



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-179124

November 13, 1973

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The Honorable Dixy Lee Ray, Chairman
Atomic Energy Commission

Dear Dr. Ray:

Reference is made to letter of August 2, 1973, from the Controller of the Atomic Energy Commission (AEC) requesting ~~for~~ advice concerning alleged attorney's liens asserted against an award of just compensation by AEC to James C. Hobbs for the Government's use of Hobbs' patented H valve.

Specifically, the following questions are presented:

- (1) Is the United States bound to recognize an attorney's lien asserted against an award of just compensation by the Commission pursuant to 42 U.S.C. 2167f?
- (2) If the answer to the first question is affirmative, do the letters attached as enclosures B and C constitute proper and binding notice of such liens?
- (3) If the answer to the first two questions is yes, what is the obligation of the AEC with respect to resolution of dispute as to the existence and/or amounts of the claimed liens?

We have held that recognition of an attorney's lien as a valid claim against the United States would be in violation of the provisions of section 3477 of the Revised Statutes, 31 U.S.C. 203, since attorney's liens operate as assignments by purchase rather than by operation of law. See B-68587, July 14, 1949. See also 25 Op. Atty. Gen. 279, (1904); Spofford v. Kirk, 97 U.S. 484 (1878). No statute exists which authorizes an attorney's lien on public funds in the Treasury of the United States. Further, there are many decisions to the effect that an attorney's retainer agreement is unenforceable as in violation of said section 3477 of the Revised Statutes. Moreover, even an attorney's lien created by State law may not be considered paramount to a Federal statute properly enacted. See B-68587, November 10, 1949. See also Penn Dairies, Inc. v. Mill Control Commission of Pennsylvania, 318 U.S. 261 (1943) and cases cited therein.

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Also, in the case of Fitzman v. United States, 127 Ct. Cl. 173 (1953) certiorari denied, 348 U.S. 815, the Court of Claims gave consideration to a suit to recover from the United States an amount on the ground that the plaintiff, an attorney, had a lien against an award made to his client by the Maritime Administration. In dismissing the plaintiff's petition the court held that whether it was an attorney's lien, or equitable interest or something else, the contract between the plaintiff and his client gave over to the plaintiff an interest in his client's claim against the Government, which is forbidden by the "Anti-Assignment statute", 31 U.S.C. 203.

In light of the foregoing it is our view that the United States is not bound to recognize an attorney's lien asserted against an award of just compensation by AEC pursuant to 42 U.S.C. 2137. Accordingly, the first question is answered in the negative.

In view of the answer to the first question, answers to the second and third questions are not required.

Sincerely yours,

H. F. Koller

Deputy Comptroller General
of the United States