



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

AUG 16 1937

A-86612

The Honorable,

The Secretary of Commerce.

Sir:

Your letter of July 8, 1937, is as follows:

"Reference is made to your decision of June 8, 1937 (A-86612) regarding the employment of an inspector in connection with the construction and equipment of a lighthouse tender and payment of such inspector's compensation from the appropriation of \$125,000 (part of appropriation of \$227,000 under item, Special Projects) provided in the act of June 22, 1936 (49 Stat., 1618).

"It is noted that your decision holds that the appropriation in question is not available for the salary of an inspector either during the fiscal year 1937 or the fiscal year 1938; and note is also made of your statements to the effect that, generally, a construction appropriation is not available for payment of an inspector's salary, but that the duties of such inspectors are for performance by the regular personnel of the particular department concerned, and the salary constitutes a proper charge against the appropriation available for salaries.

"It is presumed that this view is predicated on the assumption that there is some other appropriation made for the Lighthouse Service of this Department more specifically applicable to the payment of such services. Otherwise the rule would seem to be for application that 'An express provision of a statute is not necessary for every item of expenditure and that where an appropriation has been made for a particular object it confers authority to incur expenditures which are incident to that object.' (4 C.D.478; 6 C.D.91). (See also 7 C.G.401,402).

"It is a fact that no provision is made for the salaries of inspectors on the construction of vessels for the Lighthouse Service in any of the regular salary appropriations of that Service. The regular salary appropriations for the fiscal year 1938 under the Bureau of Lighthouses are provided for in the Act of June 16, 1937, (Public No. 153, 75th Congress, pages 34, 35, pamphlet copy of Act). There are four items of annual salary appropriations, each of which

is for a specific class of employees, but none of these covers in its stated terms, the inspectors of construction of vessels, whose duties are performed at the works of contractors for such construction and the amounts include no provision for such inspection. It is, therefore, the Department's belief that the rule quoted above is applicable and that the salaries of such inspectors may be regarded as payable from the appropriation for the construction work on which they are engaged. It should be pointed out that on such construction work inspectors serve continuously on a job from the time of their assignment until the work is finished. It is not a case of intermittent inspection duty, where an inspector may cover a number of jobs during a given period, returning from time to time to some designated headquarters. In the view of the Bureau of Lighthouses the inspection duty on such construction work is an integral part of the undertaking.

"The Bureau of Lighthouses for which Congress makes appropriations for a specific construction program from year to year has regularly based its estimates of cost for such work on including all items that may directly and incidentally enter into the execution of the project. Only general overhead and other undistributable costs are not included. Such details are available to the Bureau of the Budget and to the committees of Congress, though they may not always be recorded in Committees' reports on hearings.

"It has thus been the practice to include in such estimates of cost the salaries of inspectors, when required, as well as other contingent expenses of the respective projects. This has been deemed to be the preferable administrative and budgetary practice. From the accounting point of view it is in line with the opinion expressed in the decision of June 18, 1904 (10 Comp. Dec. 834), as follows:

"It should be the effort of the accounting officers to make an appropriation made to secure a specific object, as near as can be under the law, bear the expenses of securing such object without encroaching on other appropriations made to secure general or other objects."

"The Department's records indicate that this question has previously arisen between the General Accounting Office and the Bureau of Lighthouses, reference being made to letter of February 7, 1925 (C-AWP-7), from the General Accounting Office to the Commissioner of Lighthouses, the Commissioner's reply thereto dated March 11, 1925, and General Accounting Office letter of April 3, 1925, which advised with reference to expenditures for salaries, provisions for working parties, etc., from specific appropriations that 'all such suspensions will be credited in the accounts of disbursing officers and no suspensions of that nature will be made in the future'.

Your attention is respectfully invited to the appropriation item in the act of June 16, 1937 (Public No. 153, 75th Congress; page 35 of pamphlet copy), which reads as follows:

"Special Projects, vessels, and aids to navigation: For constructing or purchasing and equipping lighthouse tenders and light vessels for the Lighthouse Service as may be specifically approved by the Secretary of Commerce, not to exceed \$796,000; and for establishing and improving aids to navigation and other works as may be specifically approved by the Secretary of Commerce, \$500,000; in all, \$1,296,000, which sums shall be available for all expenditures, directly relating to the respective projects which are approved by the Secretary of Commerce."

