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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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Dear Mr. Olney:

This is in response to the request dated June 3, 1965, of your Assistant Director, Mr. William R. Sweeney, for an expression of our views on a question which has arisen regarding the inauguration of the provisions of the Criminal Justice Act of 1964, approved August 20, 1964, Pub. L. 88-455, 78 Stat. 552.

Section 2 of the Criminal Justice Act of 1964 amends Title 18 of the United States Code by the addition of section 3006A. The new Title 18 section requires each United States district court, with the approval of the judicial council of the circuit, to place in operation throughout the district a plan for furnishing representation for defendants charged with felonies or misdemeanors who are financially unable to obtain adequate defense. Provision is made for compensating attorneys appointed pursuant to the section and for the payment of persons rendering other services, such as investigative, expert, etc., necessary to an adequate defense. The new Title 18 section also includes a provision which authorizes to be appropriated to the United States courts "sums necessary to carry out the provisions of this section."

Of particular significance is section 3 of the Criminal Justice Act of 1964, establishing an operational timetable for the legislative program. It is as follows--

"Each district court shall within six months from the date of this enactment submit to the judicial council of the circuit a plan formulated in accordance with section 2 and any rules and regulations issued thereunder by the Judicial Conference of the United States. Each judicial council shall within nine months from the date of this enactment approve and transmit to the Administrative Office of the United States Courts a plan for each district in its circuit. Each district court and court of appeals shall place its approved plan in operation within one year from the date of this enactment. (Underscoring supplied.)

As yet an appropriation for fees and expenses incurred pursuant to the act, presently contained in H. R. 8639, 89th Congress, has not been approved. In anticipation of initiating the adequate representation

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Expenditures prior to appropriation availability

program called for by the Criminal Justice Act of 1964, the question is presented--

"If the courts proceed to appoint attorneys and authorize other expenses prior to the enactment of an appropriation bill, would these fees and expenses be payable out of the appropriation for the fiscal year 1966 subsequently passed by the Congress?"

Section 3^x of the act provides that "Each district court and court of appeals shall place its approved plan in operation within one year from the date of this enactment [August 20, 1964]." It is a legislative directive that is unequivocal. To be effective and meaningful it must be viewed as stating that with the placement of the approved plan in operation no later than August 20, 1965, the provisions of the act, including the compensation provisions, shall be given effect. The latter provisions vest reimbursement rights in court-appointed counsel and others rendering investigative, expert or other services. It thus appears that with the placement of an approved court plan in operation, obligations authorized by law may thereafter arise for the payment of fees and reimbursement of expenses. Such obligations are not precluded by the absence of an appropriation (31 U.S.C. 665) and we perceive no objection to the use of funds which may be made available for the fiscal year 1966 in the payment of fees and expenses incurred during the fiscal year after approved plans are placed in operation pursuant to the Criminal Justice Act of 1964,^x even though entitlement to the fees and expenses preceded enactment of the appropriation bill for the year, provided the appropriation as enacted is in terms similar to the language now carried in H. R. 8639.

The question presented is answered in the affirmative as to obligations incurred during the fiscal year 1966.

Sincerely yours,

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FRANK H. WEITZEL

Acting Comptroller General
of the United States

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The Honorable Warren Olney, III, Director
Administrative Office of the United States
Courts
Supreme Court Building

