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(A-27284)

**APPOINTMENTS—PROMOTIONS—EFFECTIVE DATE**

The appointing power for the custodian service of the Treasury Department being vested in the Secretary of the Treasury by virtue of section 169, Revised Statutes, may not be delegated to a subordinate. Accordingly, appointments and promotions in the custodian service may not be made effective prior to the date of their approval by the Secretary of the Treasury.

Comptroller General McCarl to the Secretary of the Treasury, July 22, 1929:

Reference is had to your letter of April 13, 1929, as follows:

The receipt is acknowledged of your letter of the 9th instant, file "A-EMI-121," regarding the administrative procedure in making appointments, promotions, and transfers of employees in the custodian service of the Treasury Department.

All appointments, promotions, transfers, and separations of employees are approved by the Secretary or the Assistant Secretary in accordance with the rules and regulations of the United States Civil Service Commission.

When a vacancy occurs at any Federal building and there is an eligible register in existence the custodian proceeds to make a selection from that register in accordance with civil-service rules. Inasmuch as Federal buildings

must be operated continuously for the proper conduct of the Postal Service and other Government activities conducting business throughout the United States, it is not possible to delay to any great extent the assignment of persons to duty in the several positions. It is therefore the policy for the custodian when he makes the selection from the register to assign the person selected to duty, prepare a nomination on the forms prescribed by the department, and submit the nomination, accompanied by a copy of the register, personal history, and an oath of office, to the department through the office of the district secretary of the Civil Service Commission. Upon receipt of the nomination through the proper channels the department examines the same for compliance with existing law, and if there has been no irregularities the appointment is approved from date of oath of office or date of assignment to duty in the event such assignment is made prior to the execution of the oath. It may be stated that the Comptroller of the Treasury has held that it is not necessary for an oath to be executed upon the date an employee is assigned to duty, but may be executed at any subsequent time.

In the event no civil-service register is in existence, custodians have been authorized to nominate suitably qualified persons within the prescribed age limits for temporary appointment. Assignment to duty is made in the usual manner and the nomination submitted here through the district secretary the same as in the case of regular selection from registers. Upon receipt of the nomination on proper form it is approved.

Transfers of employees from one building to another are approved by the department effective from date of actual assignment to duty in the new position. In connection with transfers from one department of the service to the custodian service actual transfer is not effected until the same has been approved by the Civil Service Commission. It has occurred where the services of an employee were essential for the proper care, maintenance, and repair of the department's property and in order not to curtail service rendered to the general public for an employee to be appointed temporarily pending approval of the transfer.

Before promotions are made it has always been the policy of the department to ascertain from its records or those of the Civil Service Commission whether an employee is eligible for such promotion before the same is authorized. Custodians initiate such action in the larger portion of instances, but the promotion is not effective until it has been approved by the department. Increases in compensation are likewise initiated by custodians and inspectors of the department for meritorious service, but do not become effective until approved and in no case are such increases made retroactive, such action being contrary to existing decisions.

The quotation from Voucher No. 869 in the account of Phillip Elting, referred to in the second paragraph of your letter, means that the oath of the employee was executed on November 27, submitted with the nomination, and that the appointment was approved by the department on December 7. In connection with the item referred to on Voucher No. 382, the "D. C. December 7" refers to the approval of the department. This is also the case in connection with the quotation "D. L. December 3."

Employees in the Custodian Service are assigned for the care, maintenance, and repair of completed and occupied Federal buildings in which are housed the Postal Service, Internal Revenue Service, Customs Service, and other branches of the Government service serving the public. In order not to interfere with the functioning of these activities and their service to the public it is necessary that these buildings be operated as efficiently as possible. To accomplish this it is necessary to have a full complement of employees on duty during the various hours of the day, and with this end in view custodians have been authorized in filling vacancies to assign persons to duty subject to the approval of the department. In the case of newly created positions custodians are requested to submit nominations but not to assign the nominees to duty until after the receipt of the approval of the appointment.

If a custodian was unable to assign a person to duty until after the department had approved the appointment, it would greatly interfere with the operation of these buildings, especially when there are some buildings where only one employee is assigned and therefore a vacancy in that position over a period of approximately four or five days would greatly interfere with the operation of the building and work a hardship upon the activities quartered therein. This would also apply to the larger buildings where certain extensive mechanical and electrical equipment is in operation and where it is essential that

qualified employees be on duty at all times in order not to have serious breakdowns and interruptions in the service. You can readily realize the enormous trouble that would develop were facilities for handling the mail or lighting the post office in cities like New York, Chicago, Philadelphia, and Boston interrupted by reason of the fact that vacancies existing could not be immediately filled.

The appointing power in the various executive departments and bureaus thereof is vested in the head of the department by section 169, Revised Statutes, and in the absence of specific statutory authority therefor may not be delegated to a subordinate. 26 Comp. Dec. 444; 27 *id.* 656; 21 Ops. Atty. Gen. 356; 4 Comp. Gen. 675; and *Burnap v. United States*, 252 U. S. 512.

No general statutory authority is found authorizing you to delegate to the custodians of public buildings authority to appoint or promote employees. The matter of making appointments in the Internal Revenue Service and the Public Health Service effective prior to their approval by you was made the subject of decisions by this office reported in 3 Comp. Gen. 559 and 4 *id.* 675, notwithstanding said decisions, it is apparent from the records of this office and from your letter, *supra*, that such a practice still obtains in the custodian service.

As illustrative of such illegal practice, attention is invited to the payment made by Phillip Elting, collector of customs, to Michael Serletti for the period, November 19 to December 6, 1928, at the rate of \$2,500 per annum. Serletti was previously employed as assistant engineer in the old Appraiser's Warehouse Building at \$2,300 per annum, and on November 19 was recommended for employment as acting chief engineer, new Appraiser's Stores Building, at \$2,500 per annum, which recommendation was not approved by you until December 6, 1928. Nevertheless, the employee was paid at the increased rate from November 19. In a letter dated May 27, 1929, from the executive officer of the Office of Supervising Architect, Treasury Department, it is sought to justify this as due to an emergency, and it is stated that the employment as acting chief engineer was temporary duty, pending the appointment of a permanent chief engineer from the civil-service list, Serletti not being eligible for such appointment. This payment was in direct contravention of section 1764, Revised Statutes, which provides:

No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

In view of all the facts and circumstances appearing, credit for the payment so made to Serletti will be allowed in this instance, but the practice of making appointments and promotions effective retroactively—that is, effective on a date prior to the date of your approval