



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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NOV 27

The Administrator

Housing and Home Finance Agency

My dear Mr. Administrator:

Reference is made to letter of October 30, 1951, from the Acting Administrator, requesting a decision with respect to certain questions, hereinafter quoted, which have arisen as a result of the "Jensen amendment" (section 605) to the Independent Offices Appropriation Act, 1952, Public Law 137, approved August 31, 1951, 65 Stat. 292, as amended by section 702 of the Supplemental Appropriation Act, 1952, Public Law 253, approved November 1, 1951, 65 Stat. 746.

Section 605, as amended, as set forth in pertinent part in your letter, provides as follows:

"Sec. 605. No part of any appropriation or authorization contained in this Act shall be used to pay the compensation of any incumbent appointed to any civil office or position which may become vacant during the fiscal year beginning on July 1, 1951: Provided, That this inhibition shall not apply--

- (a) to not to exceed 25 per centum of all vacancies;
- (b) to positions filled from within and by transfer to agencies provided for by this Act;
- (c) to offices or positions required by law to be filled by appointment of the President by and with the advice and consent of the Senate;

* * *

Provided further, That when the total number of personnel subject to this section has been reduced to 90 per centum of the total provided for in the budget estimates for 1952, this section shall cease to apply: And provided further, * * *

B-106323

It is pointed out in the letter that the language now appearing in the second proviso, quoted above, was inserted pursuant to the amendment made in section 702 of the Supplemental Appropriation Act, 1952, supra, in lieu of the following language which originally appeared therein:

***** Provided further, That when any department or agency covered in this Act shall, as a result of the operation of this amendment reduce their employment to a figure not exceeding 90 per centum of the total number on their rolls as of July 1, 1951, such amendment shall cease to apply and said 90 per centum figure shall become a ceiling for employment during the fiscal year 1952 and if exceeded at any time during fiscal year 1952 this amendment shall again become operative: And provided further, * * ***

The first question is set forth in the letter of October 30 as follows:

"1. In view of the specific deletion from section 605 of the Independent Offices Appropriation Act, 1952, of the language providing that the 90 per centum level shall become a ceiling for employment during fiscal year 1952, and of the omission from the revised proviso of any provision similar thereto and of any language providing that if the 90 per centum level is exceeded at any time during fiscal year 1952 the section shall again become operative, does the section continue to be operative after an agency once has reduced the total number of its personnel subject to the section to 90 per centum of the total provided for in the budget estimates for 1952, that is to say, would the section again become effective if, after such a reduction once had been accomplished, the number originally subject to the section should at any time thereafter exceed the 90 per centum level?"

It is stated at page 18 of Senate Report No. 891 accompanying the Supplemental Appropriation Bill, 1952 (H. R. 5215), under the caption, "INDEPENDENT OFFICES--GENERAL PROVISIONS" that--

"SECTION 702. LIMITATION ON FILLING OF VACANCIES (JENSEN AMENDMENT): In order to conform section 605 of the Independent Offices Appropriation Act, 1952, relating to the filling of vacancies, to the provisions in other appropriation acts for 1952, so that all

B-106323

agencies of the Government may be treated uniformly, the committee recommends that the following be added to the bill: * * *

Clearly, the purpose of the amendment was to bring about uniformity in the matter of the personnel ceiling formulas in the Jensen amendments to the several appropriation acts for the fiscal year 1952.

Consequently, I do not regard the omission from the revised proviso of the language formerly appearing therein, to the effect that if the 90 per centum figure is exceeded at any time during the fiscal year 1952, the amendment shall again become operative, as entitled to any weight in construing said revised proviso. A negative answer to the question under consideration would call for the same conclusion with respect to similar provisions in the Jensen amendment to other appropriation acts and would have the effect of vitiating the purpose of the Congress in enacting these provisions by permitting the administrative expedient of reducing the number of personnel below the 90 per centum level and thereafter increasing the number above such level without regard to the vacancy-filling restriction. I am unable to agree that a personnel ceiling of such transitory duration was intended. Accordingly, the first question is answered in the affirmative.

The second question is as follows:

"2. Is section 605 of the Independent Offices Appropriation Act, as amended, applicable to appropriations or authorizations contained in other acts: more specifically, is it applicable to the various appropriation and authorization items for the Housing and Home Finance Agency contained in the Second Supplemental Appropriation Act, 1952 (Public Law 254, 82d Congress, approved November 1, 1951, H. R. 5650, 65 Stat. 760), for the purpose of carrying out

B-106323

various functions authorized by the Defense Housing and Community Facilities and Services Act of 1951, Public Law 139, 82d Congress, 65 Stat. 293; and to the appropriation for the Office of the Administrator, Housing and Home Finance Agency, contained in the Supplemental Appropriation Act, 1952, *supra*, for expenses necessary to enable the Agency to carry out its functions under the Defense Production Act of 1950, as amended?"

At first consideration, the expression "any appropriation or authorization contained in this Act" appearing in section 605 might be viewed as precluding application of the restriction of said section in respect of appropriations or authorizations made by any other act. Standing against such view of first impression, however, is the general rule long followed that an appropriation specifically supplementing one made by a prior act is subject to the same limitations as the funds under the earlier appropriation, unless otherwise provided. The same general rule is applicable to authorizations. Accordingly, it must be held in those cases in which appropriations or authorizations with respect to funds under the Housing and Home Finance Agency made by the Independent Offices Appropriation Act, 1952, have been specifically supplemented by appropriations or authorizations in later acts, that such funds, including the increment effected by the later acts, may not be used for the compensation of personnel contrary to the terms of section 605, as amended, of the former act. In such class appear to be those cases in which the Second Supplemental Appropriation Act, 1952, increased the amounts made available under Title IV of the Independent Offices Appropriation Act for administrative expenses. The circumstance that the supplementation of prior appropriations or authorizations may have

B-106323

been occasioned by new activities or duties, such as those devolving upon your agency under the Defense Housing and Community Facilities and Services Act of 1951, Public Law 139, approved September 1, 1951,^{65 Stat. 243} does not take the case out of the general rule. Cf. 19 Comp. Gen. 324; id. 832; decision of October 1, 1943, B-36392, to the former National Housing Administrator; also, pages 522, 523, Senate Hearings on H. R. 5215, which became the Supplemental Appropriation Act, 1952.

On the other hand, in addition to supplementing prior appropriations or authorizations, an appropriation act denominated "supplemental" may make entirely new appropriations which are separate and distinct from those made by an earlier appropriation act or acts. In such cases the restriction of said section 605, as amended, would not apply.

In the class just mentioned are the appropriations under the head Housing and Home Finance Agency, Office of the Administrator, Salaries and Expenses, Defense Production Activities, in Chapter X of the Supplemental Appropriation Act, 1952, and the appropriations under the head Housing and Home Finance Agency, in Chapter V of the Second Supplemental Appropriation Act, 1952, for defense housing (except the increases in the amount available to the Public Housing Administration for administrative expenses, which is a supplementation of the amount available under Title IV of the Independent Offices Appropriation Act); defense community facilities and services; revolving fund for development of isolated defense sites; and

B-106323

salaries and expenses, defense housing and community facilities and services.

The second question is answered accordingly.

Sincerely yours,

(Signed) Lindsay G. Warren

Comptroller General
of the United States