

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

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DEC 11

President,

United States Civil Service Commission.

My dear Mr. Mitchell:

Reference is made to your letter dated September 30, 1941,
(File Ref:AR:LGC,CSA-115642), as follows:

"There has been submitted to this office the retirement account of [REDACTED], who was separated June 30, 1941, having to his credit in the retirement fund \$22.22, exclusive of interest.

"Information has been received to the effect that [REDACTED] was paid by the House of Representatives for services as Clerk to Congressman Everett W. Dirksen of Illinois, from October 14, 1939 to October 31, 1939, the amount of \$51.94, and that he was also paid by the Federal Deposit Insurance Corporation for services as examiner from October 14, 1939 to October 31, 1939, the amount of \$113.33.

"The Federal Deposit Insurance Corporation is of the opinion that the above does not constitute illegal dual compensation, giving as a basis for their opinion the following excerpt taken from the Federal Deposit Insurance Law, Provision of Section 12B of the Federal Reserve Act (12 U.S.C. 264 (j)):

"Nothing in this or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Corporation of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof."

"Letters reporting records of the payments are inclosed, and it is requested that verification be made and a decision rendered as to whether or not the aforementioned dual compensation is illegal.

"By direction of the Commission."

By letter dated September 18, 1941, the Disbursing Clerk of the House of Representatives reported to the Civil Service Commission, as follows:

"I have your letter of September 5, file Net:AR:mym GSA-115642, regarding the apparent dual compensation case of [redacted], as an employee of both the House of Representatives and the Federal Deposit Insurance Corporation for the period October 14 to 31, 1939, both dates inclusive.

"In reply permit me to state that [redacted] was carried on the pay rolls of the House of Representatives for the full month of October, 1939, as a clerk to Congressman Everett M. Dirksen of Illinois and was paid compensation at the rate of \$1,100. per annum or \$88.44 net (\$3.22 retirement) on voucher #1786, appropriation 'Clerk Hire, Members and Delegates, 1940'. Disbursing Officer South Triable, symbol #90-004."

and by letter dated September 23, 1941, the Controller and Director of Personnel, Federal Deposit Insurance Corporation, advised your Commission, as follows:

"Reference is made to your letter of September 15, 1941, regarding salary paid to [redacted] by Federal Deposit Insurance Corporation, Washington, D. C.

"This is to advise you that [redacted] was appointed an Examiner on October 14, 1939, at a salary of \$2,400.00 per annum. He was paid \$113.33 for the period October 14 to October 31, 1939, inclusive, from F.D.I.C. Funds, Symbol 13885, Disbursing Officer, W. G. Loeffler, Fiscal Agent."

Subsection (j) of section 264, title 12, U. S. Code, part of which is quoted in your letter, provides in pertinent part as follows:

"(j) Incorporation; powers as corporation. * * * the Corporation shall * * * have power—

* * *

"Fifth. To appoint by its board of directors such officers and employees as are not otherwise provided for in this section, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Corporation of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof."

Section 6 of the act of May 10, 1916, 39 Stat. 120, as amended by the act of August 29, 1916, 39 Stat. 582, provides as follows:

"That unless otherwise specially authorized by law, no money appropriated by this or any other Act shall be available for payment to any person receiving more than one salary, when the combined amount of such salaries exceeds the sum of \$2,000 per annum * * * ."

The Federal Deposit Insurance Corporation was created by section 8 of the Banking Act of 1933, 48 Stat. 168, as amended by the Banking Act of 1935, 49 Stat. 684, (section 264, title 12, U. S. Code). Subsection (d) of section 264, title 12, U. S. Code, provides in part as follows:

"There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$150,000,000, which shall be available for payment by the Secretary of the Treasury for capital stock of the Corporation in an equal amount, which shall be subscribed for by him on behalf of the United States. * * * Every Federal Reserve bank shall subscribe to shares of stock in the Corporation to an amount equal to one-half of the surplus of such bank on January 1, 1933, and its subscriptions shall be accompanied by a certified check payable to the Corporation in an amount equal to one-half of such subscription. * * * "

The appropriation act of June 16, 1933, 48 Stat. 279, contains the following item:

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"Payment for capital stock of the Federal Deposit Insurance Corporation: To enable the Secretary of the Treasury to make payment for capital stock of the Federal Deposit Insurance Corporation in accordance with the provisions of paragraph (c) of section 12B of the Act entitled 'Banking Act of 1933', approved June 16, 1933, \$150,000,000, to be immediately available and to remain available until expended."

The banks whose deposits are insured are assessed for such service and the amounts collected on account thereof are deposited to the credit of the Federal Deposit Insurance Corporation for its use. See subsection (h), section 264, title 12, U. S. Code. However, there is no provision of law which appropriates the amount of these assessments for the expenditures of the Federal Deposit Insurance Corporation. In that connection, there is for noting the statement in decision of April 11, 1938, A-91137, as follows:

" * * * While no appropriations are made for the current expenses of the Federal Deposit Insurance Corporation under the provisions of section 12B of the Federal Reserve Act, as amended, the Corporation has under its control funds available for the payment of all necessary expenses, including expenses of its examiners and other employees while traveling on official business for the Corporation. * * * "

Also, attention is invited to the provision appearing in the act of June 16, 1933, 48 Stat. 192, 193, as follows:

" * * * The examiners and assistant examiners making the examinations of national banking associations and affiliates thereof herein provided for and the chief examiners, reviewing examiners and other persons whose services may be required in connection with such examinations or the reports thereof, shall be employed by the Comptroller of the Currency with the approval of the Secretary of the Treasury; the employment and compensation of examiners, chief examiners, reviewing examiners, assistant examiners, and of the other employees of the office of the Comptroller of the Currency whose compensation is paid from assessments on banks or affiliates thereof shall be without regard to the provisions

of other laws applicable to officers or employees of the United States. The funds derived from such assessments may be deposited by the Comptroller of the Currency in accordance with the provisions of section 5234 of the Revised Statutes (U. S. C., title 12, sec. 192) and shall not be construed to be Government funds or appropriated monies; and the Comptroller of the Currency is authorized and empowered to prescribe regulations governing the computation and assessment of the expenses of examinations herein provided for and the collection of such assessments from the banks and/or affiliates examined. * * * "
(Underscoring supplied)

In view of the absence of any appropriation for the payment of salaries of the Federal Deposit Insurance Corporation, and in the light of the statute in pari materia, above-quoted, showing that similar assessments against national banks for examinations are not to be regarded as "appropriated monies", it may be concluded that the salary of [REDACTED] as an employee of the Federal Deposit Insurance Corporation was not paid from "money appropriated" and, therefore, that the dual compensation act of 1916, supra, has no application to this case.

In view of the above disposition of the case, it is unnecessary in this decision to determine what authority, if any, the Federal Deposit Insurance Corporation has under the provisions of section 12B of the Federal Reserve Act, quoted in your letter, to employ a person who is on the rolls of the Congress in a pay status.

In the absence of other objection, you are authorized to refund to [REDACTED] the amount to his credit in the retirement fund.

Respectfully,

[REDACTED]
Comptroller General
of the United States.