



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-79709

The Honorable,

OCT 1 1948

The Secretary of the Interior.

My dear Mr. Secretary:

Consideration has been given letter dated August 25, 1948, from the Assistant Secretary of the Interior, respecting the applicability of the provisos in the Interior Department Appropriation Act, 1949, under the headings "Bureau of Reclamation" and "General Offices" as follows:

"* * * Provided further, That not exceeding \$48,000,000 of appropriations available for expenditure by the Bureau of Reclamation during the fiscal year 1949 shall be used for administrative personal service and other personal services: Provided further, That the total number of employees in the Bureau of Reclamation holding a permanent, temporary, or other appointment in grades CAF-9 and P-3, or above, shall not exceed three thousand five hundred at any one time during the fiscal year 1949."

The letter requests answers to two specific questions, as follows:

- "1. Are services performed by the Bureau of Reclamation for other agencies and financed
 - (a) by funds transferred from other Federal agencies to the Bureau;
 - (b) by funds made available to the Bureau under the Act of March 4, 1921 (41 Stat. 1367, 1404) and December 5, 1924 (43 Stat. 672, 685) and similar Acts; or
 - (c) by funds received by the State Department from foreign governments pursuant to the terms of Section 901 of the Act of January 27, 1948 (P. L. 402, 80th Congress) and transferred to the Bureau

included within the limitation?

"2. Are transfers of funds by the Bureau of Reclamation to other agencies

(a) by transfer appropriation warrants and allotment advices, or

(b) by Form 1080 vouchers for 'work or services' pursuant to Section 601 (a) of the Economy Act

included within the limitation?"

In expressing the tentative belief of the Interior Department that the answer to the first question should properly be in the negative, the letter points out that the first limitation is phrased in terms of "appropriations available for expenditure by the Bureau of Reclamation" rather than in the familiar and more comprehensive expression "funds available for obligation," generally used in the President's budget to cover all expendable funds. It is suggested therefore that contributions by States and advance payments by water users' associations, as well as other non-Federal sources of revenue (presumably referring to parts (b) and (c) of question 1) are not within the first, or \$48,000,000, limitation. As to part (a) of question 1, the letter suggests that inasmuch as Bureau appropriations are distinguished in the terminology of the budget from "reimbursement for services performed," and as there is no evidence of a Congressional intent to limit (as a contrary construction would limit) the Bureau's ability to make its services available to other agencies under section 601 (a) of the Economy Act, expenditures from funds transferred to the Bureau from other Federal agencies may properly be regarded as without the limitation.

In proposing that the answer to question 2 should also be in the negative, the letter indicates—presumably as an example under part (a)—that portions of the lump-sum appropriation to the Bureau for the Missouri River Basin, being a department-wide item rather than one available to the Bureau of Reclamation alone, are transferred to other departmental units by transfer appropriation warrants and allotment advices, and therefore are not "available for expenditure by the Bureau of Reclamation" and not within the limitation. Likewise, the letter points out (part (b) of question 2) that the Bureau should not be required to trace the use of funds transferred to other Federal agencies by form 1080 vouchers pursuant to section 601 (a) of the Economy Act, to determine their expenditure for personal services by reason of the limitation, such transfers being for treatment as payments on contractual obligations rather than for personal services.

The letter further points to the figures upon the basis of which the \$48,000,000 limitation was originally framed by the House Appropriations Committee, stating that the summary figure used was derived from a total of all the "01" items (personal services) in the "Obligations by Objects" tabulations in the President's budget, and excluded all transfers by transfer appropriation warrants and allotment advices, and that Form 1080 transfers, pursuant to budget instructions, were differentiated and included as "07" items (other contractual services). It is stated that this fact by itself is recognized as not conclusive, but that in view of the ambiguity of the language used, it is at least

persuasive evidence of the correctness of the Department's views.

