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TO : Director, ID

FROM : Acting General Counsel - Harry R. Van Cleave

August 4, 1982

*[Signature]*

SUBJECT: Panamanians working as certifying and disbursing officers of the Panama Canal Commission (B-206288-O.M.)

Your staff has asked whether Panamanians who are not United States citizens can work as certifying and disbursing officers for the Panama Canal Commission, and, if so, whether they are accountable officers of the United States subject to the provisions of the accountable officer relief statutes—31 U.S.C. §§ 82a-1 and following. For the reasons given below, we answer both questions affirmatively.

Article III, paragraph (1) of the Panama Canal Treaty of 1977 grants the United States the right to "manage, operate, and maintain the Panama Canal," its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal. "These responsibilities are to be carried out by an agency of the United States Government called the Panama Canal Commission. Id. para. 3. The Commission is supervised by a Board composed of nine members: five United States and four Panamanian nationals. Until December 31, 1989, the Administrator of the Commission is to be a United States national and the Deputy Administrator a Panamanian. After that date, those positions will be reversed. Id. paras. 3(a), (c).

Article X of the Treaty describes Commission employment and states that the United States as employer shall establish employment and labor regulations for the Commission. Paragraph 2(a) provides that the regulations "shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission." Paragraph 3(a) requires the United States to establish an employment policy for the Commission that generally limits recruitment outside Panama to persons possessing requisite skills and qualifications unavailable in Panama, and paragraph 3(b) obligates the United States to establish training programs for Panamanian employees and apprentices to increase the number of Panamanian nationals qualified to assume positions with the Commission.

In 1979 the United States enacted legislation implementing the Treaty. Section 1212(a) of the Panama Canal Act, 22 U.S.C. § 3652(a), required the President to establish a Panama Canal Employment System, among other things, in accordance with and subject to the provisions of the Treaty. This, of course, included the preference for hiring Panamanians.

The Panama Canal Commission is a joint enterprise of the United States and Panama. Although a United States Government agency, it is evident that Panamanians are to participate essentially on an equal basis in running it: four of the nine members of the Commission's Supervisory Board are Panamanians as is the Deputy Administrator, the Administrator will be a Panamanian beginning in 1990, and the United States as employer is required to give preference to hiring Panamanians. In view of these factors, we would think it anomalous to preclude Panamanians from working as Commission certifying and disbursing officers.

Moreover, we are not aware of any other provision which would indicate a need for these employees to be citizens of the United States. In this regard, by regulation, 5 C.F.R. § 7.4(b), members of the competitive service are required to be U.S. citizens; however, pursuant to section 1202(c) of the Act, 22 U.S.C. § 3642(a), the Commission has exercised its authority to hire outside the competitive service so this regulatory provision is not applicable. Also, although section 699b of title 31 of the United States Code generally limits using appropriations for compensation of United States employees to employees who are United States citizens, it applies only to United States employees whose post duty is in the continental United States. Thus, it would not apply to Commission employees in Panama. Accordingly, since we are unaware of any statute or regulation prohibiting it, we find that Panamanians who are not United States citizens, can work for the Commission as certifying and disbursing officers. 1/

An accountable officer of the United States is any Government officer or employee who by reason of his or her employment is responsible for or has custody of Government funds. 59 Comp. Gen. 113/114 (1979). Whether employees are certifying and disbursing officers, and therefore accountable officers, does not turn on their citizenship, but on their duties. The Panama Canal Commission is a United States agency whose employees are employees of the United States. As accountable officers of the United States, they are subject to the same provisions of the accountable officer statutes as accountable officers of other Federal agencies.

This conclusion is consistent with that expressed in an internal Treasury Department memorandum.