DECISION

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

61455

FILE: B-179640

DATE: AUG 19 1974

U980U1/98067

MATTER OF: Charles C. Varga, Jr. - Travel and Per Diem allowances for consultant

DIGEST: Person employed as consultant becomes temporary rather than intermittent employee upon completion of 130 days of work in a service year and thereupon ceases to be entitled to per diem allowance or allowance for travel between his home and place of performance of consulting duties even though employing agency may have informed employee otherwise, since Government is not responsible for unauthorized acts of its employees.

This action is in response to a request for a review of the disallowance by our Transportation and Claims Division of the claim of Mr. Charles C. Varga, Jr., a former consultant with the Environmental Protection Agency, for travel expenses for the period May 23, 1972 through June 29, 1973.

Mr. Varga was employed by the Environmental Protection Agency as a consultant on various programs from January 25, 1971 to June 29, 1973, under various appointments. From January 25, 1971 to October 24, 1971, his consulting duties were in Washington, D.C.; from October 25, 1971 to May 22, 1972, they were in New York; and, from May 23, 1972 to June 29, 1973, they were in the Washington area. Throughout this time, Mr. Varga maintained his home in the New Jersey suburbs of New York City. All of the above appointments were made under 5 U.S.C. 3109 and Mr. Varga's employment was on a full time basis.

During the period in question, as well as the period in 1971 when his consulting duties were performed in the Washington area, Mr. Varga generally flew to Washington at the start of the week, stayed in hotels in Washington, and flew home on weekends. He generally traveled to and from the airports, hotels, and consulting locations by taxicab. For the period January 25, 1971, through May 22, 1972, Mr. Varga received expenses of travel including a per diem in lieu of subsistence and transportation between his home and duty station. While his services were originally intended to be utilized on an intermittent basis it is evident that when his working days totalled 130 days, he no longer was to be regarded as an intermittent consultant so as to be entitled to expenses in traveling between his home and duty station and expenses while at his duty station. In July of 1973, the agency disallowed his

travel vouchers for the period May 23, 1972, through June 29, 1973, and sought the return of amounts advanced for expenses in excess of 130 days.

The settlement certificate disallowing Mr. Varga's claim, issued on November 19, 1973, by our Transportation and Claims Division, explained that consultants may be hired on a temporary or on an intermittent basis under 5 U.S.C. 3109(b). Travel and per diem expenses are authorized for intermittently employed consultants under 5 U.S.C. 5703(b). Intermittent employment is defined as less than half of full-time employment, or less than 130 days in a service year. Federal Personnel Manual, chapter 304, subchapter 1, paragraph 1-2a(5). Upon exceeding the 130 days, it becomes temporary employment.

Mr. Varga contends that his travel was in accordance with agreements with his agency, that travel orders, requests for money advances had been issued regularly, and that he had acted in good faith. When a Government employee acts outside the scope of the authority actually held by him, the United States is not estopped to deny his unauthorized or misleading representations, commitments, or acts, because those who deal with a Government agent, officer, or employee are deemed to have notice of the limitations on his authority, and also because even though a private individual might be estopped, the public should not suffer for the act or representation of a single Government agent. Utah Power & Light Co. v. United States, 243 U.S. 389 (1917); Bianco v. United States, 171 Ct. Cl. 719 (1965); Bornstein v. United States, 170 Ct. Cl. 576, 345 F. 2d 558 (1965); Potter v. United States, 167 Ct. Cl. 28 (1964), cert. denied, 382 U.S. 817 (1965); Vogt Bros. Mfg. Co. v. United States, 160 Ct. Cl. 687 (1963); Byrne Organization, Inc. v. United States, 152 Ct. Cl. 578, 287 F. 2d 582 (1961); National Electronics Lab., Inc. v. United States, 148 Ct. Cl. 308 (1960). The Government is not estopped from repudiating advice given by one of its officials if that advice is erroneous. von Kalinowski v. United States, 151 Ct. Cl. 172 (1960), cert. denied, 368 U.S. 829 (1971). Where a Government official approves and promises reimbursement beyond that allowed by applicable law, any payments made under such unauthorized actions are recoverable by the Government. W. Penn Horological Inst. v. United States, 146 Ct. Cl. 540 (1959).

Mr. Varga has submitted copies of several letters which he feels are pertinent in reconsidering the disallowance of his claim. These letters are on file in our Office and were fully considered by our Transportation and Claims Division when the Settlement Certificate of November 19, 1973, was issued disallowing his claim.

Mr. Varga states that in reconsidering his claim the Comptroller General has the latitude, flexibility and the authority to examine more broadly the particular case posed and in taking a second look, go beyond a "chapter-and-verse reading of the United States Code," and in so doing, render a more equitable decision. In deciding claims before our Office, the Comptroller General must abide by clear and unambiguous provisions of the statutes and regulations issued pursuant thereto which have the force and effect of law, and they may not be waived or disregarded by our Office.

Since Mr. Varga was not entitled to reimbursement of travel expenses beyond 130 days, under the circumstances, and he has not furnished any new evidence that would cause us to change our prior determination, we must sustain the action taken in our Transportation and Claims Division settlement of November 19, 1973.

R.F.KELLER

Acting Comptroller General
of the United States