

# DECISION



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

FILE: B-184145  
MATTER OF:

DATE: SEP 30 1975

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Responsibilities and liabilities of certifying officers

## DIGEST:

1. In view of certifying officer's statutory right to request and receive advance decision from the Comptroller General on matters of law, certifying officers are not "bound" by conclusion of law rendered by agency's general counsel. 31 U.S.C. § 82d.
2. Where there is doubt as to legality of a payment, certifying officer's only complete protection from liability for an erroneous payment is to request and follow Comptroller General's advance decision under 31 U.S.C. § 82d.
3. The Comptroller General may not relieve a certifying officer from liability if the Comptroller General finds a payment was specifically prohibited by statute, even though payment was made in good faith and for value received. 31 U.S.C. § 82c.
4. Test of good faith regarding legal questions concerning certified vouchers is whether or not certifying officer was "in doubt" regarding payment, and, if so, whether he exercised his right to request and receive advance decision from Comptroller General. 31 U.S.C. § 82c, 82d.
5. Certifying Officer is liable moment an improper payment is made as a result of his erroneous certification. This is true whether certification involves question of fact, question of law, or mixed question of law and fact.
6. This Office has sought to apply the certifying officer's relief statute by considering practical conditions and procedures under which certifications are made. Consequently, diligence required of a certifying officer before requests for relief can be granted is matter of degree dependent on practical conditions prevailing at time of certification, sufficiency of administrative procedures protecting interests of Government, and apparentness of the error.

PUBLISHED DECISION  
55 Comp. Gen. ....

In a letter of June 4, 1975, the Chief Certifying Officer of the U.S. Energy Research and Development Administration requested our guidance as to the role and responsibilities of a certifying officer. The certifying officer is concerned with the degree of reliance he can and should place on the advice of the agency's legal counsel in view of his responsibilities which are fixed by law. In addition to requesting general advice concerning his responsibilities, the certifying officer specifically asks--

"If our Office of General Counsel determines that a claim meets all legal requirements and is proper for payment or that payments under a proposed agency policy would not be contrary to any statutory provisions specifically prohibiting payments of the character involved, is the certifying officer bound by such determinations?"

"To what extent, if any, can a certifying officer be relieved of his financial responsibility when he has relied upon a legal opinion by the Agency's General Counsel?"\*

The responsibilities of a certifying officer are fixed by the acts of December 29, 1941, c. 641, § 2, 55 Stat. 875, as amended, (31 U.S.C. § 82c (Supp. III, 1973)), and April 28, 1942, c. 247, title III, 56 Stat. 244, 31 U.S.C. § 32f (1970). See 21 Comp. Gen. 976, 978 (1942); 28 Comp. Gen. 425, 426 (1949). These acts provide that:

"The officer or employee certifying a voucher shall (1) be held responsible for the existence and correctness of the facts recited in the certificate or otherwise stated on the voucher or its supporting papers and for the legality of the proposed payment under the appropriation or fund involved; and (2) be held accountable for and required to make good to the United States the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which

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\*The instant submission is not appropriate under 31 U.S.C. § 82d, infra in text, since it does not involve legal questions arising in a specific voucher presented for certification. However, we respond to the questions raised as a matter of general interest.

did not represent a legal obligation under the appropriation or fund involved \* \* \*." 31 U.S.C. § 82c (Supp III. 1973) (Emphasis Supplied),

and--

"The responsibility and accountability of certifying officers under sections 82b, 82c to 82e of this title shall be deemed to include the correctness of the computation of certified vouchers \* \* \*." 31 U.S.C. § 82f (1970).

If the certifying officer should either make a "false, inaccurate, or misleading certificate" that is the proximate cause of any illegal, improper, or incorrect payment, or issue a certificate causing a payment prohibited by law or which does not represent a "legal obligation under the appropriation or fund involved," then the certifying officer is liable to the United States for any payment made under such certificate. 31 U.S.C. § 82c (Supp III, 1973).

Furthermore, a certifying officer is liable the moment an improper payment is made as the result of his erroneous certification. See 54 Comp. Gen. 112, 114 (1974). This is true whether the certification involves a matter of fact, a question of law, or a mixed question of law and fact. 4 Comp. Dec. 332, 337 (1897); 23 Comp. Gen. 181, 183 (1943); 30 id. 298, 300 (1951); 39 id. 548, 549 (1960); 45 id. 447 (1966). Moreover, this Office looks only to the certifying officer for reimbursement even though some other administrative employee may be liable to the certifying officer under administrative regulation. 32 Comp. Gen. 332 (1953); 15 id. 962 (1936).