"The underscored words are new language added to this item for the first time in the cited appropriation act. It is believed that this language removes any question as to authority for paying from the appropriation so made salaries of inspectors employed on the respective projects approved by the Secretary of Commerce as well as other incidental and contingent expenses directly relating thereto.

"There are, however, certain appropriations for Special Projects or works of construction, etc., in the Lighthouse Service, the language of which did not contain the special provision referred to in the preceding paragraph, under which appropriations projects are in course of execution or are yet to be carried out. The employment of inspectors on such works is in progress or is contemplated, payable from the appropriations applicable to the respective projects. Such appropriations include the following:

- "13-0707 Aids to Navigation, Lighthouse Service
- 13-0708 Vessels for Lighthouse Service, Emergency Construction, Act July 21, 1932.
- 13-0709 Aids to Navigation, Lighthouse Service, Emergency Construction, act July 21, 1932
- 13-0714 Vessels for Lighthouse Service
- 136/80710 Special Projects, Lighthouse Service, 1936-1938

"In view, therefore, of the intent of Congress as indicated in the appropriation for Special Projects, Vessels and Aids to Navigation contained in the act of June 16, 1937, and of the long standing practice of the General Accounting Office in passing payments of salaries of inspectors made from appropriations for specific objects of construction in the Lighthouse Service on which they were engaged, it is respectfully requested that your office reconsider the ruling contained in your decision of June 8, 1937 (A-86612), so far as it may apply to the unexpended balances

of appropriations for Special Projects or works of construction, etc., enumerated above, so that payments for salaries of inspectors made from such appropriations may not be subject to objection in the audit of accounts by your office. With respect to future appropriations for such objects it is believed that they will carry such language as in the act of June 16, 1937, or similar language."

The previous correspondence stated to have been had with this office in 1925 has been identified as correspondence with the Audit Division of this office and, of course, cannot be considered as a decision of this office or an authoritative precedent. 11 Comp. Gen. 365, 367.

The appropriation for your Department for 1937, act of May 15, 1936, 49 Stat. 1339-1340, contains, under the heading "Bureau of Lighthouses", specific appropriations for "personal service in the District of Columbia", and, also:

"Superintendents, clerks, and so forth: For salaries of eighteen superintendents of lighthouses, and of assistant superintendents, clerks, draftsmen, and other authorized permanent employees in the district offices and depots of the Lighthouse Service, exclusive of those regularly employed in the office of the Bureau of Lighthouses, District of Columbia, \$700,000."

The fact that an inspector is required to be continuously present at the place where the construction work is being performed is not inconsistent with considering him an employee of the Bureau of Lighthouses, District of Columbia, or of a district office or depot.

In decision of September 1, 1925, A-11024, it was stated:

"The appropriation for the construction of the steel bridges was carried in the annual appropriation for the Interior Department for the fiscal year 1925 and is accordingly now available only to

the extent it has been obligated by the contracts entered into before the expiration of that fiscal year. Personal services of Government employees are payable only from appropriations for the fiscal year in which the services are rendered. Review 5139, April 5, 1924. See also 26 Comp. Dec. 4; 27 id. 291. Furthermore, it is not to be assumed that the appropriation in question was intended to be used for administrative or supervisory expenses incident to the construction of the bridges.

"Answering your inquiry specifically, I have to advise that the appropriation for the construction of steel bridges across the Rio Grande is not available for the compensation of an inspector employed by the Government."

In a similar decision rendered July 1, 1931, A-37115, to the Superintendent, National Training School for Boys, it was stated:

"Irrespective of other objections which there may be to the proposed employment under the construction appropriation, it is clear that the limitation in the prior paragraph to \$126,080, provided thereunder for salaries and wages of all officers and employees, precludes the use of other appropriations to pay such salaries and wages, and you are accordingly advised that the employment of an inspector of construction under the appropriation for construction and repair of buildings is not authorized."

It may be taken as a well established rule, therefore, as stated in decision of June 8, 1937, to you, that a construction appropriation which does not specifically provide for personal service may not be used for the employment of inspectors.

However, in view of the long continued practice in the Lighthouse service and your statement that the estimates were based on that practice and the insertion of the additional language in the 1938 appropriations which language you state will hereafter be added to all construction appropriations, this office will not further object to the use of

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construction appropriations, heretofore made to the Bureau of Lighthouses, for the service of inspectors so long as the particular appropriation remains available for construction costs due to obligations in the fiscal year in which made. The decision of June 8, 1937, is modified accordingly.

Respectfully,

(Signed) R. N. Elliott

Acting Comptroller General  
of the United States.