Finally, the letter states that it is the intent of the Department, unless there be objection, to transfer from the rolls of the Bureau of Reclamation the members and staff of the Missouri Basin Field Committee, who, for convenience in pay roll matters and the like, have heretofore been carried on the rolls of the Bureau Office at Billings, Montana, the purpose of such transfer being to avoid the effect of the limitations, for the stated reason that these employees perform Departmental work, rather than Bureau work.

In the Interior Department Appropriation Act, 1949, all appropriations for the Bureau of Reclamation are made in lump sums, one for General Offices, one for General Investigations, one for Construction (by projects), one for Operation and Maintenance (by projects), etc. The four limitations generally applicable to all such lump sum appropriations are appended as provisos under the heading "General Offices." Those quoted above are the last two such provisos.

The purpose of the House Committee on Appropriations in including in the draft of the Interior Department Appropriation Act, 1949, limitations on the number of employees and on expenditures for personal services during the fiscal year 1949 was stated on page 23 of its report (No. 2038, 80th Congress) as follows:

"From many sources, the committee has received serious complaints to the effect that the Bureau of Reclamation is overstaffed, particularly in its administrative and supervisory personnel. The committee has given much time and study to these complaints in order that some specific action may be taken with a view to limiting the over-all number of persons employed by the Bureau for all types of personal services. The committee has been advised further that approximately 25 percent of funds available to the Bureau are, in some areas, being

used for personal services. In a serious effort to correct this situation, the committee has inserted a provision in the bill limiting the expenditures during the fiscal year 1949 for all personal services to a total of \$45,341,615, the sum stated by the Bureau as the amount obligated by the Bureau for this purpose during the current fiscal year. A statement of these expenditures is set forth on pages 34 to 37, part 1, of the printed hearings. A tabulation subsequently submitted to the committee on this subject will also be found on page 670, part 3, of the hearings. The committee has given consideration to each tabulation.

"In order to limit personnel in the upper grades, the committee has inserted a provision limiting the number of employees who may hold positions in grades CAF-9 and P-3, or above, to 3,251 during the fiscal year 1949. This limitation will prevent the Bureau from overstaffing with high-salaried personnel, a complaint which has been received from many sources, both during hearings on the bill and during the committee's investigations in the field."

The figure 3,251 was, as indicated by the Bureau's testimony before the Senate subcommittee (page 761, Senate Subcommittee Hearings on H.R. 6705), based on a report submitted by the Bureau to the House Committee, and purported to show the estimated number of employees in the higher grades for the fiscal year 1948.

The subsequent action taken by the conferees in increasing the dollars limitation to \$48,000,000 and the personnel limitation to 3,500 apparently resulted from representations made to the Senate subcommittee by the Bureau (See pages 759-762, Senate Subcommittee Hearings on H.R. 6705) that the figures used by the House committee incorrectly expressed obligations for personal services for the fiscal year 1948. It is to be noted, however, that the conferees did not accept the increased figure (\$49,224,593) substituted as more correct by the Bureau, but instead chose the lesser, rounded figure of \$48,000,000.

However, the condition observed during the committee's investigation, the existence of which apparently was corroborated by complaints received during the hearings, was one involving an apparent excess of available personal services of employees in Bureau offices, particularly of its administrative and supervisory personnel, taking into consideration all the work the Bureau was performing, whether directly incident to its own functions and operations or regularly undertaken at the instance of other agencies or institutions, under the authority of any law. The limitations adopted by the Congress to correct this condition were based generally on figures submitted by the Bureau covering its performance during the fiscal year 1948. Presumably, the Congress believed that the 1948 complement of Bureau personnel included sufficient slack to shoulder and advance the enhanced 1949 program, as well as normal augmentations of the work load undertaken at the instance of other agencies, with little or no increase in outlays for compensation for personal services or in numbers of employees in the higher classified grades. The limitations must be read together as being designed to correct the condition. They are designed to be remedial in nature, and the language used therein is to be broadly construed so as to give effect to the Congressional purpose.

