

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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The Honorable,

The Secretary of the Army.

My dear Mr. Secretary:

Reference is made to your letter of March 11, 1948, forwarding a voucher drawn in favor of the Treasurer of the United States in the amount of \$35.20 payable from funds appropriated under Finance Service Army 1948 pursuant to authority contained in the act of 23 December 1944 (58 Stat. 921), and requesting a decision as to the propriety of payment under Office decision B-69160, dated October 16, 1947, to you.

The referred-to decision was in response to your letter of August 25, 1947, posing four questions as to the applicability of the act of December 23, 1944, in the case of the cashing of fraudulently negotiated or forged instruments. In the particular case which prompted the said letter, Captain E. F. Freiburg, P.D., United States Army, issued a check and, on the same day, cashed it for someone unknown upon the forged endorsement of the payee's name and forwarded it to the Treasurer of the United States for deposit to his official credit. The payee of the check alleged the forgery thereof and, upon being satisfied as to such allegation, the Treasurer of the United States charged the amount of the check to the official checking account of Captain Freiburg, causing a deficiency in the officer's account.

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It was held in the referred-to decision that the cashing of a check is an operation authorized under the act of December 23, 1944, and, therefore, that any loss arising out of such a transaction properly may be considered as coming within the purview of the term "any deficiencies" for which relief is contemplated under the act.

In answer to the question whether the appropriation made to cover losses in the accounts of Army disbursing officers in accordance with the said act was available to reimburse the Treasury Department or the Post Office Department after settlement by those departments with the payee or rightful owner of checks or money orders "from their respective reclamation or forgery funds," it was held that since the act of December 23, 1944, operates only in the event of a deficiency in the accounts of a disbursing officer, unless and until a deficiency is incurred in the accounts, the appropriation is not available for making adjustments.

You state that, if "deficiency" within the meaning of the decision of October 18, 1947, is interpreted to mean that an actual shortage must be shown in the accounts of the disbursing officer before the provisions of the act of December 23, 1944, can be applied, "it would appear that to a large degree the pertinent aspects of the act, so far as forgeries are concerned, are subject to conditions (accounting or mechanical) foreign to the factual conditions in a given case under which a forgery has been perpetrated." As an illustration, you cite the case of Major R. F. Strode, in whose account

a Treasury check cashed on a forged endorsement was deposited. In Major Strode's case, upon investigation disclosing that the rightful payee was entitled to payment, the Treasurer of the United States apparently made payment from the check forgery insurance fund created by the act of November 21, 1941, 55 Stat. 777. Said act authorized, under certain conditions, payment to payees of forged checks prior to reclamation and provided for the crediting to the fund any recoveries subsequently effected. The voucher transmitted with your letter, if payment thereon is authorized, would permit repayment to the fund the amount of the check cashed by Major Strode and deposited in his account.

While Major Strode's account has not been charged with the amount of the check, to wit, \$35.20, there is a deficiency therein since the officer has received credit from the Treasurer of the United States for a check which he cashed upon a forged endorsement of the payee's name and he properly is required to reimburse the Treasurer for the loss sustained on account of the *transaction* ~~transportation~~. Hence, it may be considered that a deficiency proper for consideration under the provisions of the act of December 23, 1944, exists in the officer's accounts and that relief is authorized under said act since you have made a finding that the cashing of the check involved was without fault or negligence on the part of Major Strode and that reasonable safeguards were employed to prevent loss due to the fraudulent cashing of negotiable instruments.

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The voucher transmitted with your letter is returned herewith
and payment thereon is authorized, if otherwise proper.

Respectfully,

(Signed) Lindsay O. Warren

Comptroller General
of the United States.

Enclosure.