Under the first proviso of 31 U.S.C. § 82c (Supp. III. 1973)--

"\* \* \* the Comptroller may, in his discretion, relieve such certifying officer or employee of liability for any payment otherwise proper whenever he finds (1) that the certification was based on official records and that such certifying officer or employee did not know, and by reasonable diligence and inquiry could not have ascertained, the actual facts, or (2) that the obligation was incurred in good faith, that the payment was not contrary to any statutory provision specifically prohibiting payments of the character involved, and that the United States has received value for such payment \* \* \*." (Emphasis supplied.)

Subsection (1) of the relief proviso allows the Comptroller General, in his discretion, to relieve a certifying officer from liability based on the officer's certification of incorrect facts, provided such certification occurred under circumstances as stipulated

therein. As a general rule, a certifying officer may not escape liability for losses resulting from improper certification merely by stating either that he was not in a position to ascertain of his personal knowledge that each item on a voucher was correctly stated or that he must depend on the correctness of the computations of his subordinates. If he relies upon statements and computations of subordinates, he must assume responsibility for the correctness of their statements and computations, unless it can be shown that neither he, nor his subordinates, in the reasonable exercise of care and diligence, could have known the true facts. Otherwise, the certification would be without material value as a protection of the United States against erroneous payments if, after certifying definitely to the correctness of the voucher, the certifying officer could then escape liability by merely stating that he was not personally familiar with the facts to which he certified and did not know whether they were correct. 49 Comp. Gen. 486 (1970). The function of certification is not perfunctory, but involves a high degree of responsibility. 20 Comp. Gen. 182 (1940); 26 *id.* 578, 579 (1947). Thus we have held that press of work cannot relieve the certifying officer of his responsibilities. B-147747, December 28, 1961. On the other hand, we have held that, where proper administrative safeguards exist, certifying officers do not need to examine time, attendance, and leave records in order to certify the correctness of amounts shown on payrolls submitted to them. 31 Comp. Gen. 17, 18 (1951).

We have never undertaken to formulate any general rule declaring what acts may carry exemption from liability for certification of incorrect facts. Rather, we have sought to apply the relief provisions by considering the practical conditions and procedures under which certifications of fact are made. Consequently, the diligence to be required of a certifying officer before requests for relief under the act will be considered favorably is a matter of degree dependent upon the practical conditions prevailing at the time of certification, the sufficiency of the administrative procedures protecting the interest of the Government, and the apparency of the error.

Subsection (2) of the relief proviso of 31 U.S.C. § 82c (Supp. III, 1973) allows the Comptroller General in his discretion, to relieve certifying officers from liability for payments made in good faith and for value received by the United States. But the Comptroller General may not relieve a certifying officer if the Comptroller General finds that the payment was specifically prohibited by statute, regardless of value received by the Government or the certifying officer's good faith. 46 Comp. Gen. 135 (1966); 31 *id.* 653, 654 (1952); 14 *id.* 578, 583 (1935). Assuming value received for a payment and the absence of statutory prohibition, the test of good faith regarding legal questions concerning certified

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vouchers is whether or not the certifying officer was "in doubt" regarding the payment, and, if so, whether he exercised his right to request and receive an advance decision from the Comptroller General on any question of law involved in a payment on any voucher presented to him for certification, under section 3 of the act of December 29, 1941, 31 U.S.C. § 82d (1970). Thus, we have held that a certifying officer, who accepts the advice and instruction of an administrative or legal officer concerning a doubtful payment instead of exercising his right to obtain a decision by the Comptroller General, may not be relieved of responsibility for making an erroneous payment. 31 Comp. Gen. 653, 654 (1952); 14 id. 578, 583 (1935); B-180752, June 12, 1974.

Replying to the certifying officer's two questions quoted previously herein, where there is doubt as to the legality of a payment, the certifying officer's only complete protection from liability for an erroneous payment is to request and follow the Comptroller General's advance decision under 31 U.S.C. § 82d (1970). Moreover, in view of the certifying officer's statutory right to request and obtain an advance decision from the Comptroller General regarding the lawfulness of any payment to be certified, we can see no reason for concluding that the agency's general counsel's conclusions of law regarding such payment are "binding" on the agency's certifying officers.

R.F. KELLER

Deputy } Comptroller General  
of the United States