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Federal Security Administrator,  
Federal Security Agency.

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My dear Mr. McNutt:

I have your letter of February 3, 1942, as follows:

"Paragraph 11 of the National Youth Administration Appropriation Act of 1942 provides as follows:

"Par. 11. No person shall be employed or retained in employment in any administrative position, or in any supervisory position on any project, and no person shall receive assistance in the form of payments or otherwise from the United States for services rendered under the National Youth Administration, under the appropriation in paragraph 1 or paragraph 2 unless such person before engaging in such employment or receiving such assistance subscribes to the following oath:

"I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office (or employment) on which I am about to enter (or which I now occupy). So help me God."

"Although this Agency is familiar with the rule set forth in United States v. Flanders, 112 U. S. 88; United States v. Eaton, 169 U. S. 331; 4 Comp. Dec. 496; 6 Comp. Dec. 199; 4 Comp. Gen. 845; and 39 Op. Atty. Gen. No. 79, the National Youth Administration requests a decision, because of the particular wording of paragraph 11, quoted above, as to the availability of funds for the payment of employees who have been properly appointed but who have not executed oaths of allegiance prior to the performance of services but have executed such oaths prior to the time when checks are to be drawn in their favor.

"The National Youth Administrator advises that this question has not been raised at an earlier date since the General Accounting Office permitted the practice of pre-auditing pay rolls involving the execution of oaths subsequent to the performance of services, and, as he states, questionable payments were cleared in that manner.

However, the National Youth Administrator advises that, since the General Accounting Office has discontinued the practice of pre-auditing such items, a decision on this question seems desirable.

"Your decision is therefore respectfully solicited."

Section 1756, Revised Statutes, the statute construed in the case of United States v. Flanders, 112 U. S. 88, referred to in your letter, required the taking of a specified oath by persons appointed to any office of honor or profit upon the basis of two factors, namely, (1) "before entering upon the duties of such office," and (2) "before being entitled to any part of the salary or other emoluments thereof." In said decision the Supreme Court of the United States 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."

Section 1756, Revised Statutes--the statute considered in the court decision, supra--was repealed in toto by section 2 of the act of May 13, 1884, 23 Stat. 22, but said act required that there-after the oath taken in such cases should be "as prescribed in section

seventeen hundred and fifty-seven of the revised Statutes." Said section 1757, Revised Statutes, requires the taking of the oath by persons in such cases only upon the basis of one factor, namely, "before entering upon the duties of his office."

Relative to the application of the provisions of section 1757, Revised Statutes, it was stated in 4 Comp. Gen. 845, as follows:

"It appears that [redacted] was appointed to the commission on July 3, 1924, but was not notified of his appointment until July 15, 1924, on which date he took the oath of office. Section 1757, Revised Statutes, and the act of May 13, 1884, 23 Stat. 21, require generally that an officer of the United States shall take the oath of office before entering upon his duties. These provisions have been held to be directory only. United States v. Eaton, 169 U. S. 331. The accounting officers have followed the decision cited and held that unless an appointment stipulated taking the oath of office as a condition precedent to make the appointment effective, the officer or employee would be entitled to compensation from the date of acceptance of the appointment, provided the oath had been taken prior to the payment of compensation; that is, the oath must be taken before the officer or employee is entitled to payment, but the oath having been taken the right to compensation may relate back to the date of the acceptance of the appointment in the absence of any restriction in the appointment itself. See 24 Comp. Sec. 547."

There is for noting that paragraph 11 of the National Youth Administration Appropriation Act, <sup>55 Stat. 489,</sup> quoted in your letter, not only provides that "no person shall be employed" before taking the oath but also, that "no person \* \* \* shall be retained in employment"; and there is for noting, also, that the parenthetical insertion in the language of the oath itself permits the application of the oath to the "duties of the office or employment \* \* \* which I now occupy," thus making the oath applicable to those already in the service. The basis for the requirement of the oath here would, in effect,

seem to be the same as that required by the oath prescribed by section 1757, Revised Statutes, which section relates to "every person elected or appointed." In other words, the rule stated by the Supreme Court of the United States in the Flanders case, supra, appears properly for following in the application of the statute quoted in your letter, as both seem to contemplate that the appointment or employment may become effective before the oath is taken but that the right to receive compensation does not spring into being until the oath shall have been executed. Compare decision B-23157, dated January 31, 1942, involving a substantially identical situation.

Answering your question specifically, you are advised that employees of the National Youth Administration should where practicable be required to take the prescribed oath before being permitted to enter upon duty; and even where that is not practicable they may not be paid from the appropriation here involved until they shall have taken the said oath but, in such cases, the oath when taken will relate back to the date they entered upon duty under proper authority and will entitle them to pay from that date.

Respectfully,

[Signed) Lindsay C. Warren

Comptroller General  
of the United States.