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COMPTROLLER GENERAL OF THE UNITED STATES
Washington 25

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B-109025

June 23, 1952

The Honorable

The Secretary of Agriculture

My dear Mr. Secretary:

Reference is made to your letter of April 3, 1952, requesting decision whether employees transferring between the various milk markets or between milk markets and other federal agencies may be considered as transferred between different leave systems and, as such, entitled to lump-sum payment for their accrued leave at the date of such transfers pursuant to the act of December 21, 1944, 58 Stat. 845. Your request is predicated upon the desirability of maintaining intact the trust funds from which employees of such markets are paid and which are established by assessments upon the milk handlers.

You refer to Office decision of September 10, 1951, B-94359, in which it was held:

"The market agents, as well as the market administrators and their employees, were appointed by officials of the Federal Government to perform a function of the United States under the supervision, direction, and control of Federal officials. Accordingly, it also appears that, as such, they were 'employees of the United States' within the meaning of the Annual and Sick Leave Acts of March 14, 1936, 49 Stat. 1161 and 1162, as amended, 5 U.S.C. 30-30m. In that connection, the source of the funds from which their salaries are paid is immaterial.

The foregoing decision was rendered with respect to the leave acts of March 14, 1936, 49 Stat. 1161 and 1162, but is equally applicable

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to the present leave act approved October 30, 1951, 65 Stat. 679-683. Consequently, as employees of the milk markets are employees of the Federal Government, they are subject to the Leave Act of October 30, 1951, and it cannot be held that transfers between such markets and other Government agencies which likewise are subject to the same leave act would constitute transfers between different leave systems within the purview of the Lump-sum Leave Act of December 21, 1944.

However, it is believed that the solution to your problem of maintaining the trust funds' integrity may be met by adoption of a different method of accounting for accrued annual leave. The general rule has been that upon transfer to another Government agency subject to the same leave act, the employee's leave credits are transferable to, and become a charge against the appropriations of the new agency without any adjustment between the appropriations of the former and new employing agency. 16 Comp. Gen. 1122; 17 id. 315. However, that rule was amplified in 17 Comp. Gen. 571, to permit the cost of annual leave accrued while on detail to a borrowing agency—pursuant to an agreement under section 601 of the Economy Act^{47 Stat}—to be included as an item of cost to be reimbursed to the lending agency. In a subsequent decision, 25 Comp. Gen. 687, the Secretary of the Treasury, who then exercised control over the General Supply Fund, was authorized, in order to maintain the integrity of that fund and to make appropriate accounting therefor, to charge the value of accrued leave to the cost of operations for the year in which accrued and transfer that cost to a reserve fund to be

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available for payment for such annual leave when used or to make lump-sum payment therefor upon separation from the service. Accordingly, in recognition of the necessity for confining the assessments against milk handlers to the actual cost of the services rendered, this Office would not be required to object to the adoption of a procedure whereby the estimated value of accrued annual leave to an employee's credit when transferred between milk markets or between milk markets and other Government agencies would be transferred to the new agency. It is believed that the proper procedures to be followed in the respective agencies in accounting for the funds involved in the leave transfer could follow this pattern, viz:

1. Transfers between milk markets--The value of leave accumulated to the credit of an employee transferring from one milk market to another may be (a) charged to the leave liability account on the records of the employer from which transferred and (b) credited to the leave liability account on the records of the employer to which transferred.

2. Transfer of an employee to a milk market--In this case, the value of the accumulated annual leave to the credit of the employee would be paid to the milk market and the agency would charge the amount paid to the applicable current appropriation or other fund properly chargeable with the employee's salary.

3. Transfer of an employee from a milk market--In this case, the Government agency would receive payment for the value of the accumulated annual leave to the credit of the employee. As the funds thus received from the milk market covering the value of the employee's accumulated

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annual leave are transferred to and received by the Government agency for a definite purpose, i.e., to bear the cost of the employee's leave when taken or when paid for upon separation, they should be established as a trust fund in accordance with section 20 of the Permanent Appropriation Repeal Act of June 26, 1934, 48 Stat. 1233, until the end of the fiscal year involved, after which the funds may be covered into the Treasury to the credit of the appropriate miscellaneous receipt account.

Sincerely yours,

(Signed) LINDSAY C. WARREN

Comptroller General
of the United States