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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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June 26, 1959

B-139261

Honorable Dante B. Fascell
House of Representatives

Dear Mr. Fascell:

In your letter of April 3, 1959, you asked whether legislation is necessary in order to permit the Air Force to accept the services offered by members of the former Ground Observer Corps at Miami, Florida.

Your inquiry was prompted by a letter addressed to you by Mrs. Marion G. Collins and a number of other individuals. The letter states that after inactivation of the Ground Observer Corps, which occurred on January 31, 1959, a group of civilian volunteers offered their services to the "Air Reserve Training Center"--2677th Air Reserve Center. They performed such duties as operating mailing and duplicating machines, typing form letters, and doing miscellaneous filing. Before performing such duties they signed a waiver precluding them from presenting any claim against the Government for any purpose whatever with respect to such services.

The letter then states that after about a month they no longer were permitted to perform such services. The basis for this refusal is stated as being the prohibition contained in section 3679, Revised Statutes, as amended, 31 U.S.C. 665(b) which provides as follows:

> "No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property."

Legislation similar to that quoted above first was enacted into law by the act of May 4, 1884, 23 Stat. 17. Concerning that provision, Mr. Justice Field, in concurring in the opinion handed down in the case of United States v. San Jacinto Tin Co., 125 U.S. 273, 305, decided March 19, 1888, stated as follows:

> "* * * It would seem that Congress designed to put its mark of condemnation upon the practice of obtaining services from private parties, without incurring liabilities for them, such as was adopted in this case, when, on May 4, 1884, it declared that 'Hereafter no department

> or officer of the United States shall accept voluntary service for the government, or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving loss of human life or the destruction of property.' 23 Stat. 17, c. 37. The language here used clearly indicates that the government shall not, except in the emergencies mentioned, place itself under obligations to any one. The principle condemned is the same, whether the party rendering the service does so without any charge or because paid by other parties. The government is forbidden to accept the service in either case."

In an opinion dated February 7, 1913, which appears in 30 Op. Atty. Gen. 51, the Attorney General referred to the statement by Mr. Justice Field but noted that his language was expressly addressed to the "practice of obtaining services from private parties without incurring liabilities for them." He then concluded that the words "voluntary service" as employed in section 3679, Revised Statutes, as amended, were not intended to cover services rendered in an official capacity under regular appointment to an office otherwise permitted by law to be remunerated.

In an opinion dated March 14, 1913, this provision of law was again considered by the Attorney General, 30 Op. Atty. Gen. 129, 131, and the statement is made that--

> "The provision of section 3679, Revised Statutes, as amended by section 3 of the act of February 27, 1906 (34 Stat. 48), prohibiting the acceptance of voluntary service for the Government, has no application to the performance of additional service by a clerk in executive department without additional compensation, but refers to voluntary services rendered by private persons without authority of law. * * *"

Section 3679, Revised Statutes, as amended, consistently has been construed by the courts, by the Attorney General, and by our Office as prohibiting the acceptance by the United States of voluntary services--that is, services furnished on the initiative of the persons rendering them without a proper request from or agreement with the United States.

That legislation does not purport, however, to prevent the acceptance of gratuitous services, if otherwise lawful, when the services are rendered by one who, upon his being appointed as a Government employee without compensation, agrees in writing and in advance that he waives any and all claims against the Government on account of such services. It is only when the compensation for a particular position is fixed by or pursuant to law that the employee of the position may not waive his ordinary right to such compensation. But even in these situations when the compensation is fixed by law, if there be some applicable provision of law authorizing

the acceptance of services without compensation, an employee of the position may waive his ordinary right to the compensation attached to the position and thereafter be estopped from claiming and receiving the salary previously waived.

From the description of the positions referred to in the letter from Mrs. Collins and her co-petitioners to you, we conclude that normally the compensation of such positions would be fixed by the Classification Act. The Department of the Air Force has no general authority to appoint employees of the nature here involved to serve without compensation.

Accordingly, it is our view that the acceptance of the voluntary services referred to in your letter are prohibited by the provisions of 31 U.S.C. 665b; and that, in order to do so, it would be necessary for the Department to obtain authorizing legislation. This conclusion is supported by the fact that the Congress, when it believed the use of voluntary services to be desirable, specifically provided for the acceptance of those services.

Some examples of such specific authority are as follows:

Section 4(b) of the act of June 25, 1938, 52 Stat. 1061, authorizes the Administrator of the Wage and Hour Division, Department of Labor, to "establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed."

The act of June 25, 1940, 54 Stat. 570, amended section 210 of the Communications Act of 1934 by adding thereto the following paragraph:

> "(b) Nothing in this Act or in any other provision of law shall be construed to prohibit common carriers from rendering to any agency of the Government free service in connection with the preparation for the national defense * * *."

Section 10(c) of the Selective Training and Service Act of 1940, 54 Stat. 894, provides that "In the administration of this act voluntary services may be accepted."

A provision identical to the above is contained in section 6(b) of the act of March 31, 1947, 61 Stat. 32, relating to the Office of Selective Service Records.

Section 8(2) of the Post Office Department Financial Control Act of 1950, 64 Stat. 462, states that the Postmaster may "accept gifts and donations of services, and of property (whether real, personal, or mixed, and

whether tangible or intangible), in aid of any of the activities of the Department."

In view of the foregoing and in specific response to your question, it is our opinion that legislation similar to that contained in the examples cited above is needed to permit the Department of the Air Force to accept the voluntary services referred to in your letter.

Relative to the voluntary services here involved, the Administrative Assistant to the Secretary of the Air Force in a report dated May 20, 1959, indicated that the acceptance of these services, even if specifically authorized by law, would be contrary to Air Force policy. He stated that acceptance of voluntary services might give rise to a number of administrative problems. That portion of his letter concerning these problems reads as follows:

> "* * * For example, any administrative authorization to accept gratuitous [services] on a broad scale would raise such problems as the anticipated unfavorable reaction of organized employee groups to any system of the Government's securing services at less than regularly established pay rates. There is also the possibility that rendering such services might give rise to claims for pay, compensation for injuries, loss of private property, or expenses incurred, if the waivers signed by the individuals were later determined to be invalid or if relief legislation were proposed for the individuals concerned.
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> "Many other problems could arise from such administrative authorization since, in the absence of specific legislation, it would not be clear whether such individuals would occupy the usual employee relationship with the Government. Examples of problems which could arise include:
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> "a. The question as to whether the actions of such a person giving gratuitous service might result in claims against the Government (such as under the Federal Tort Claims Act or 10 USC 2733), even though the person might not be under the control and surveillance of Air Force personnel in the same manner as personnel who are regularly employed.
>
> "b. The difficulty of applying certain of the so-called conflict of interest laws and policies to such persons in certain cases.
>
> "c. Questions as to the applicability of Executive Order Number 10450, which prescribes security requirements of Governmental personnel."

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While our views on this question are as stated above, we should point out that a violation of the prohibition against the acceptance of voluntary services is punishable by as much as two years in prison or a fine of $5,000, or both, 41 U.S.C. 665(i); and you may therefore wish also to obtain the views of the Attorney General in the matter.

The enclosure with your letter is returned herewith.

Sincerely yours,

Joseph Campbell

Comptroller General
of the United States

Enclosure