

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

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President,

United States Civil Service Commission.

My dear Mr. Mitchell:

I have your letter of October 31, 1944, as follows:

"The War Department has requested the concurrence of this Commission in a proposal designed to expedite the payment of refund of retirement deductions to certain separated employees.

"Specifically, the Department requests that the Commission, pursuant to the provision of Section 601 of the Economy Act dated June 30, 1932, as amended, concur in authorizing the making of refunds of retirement deductions by installations of the War Department to civilian employees separating therefrom under the conditions set out below.

"1. This procedure to continue for the duration of the present emergency unless terminated prior thereto.

"2. The War Department shall pay refunds only to the following:

"a. Employees appointed on July 1, 1943 or subsequent thereto.

"b. Employees who are separated on January 1, 1945 or subsequent thereto.

"c. Employees who have had no Government service other than the period of employment in the specific installation from which separated, during which period there has been no break in service and for which service refund is being paid.

"d. Where there is no indication at the installation from which separated of indebtedness by the employee to the Government.

"A complete outline of the plan is discussed in letter of October 16, 1944, from the Secretary of War, copy of which is attached.

"The Commission, as the agency charged with the administration of the retirement law, desires that all benefits due employees thereunder are awarded as promptly as possible.

"However, a similar proposal was made by the Navy Department to the Secretary of the Interior, when that Department was charged with the administration of the retirement law. The then Comptroller General in his decision of July 12, 1922, A. D. 6886, held that there was no legal authority for the procedure proposed. In this decision it was stated: 'A duty of this kind involves administration rather than the rendering of a service and there is no authority to transfer administrative duties.'

"In view of this decision, the Commission is doubtful of its authority to adopt the proposal of the War Department should it consider the plan otherwise desirable.

"Your decision is requested as to whether the Commission may, under the terms of Section 601 of the Economy Act of June 30, 1932, authorize the War Department to make payment of refunds of retirement deductions under the plan outlined in the Department's letter of October 16, 1944."

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Section 601 of the Economy Act of June 30, 1932, 31 U.S.C.

686, which was enacted as an amendment to section 7 of the act of

May 21, 1920, 41 Stat. 613, as amended, provides, in pertinent parts:

"(a) Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual cost of the materials, supplies, or equipment furnished, or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned: Provided, That the War Department, Navy Department, Treasury Department, Civil Aeronautics Administration, and the Maritime Commission may place orders, as provided herein, for materials, supplies, equipment, work, or services, of any kind that any requisitioned Federal agency may be in a position to supply, or to render or to obtain by contracts: Provided further, That if such work or services can be as conveniently or more cheaply performed by private agencies such work shall be let by competitive bids to such private agencies. Bills rendered, or requests for advance payments made, pursuant to any such order, shall not be subject to audit or certification in advance of payment."

It has been held repeatedly that said section does not authorize a department or agency to transfer administrative functions to another department or agency. 27 Comp. Dec. 892; 8 Comp. Gen. 116; 14 id. 455; 17 id. 1054. The theory of such decisions is that there is inherent in a grant of authority to a department or agency to perform a certain function, and to expend public funds in connection therewith, a responsibility which, having been reposed specifically in such department or agency by the Congress, may not be transferred except by specific action of the Congress. The soundness of this principle is without question; hence, it is necessary to consider whether under the proposed procedure for the refund of retirement deductions there would be involved such a transfer of duties and responsibilities conferred by law upon the Civil Service Commission as to render inapplicable the provisions of the said section 601.

Under the proposed arrangement, as described by the Secretary of War in letter dated October 16, 1944, the Commission would advance to the War Department from the Civil Service Retirement and Disability Fund sufficient funds to provide a suitable working fund—the funds so advanced to be placed in a trust fund account in the Treasury subject to disbursement by disbursing officers of the Army for the sole purpose of making the payments authorized—and would replenish such working fund from time to time thereafter; the Commission would audit all refund claims paid by the War Department to "satisfy itself that the amounts claimed as disbursed for refunds are fully supported by individual records of payment;" and if in the audit of any case

the Commission should determine that a "substantial overpayment" has been made, it would notify the Fiscal Director, War Department. Such procedure would apply only to the classes of cases described in your letter, it being estimated by the Secretary of War, however, that during the coming calendar year such cases would number between 400,000 and 500,000.

Section 4 of the Civil Service Retirement Act of May 22, 1920, as amended, 5 U.S.C. 709, provides:

"For the purpose of administration, except as otherwise provided herein, the Civil Service Commission is hereby authorized and directed to perform, or cause to be performed, any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this chapter into full force and effect."

Of course, it must be recognized at the outset that a certain amount of cooperative effort from the various departments and agencies of the Government is necessary to a proper administration of the retirement law. Such matters as the actual making of deductions from an employee's salary for retirement purpose, the keeping of employment records reflecting necessary data, etc., are functions relating to the administration of the retirement law which, by their very nature, could not be performed by the Civil Service Commission without the assistance and cooperation of the various departments and agencies of the Government. Possibly it was with such fact in mind that the Congress authorized the Commission either to perform or "cause to be performed" any and all acts necessary to carry out the purposes of the said Civil Service Retirement Act.

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Section 12 of the said Retirement Act provides that "payment of all annuities, refunds, and allowances granted hereunder shall be

made by checks drawn and issued by the disbursing clerk for the payment of pensions." Such provision was cited in the decision of July 12, 1922, A.L. 6886, referred to in your letter, and apparently influenced the holding in that case. However, since by virtue of section 4 of Executive Order No. 6166, dated June 10, 1933, establishing the central disbursing system, payments of retirement annuities, refunds, and allowances no longer are made by such "disbursing clerk for the payment of pensions", it would seem that this language in said section 12 need not now be considered a bar to an arrangement along the lines proposed.

The fact that the Commission would audit all cases of refunds made by the War Department must be considered as a retention of a certain degree of supervision and control over the matter of refunds. Moreover, the Commission still would be required under section 13 of the said Retirement Act to "make a detailed comparative report annually showing all receipts and disbursements on account of annuities, refunds, and allowances \* \* \* and it shall transmit to Congress the reports and recommendations of the Board of Actuaries." In other words, though the assistance of the War Department would be utilized in the actual making of refunds under the proposed arrangement, it would seem that the responsibility for the performance of the function generally would remain in the Civil Service Commission.

There is no indication in your letter as to the views of the Commission concerning the desirability of the proposed plan from an administrative standpoint. And, of course, it is a necessary prerequisite to any transaction or arrangement under section 601 of the

Economy Act that it be determined by the head of the department or agency placing the order for supplies or services with another department or agency that to do so would be in the "interest of the Government." In this connection, it is understood that the proposed arrangement would impose no appreciable additional burden or expense on the War Department and that no charge would be made to the Commission for the services to be rendered by the War Department in effecting these payments. Also, it is assumed that if, in the judgment of the Commission, the procedure as proposed by the Secretary of War should be revised or modified in any respect in order more effectually to accomplish the intended purposes, such revision or modification will be made. For example, it would seem necessary to clarify the proposal to question in the audit of refunds only "substantial overpayments"—if not to require that steps be taken to recover all overpayments.

Accordingly, if it be determined by you to be in the interest of the Government to effect refunds of retirement deductions in the manner proposed, this office will not be required to object thereto, it being understood that the arrangement would be adopted only as a temporary expedient during the present emergency.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General  
of the United States.