

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

B-23157

JAN 31

lsq

President, Board of Commissioners,
District of Columbia.

My dear Mr. Young:

I have your letter of January 10, 1942, as follows:

"There is enclosed a payroll submitted by the Superintendent of Schools covering salary allegedly due [REDACTED], Teacher-night school, 1-9, for the period Nov. 3, 1941 to Nov. 30, 1941, at the rate of \$2.00 per class, or \$40.00. There is also enclosed an oath of office dated Nov. 29, 1941, as well as personnel affidavit of the same date, executed by [REDACTED] (see Section 10, D. C. Appropriation Act approved July 1, 1941).

"Section 77, Title 20, of the D. C. Code provides:

"All civil officers in the District shall, before they act as such, respectively take and subscribe an oath or affirmation to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices * *".

"Your office, under date of May 19, 1931 (10 C. C. 524), held that in view of the fact that Mr. LeCompte, principal guard, District of Columbia Reformatory, having failed to take the prescribed oath of office as provided by Section 77, Title 20, of the D. C. Code, credit for any payment made to him at the higher rate of pay was disallowed in the accounts of the paying officer (see also 17 C. C. 296 and cases cited therein).

"There are decisions of your office to the effect that if the oath of office is taken before the end of the pay period and before payment is made that it may be construed to relate back to the date of entering upon service. However, since the law affecting civilian officers of the District, which includes public school teachers, requires that the oath of office be taken before they act as such, the question is whether your office will allow credit in the account if payment is made for service rendered by [REDACTED] prior to taking the prescribed oath of office.

"It is understood that, because of an emergency condition which necessitated her absence, [REDACTED] was away from the city at the time the oaths of office were administered to other personnel. When she returned, she either forgot to take the oath of office, or those in authority neglected to notify her of this requirement before entering upon duty. [REDACTED] was appointed by the Superintendent on Sept. 16, 1941, as per authority of the Act of April 22, 1932 to make interim appointments, and this action was confirmed by Board Order No. 18598, effective Sept. 22, 1941. The payroll indicates that she reported on Nov. 3, 1941 and took the oath of office on Nov. 29, 1941.

"The Commissioners would appreciate advice from you as to whether your Office will interpose any objection to the payment to [REDACTED] of the accrued salary for the period prior to taking the oath of Office and personnel affidavit. It is requested that you return the relating papers to this Office with your decision."

Section 10 of the District of Columbia appropriation act for the fiscal year 1942, approved July 1, 1941, Public Law 148, provides as follows:

"No part of any appropriation contained in this Act shall be used to pay the salary or wages of any person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence: Provided, That for the purposes hereof an affidavit shall be considered prima facie evidence that the person making the affidavit does not advocate, and is not a member of an organization that advocates, the overthrow of the Government of the United States by force or violence: Provided further, That any person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence and accepts employment the salary or wages for which are paid from any appropriation contained in this Act shall be guilty of a felony and, upon conviction, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both: Provided further, That the above penalty clause shall be in addition to, and not in substitution for, any other provisions of existing law."

In the case of United States v. Flanders, 112 U. S. 88, the Supreme Court of the United States gave consideration to the case of a collector of internal revenue who entered on duty and performed the

R-23157

- 3 -

duties of his office prior to taking the oath of office prescribed by the act of July 1, 1862, 12 Stat. 432 (section 1756, Revised Statutes), which specifically provided that the oath shall be taken "before entering upon the duties of such office, and before being entitled to any part of the salary or other emoluments thereof."

The court held as follows:

"* * * The compensation is given by the statute to the collector, when appointed, and is based wholly on the amount of moneys paid over and accounted for. If he is appointed, and acts, and collects the moneys, and pays them over and accounts for them, and the government accepts his services and receives the moneys, his title to the compensation necessarily accrues, unless there is a restriction growing out of the fact that another statute says that he must take the oath 'before being entitled to any of the salary or other emoluments' of the office. But, we are of opinion that the statute is satisfied by holding that his title to receive, or retain, or hold, or appropriate, the commissions as compensation, does not arise until he takes and subscribes the oath or affirmation, but that, when he does so, his compensation is to be computed on moneys collected by him, from the time when, under his appointment, he began to perform services as collector, which the government accepted, provided he has paid over and accounted for such moneys. This was, in substance, the charge given, and it was correct."

See, also, United States v. Eaton, 169 U. S. 331, and the decisions therein cited.

Section 2 of the act of May 13, 1864, 23 Stat. 22 (Title 5, section 16, U. S. Code), repealed section 1756, Revised Statutes, and prescribed in lieu thereof the oath prescribed by section 1757, Revised Statutes, which requires, also, that the oath of office be taken "before entering upon the duties of his office." This office has followed the rule stated by the Supreme Court. See 4 Comp. Gen. 345.

2/14

B-23157

- 4 -

As the condition contained in the provision of section 77, Title 20, District of Columbia Code, quoted in your letter, that the oath of all civil officers of the District of Columbia shall be taken "before they act as such" is substantially the same as the condition--prescribed in the statutes considered by the Supreme Court--that the oath shall be taken "before entering upon the duties of his office", the rule stated by the court would appear properly for adoption with respect to the applicable provision of the District of Columbia Code.

As it is understood [REDACTED] has subscribed to both of the oaths required by the statutes here involved, you are advised that this office will not interpose any objection to the proposed payment, if otherwise correct.

The voucher and other papers are returned herewith as requested.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General
of the United States.

Enclosures