer of the Navy, who, from July 1, 1899, to September 20, 1899, while at Guam, Samoa, and Honolulu, exercised a command above that pertaining to his grade, did not exercise such command in time of war within the meaning of the act of April 26, 1898, and therefore he is not entitled to the increased pay provided for by said act.

(Decision by Assistant Comptroller Mitchell, August 7, 1903.)

The Auditor for the Navy Department has submitted for my approval, disapproval, or modification, his decision dated July 29, 1903, as follows:

"Lieut. Commander V. L. Cottman, U. S. Navy, by his attorneys has presented a claim to this office 'for difference between the pay of a lieutenant-commander and that of a commander while in command of the U. S. S. *Brutus*, from July 1, 1899, to September 20, 1899.'

"Under an order from the Secretary of the Navy dated May 27, 1899, the claimant was detached from duty on board the U. S. S. *Alert*, and ordered to report to the commandant, navy-yard, Mare Island, Cal., 'for the command of the U. S. S. *Brutus*.'

"Under date of September 20, 1899, the commander in chief of the naval forces on Asiatic Station issued an order of which the following is a copy:

"'You are hereby detached from the command of the U. S. S. *Brutus*, and will turn that vessel over to the commanding officer of the U. S. S. *Yosemite*, in accordance with the provisions of the Department's letter No. 166204, of which I have received a copy. You will take passage to Manila at the first opportunity and report to the commander in chief.'

"Section 7 of the act of April 26, 1898 (30 Stat., 365), provides:

"'That in time of war every officer serving with troops operating against an enemy who shall exercise, under assignment in orders issued by competent authority, a command above that pertaining to his grade, shall be entitled to receive the pay and allowance of the grade appropriate to the command so exercised. *Provided*, That a rate of pay exceeding that of a brigadier-general shall not be paid in any case by reason of such assignment.'

"Section 1529 of the Revised Statutes is as follows:

"'The vessels of the Navy of the United States shall be divided into four classes, and shall be commanded as nearly as may be as follows: First rates, by commodores; second