Accordingly, I am constrained to hold that the \$48,000,000 limitation is to be regarded as applicable to all 1949 expenditures in compensation for the personal services of employees of the Bureau of Reclamation, whether from appropriations made directly to the Bureau

or from funds transferred to the Bureau; and further, that the 3,500 capita limitation must be regarded as applicable to all positions in grades CAF-9 or P-3, and above, which are or have been carried on the pay rolls of the Bureau of Reclamation.

It is noted that, in protesting the figure used by the House Committee in framing the limitation, the Bureau presented as the true amount of its obligations for personal services in 1948, (\$49,224,593), a figure which included funds transferred from other agencies to the Bureau (Budget, 1949, Page 519) as well as trust funds established pursuant to the acts of March 4, 1921 (41 Stat. 1367, 1404) and December 5, 1924), (43 Stat. 672, 685) and similar acts (Budget, 1949, pages 520-521). It thus appears that it was the understanding of the Bureau that a limitation such as was proposed, if included by the Congress in final enactment, would extend to the types of funds embraced within parts (a) and (b) of your Question No. 1. The inclusion of such funds within the limitation seems also to have been within the Congressional intent, as above expressed. Accordingly, parts (a) and (b) of Question I are answered in the affirmative. However, as regards funds received by the State Department from foreign governments pursuant to section 901 of the United States Information and Educational Exchange Act of 1948 approved January 27, 1948, (62 Stat. 6), and transferred to the Bureau of Reclamation, it appears that such transfers could have had little, if any, effect on 1948 Bureau operations. Therefore, expenditures from funds transferred in 1949 under this provision of law are

not to be regarded as within the limitation--any major undertaking by the Bureau thereunder being in the nature of an abnormal augmentation of the normal work load. Question 1 (c), for this reason, is answered in the negative.

As to Question 2, it has been repeatedly held that the Congressional purpose in placing limitations on the expenditure of appropriated funds cannot be defeated by the transfer of the funds to another agency. See 18 Comp. Gen. 489; 22 id. 462; 26 id. 545. But the Congressional purpose here is to limit to the 1948 basis the number of, and expenditures for the personal services of, employees in the offices of the Bureau of Reclamation, during the fiscal year 1949, rather than to limit the amount which could be expended by some other bureau or agency for personal services utilized in performing work normally requested of it by the Bureau, or such as was performed by the transfer of funds of the Bureau in 1948. In other words, this limitation is on the Bureau, rather than on the funds. For this reason, and since, as you point out, the Congress appears to have treated transfers under section 601 of the Economy Act as payments for contractual rather than personal services, I am inclined to view this case as an exception to the general rule, and to hold that the limitation here involved has no application to funds transferred by the Bureau to other agencies for work and services performed pursuant to said section 601. In answering your Question No. 2 (a) and (b) in the negative, however, it is to be understood that transfers to other agencies of funds to perform types of work which

normally, or in 1948, were performed in the offices of the Bureau, must be considered as designed to evade the subject limitation and, as such, subject to objection.

As regards the members and staff of the Missouri Basin Field Committee, you state these employees have heretofore been carried on the rolls of the Bureau of Reclamation Office at Billings, Montana, for convenience in pay roll matters and the like, even though they were engaged in Departmental, rather than Bureau, work. Nevertheless, their salaries and positions were included on the Bureau of Reclamation pay-rolls for 1948, and no suggestion was made that they be excluded when the Bureau's protests were made to the Senate subcommittee respecting the inaccuracy of the figures used by the House committee in fixing the original limitations (See pages 759-762, Senate Subcommittee Hearings on H.R. 6705.) For these reasons, it appears that both the \$48,000,000 ceiling and the 3,500 personnel ceiling were predicated upon the inclusion of these employees as employees on the rolls of the Bureau of Reclamation during 1948, within the purview of the limitations, and the proposed transfer to another pay roll of these positions, or any other position on the rolls of the Bureau during 1948, such as would evade the effect of either limitation, would be objectionable.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General
of the United States