



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

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D-31862

FEB 27 1943

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Mr. J. E. Perry,
Authorized Certifying Officer,
Bonnevillle Power Administration,
Portland, Oregon.

Dear Mr. Perry:

There has been considered your letter of January 3, 1943, as

follows:

"Reference is made to the act of December 29, 1941, Public Law No. 389, 77th Congress, in accordance with Section 3 of which certifying officers have the right to apply for and obtain a decision by the Comptroller General on questions of law involved in the payment of vouchers presented to them for certification.

"There is transmitted herewith for advance decision as to legality of payment 'Voucher for Adjustment between Appropriations and/or Funds' in the amount of \$375.12 prepared in favor of U. S. Tennessee Valley Authority, Knoxville, Tennessee. The attached voucher represents a reclaim of items deducted by the Bonneville Power Administration from reimbursement bills of the Tennessee Valley Authority, such items covering the Authority's contribution to its own retirement fund in connection with salaries of employees loaned to Bonneville. These deductions were made in accordance with General Accounting Office Preaudit Difference Statement dated February 29, 1940, a copy of which is attached to D. O. Voucher No. 20-74223, paid March 9, 1940, from the accounts of G. F. Allen, Chief Disbursing Officer, Symbol No. 106-120. The Preaudit Difference Statement reads as follows:

"There appears no authority for including retirement at 3.75% of the basic salary as an item of cost."

"In making reclaim of the disallowed charges, the Tennessee Valley Authority states that the voucher is being presented at the suggestion of Mr. James D. Patton, field auditor for the General Accounting Office. In view of this statement, there appears to be some doubt as to the correctness of the disallowance made in the above-mentioned preaudit. Your decision is therefore requested as to whether the attached voucher may be legally certified for payment."

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The schedules submitted in support of the proposed adjustment show that the total amount of \$375.12 claimed by the Tennessee Valley Authority comprises amounts deducted by the Donnewille Power Administration, from 11 vouchers on which reimbursement was made to the Tennessee Valley Authority for salaries and expenses during various periods from August 30, 1939, to September 9, 1940, of certain of the Authority's employees loaned to the Donnewille Power Administration. Typical of the agreements under which the services of the employees first were loaned is that covering Miss Louise Dene, reflected in the following letter dated October 14, 1939, from the Executive Assistant, Donnewille Power Administration, to the Chief, Employment Division, Tennessee Valley Authority, a copy of which letter is attached to voucher 20-74223, referred to in your letter:

"With reference to your letter of September 26, 1939, this will confirm the loan to this organization of Miss Louise Dene on a reimbursable basis at a salary of \$2300 per annum, plus thirteen percent for accruing leave, transportation, and per diem expenses, for a period not to exceed three months."

It is noted that the above-quoted letter makes no reference to any item of retirement contributions. However, in the case of loan agreements made or renewed after November 1, 1939, there appears a further provision for reimbursing the Authority in an additional proportion—originally 3.75 percent—of the salaries of employees subject to the Authority's retirement system. Such provisions for additional reimbursement are included, for example, in the Authority's letter of December 7, 1939, relative to the loan of Lloyd S. Lewis, and in its letter of December 22, 1939, relative to extension of the

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loan of Miss Louise Dams, copies of which letters are attached to voucher 20 93811, May 1940 accounts of J. F. Allen. While the services of some of the employees were loaned prior to November 1, 1939, no retirement contributions are charged for periods before that date.

In this connection, it appears that the Tennessee Valley Authority's retirement system was established and is maintained independent of the retirement system applicable, under the Civil Service Retirement Act of 1930, as amended, to Federal employees generally. As set up by the Authority, the system provided for contributions by employees, by percentage deductions from their salaries, and for annual contributions by the Authority. The Authority's share was to be in an amount approximately 3.75 percent of the pay roll of the membership in the system, plus approximately 1.32 percent of such pay roll for accrued liability on account of past service. It further appears that although the retirement plan was scheduled to go into effect July 1, 1939, it actually commenced operation November 1, 1939, and that contributions by the Authority for accrued liability on account of past service were not made until the fiscal year 1941. House Hearings on the Independent Offices Appropriation Bill, 1940, pages 1829 to 1837, and id., 1941, pages 1654, 1655.

It has been held that pursuant to section 7 of the act of May 21, 1920, 41 Stat. 613, as amended by section 601 of the act of June 30, 1932, 47 Stat. 417, and by later legislation, 31 U. S. C.

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686, two departments or offices of the Government operating under separate appropriations may enter into an agreement for the performance of purely personal services by the personnel of one department or office for the other, for which reimbursement may be made not to exceed the regular salaries and expenses of the loaned personnel.

13 Comp. Gen. 234. Under the specific authorization in the amended section for the making of adjustments on the basis of the actual cost of work or services performed, the performing agency properly may be reimbursed for items, including overhead items, which commonly are recognized as elements of cost, notwithstanding such items may not have resulted in direct expenditures from the funds of the performing agency. 13 Comp. Gen. 150; 22 id. 74. Among other items, amounts required by Title I of the act of June 30, 1932, supra, to be deducted from employees' salaries and impounded and returned to the Treasury, and amounts representing the value of leave accruing to the credit of employees under the acts of March 14, 1936, 49 Stat. 1161 and 1162, have been held proper for inclusion as items of cost when adjusting the cost of services rendered by the personnel of one Federal agency to another, pursuant to the procedure authorized by section 601 of said act of June 30, 1932. 12 Comp. Gen. 442; 17 id. 571.

With respect to the item here under consideration, retirement pay has been defined as "adjusted compensation" presently earned, which, with contributions from employees, is payable in the future, provided the employee possesses the required qualifications and complies with the terms, conditions, and regulations imposed upon

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the receipt of retired pay. Retirement Board of Allegheny County v. McGovern, 316 Pa. 161, 174 Atl. 400. See, also, People v. Abbott, 274 Ill. 380, 113 N. E. 696.

But however that may be, it appears that the contribution of 3.75 percent, and any additional contribution for past service, made by the Tennessee Valley Authority to its retirement fund in accordance with the provisions of its retirement system, on account of the employees loaned to the Booneville Power Administration, was an expense of the Authority arising directly out of the employment relation and the employees' membership in the retirement system during the period covered by the contributions and measured by the amount of the member employees' salaries. Hence, such contributions are properly reimbursable under section 601, supra, along with other items entering into the cost of the services rendered. Since the Authority in entering into the loan agreements evinced an intent to claim reimbursement for all proper items in connection with the loan of its employees, and since the agreements and renewal agreements entered into after November 1, 1939, the date of institution of the retirement system, provided specifically for reimbursement of the Authority's contributions to the retirement fund, the voucher covering such reimbursements may be certified for payment, if otherwise correct.

The voucher is returned herewith.

Respectfully,

(Signed) Richard G. ROYER

Comptroller General
of the United States.

Enclosure.