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Director of Fiscal Accounts
Thru Chief Executive Officer

The General Counsel

Uniform Allowances

You have inquired by memorandum of December 21, 1954 whether Title IV of Public Law 763, 83rd Congress, approved September 1, 1954, authorizes the Railroad Retirement Board to furnish uniforms or pay a uniform allowance to its staff nurse. You state that on the basis of long-standing custom, both within the Board and in industrial nursing generally, the staff nurse has been required to wear a prescribed uniform while performing her duties. The nurse has purchased her own uniform.

Section 402 of Title IV of Public Law 763 reads as follows:

"There is hereby authorized to be appropriated annually to each agency of the Government of the United States or of the District of Columbia (including Government-owned corporations), upon a showing of the necessity or desirability thereof, an amount not to exceed \$100 multiplied by the number of the employees of such agency who are required by regulation existing on the date of enactment of this Act or by law to wear a prescribed uniform in the performance of his or her official duties and who are not being furnished with such uniform. The head of any agency to which any such appropriation is made shall, out of funds made available by such appropriation, (1) furnish to each such employee such uniform at a cost not to exceed \$100 per annum, or (2) pay to each such employee an allowance for defraying the expenses of acquisition of such uniform at such times and in such amounts, not to exceed \$100 per annum, as may be prescribed in accordance with rules and regulations promulgated pursuant to section 404. Where the furnishing of a uniform or the payment of a uniform allowance is authorized under any other provision of law or regulation existing on the date of enactment of this Act, the head of the agency may in his discretion continue the furnishing of such uniform or the payment of such allowance under such law or regulation, but where a uniform is furnished or allowance paid under any such law or regulation no uniform shall be furnished or allowance paid under this section."

Memorandum to the Director
of Fiscal Accounts

Section 2 of the Bureau of the Budget Circular No. A-30, dated November 12, 1954, to which you refer in your memorandum, contains language virtually identical with the above-quoted revision of Public Law 763 and is, therefore, no aid in answering the question raised by your memorandum.

It is clear from Section 402 that the appropriation authorized therein applies only to employees who are "required by regulation existing on the date of enactment of this Act or by law" to wear a prescribed uniform in the performance of their duties. There does not appear to be any law requiring the Board's staff nurse to wear a uniform, and on the date of enactment of Public Law 763 the Board had not issued any regulations containing such a requirement. It follows, therefore, that the Board is not authorized by Section 402 to furnish the staff nurse with a uniform or to pay her the uniform allowance provided therein. The promulgation of a regulation on the subject at this time will not bring the case within the terms of that section.

With respect to your contemplated revision of the language of the 1956 appropriation for Salaries and Expenses, Railroad Retirement Board, while the inclusion of a substantive requirement in an appropriation bill would be subject to a point of order, we see no objection to such revision.

It may be noted that the last sentence of Section 402 provides that the agency may continue the furnishing of a uniform or the payment of an allowance where this is authorized under any other provision of law existing on the date of the enactment of Public Law 763.

Title 5, United States Code, Section 118g reads as follows:

"Appropriations available for the procurement of supplies and material or equipment shall be available for the purchase and maintenance of special clothing and equipment for the protection of personnel in the performance of their assigned tasks."

While it might possibly be said that a nurse's uniform serves in some measure as a protection to her in her assigned task, the Comptroller General has stated in 32 Comp. Gen. 229, 230, that "The legislative history thereof [i.e. Section 118g] clearly indicates that it was intended to provide basic statutory authority for the purchase of such items as rubber gloves, rubber boots, and asbestos clothing, where employees are engaged in hazardous occupations".

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Wholly independent of Section 118g, the Comptroller General has set forth certain tests for determining whether an agency may properly furnish its employees with gowns or items of wearing apparel. 2 Comp. Gen. 652. In that case, he specifically approved the furnishing of gowns and caps for use by medical and dental staffs in Saint Elizabeths Hospital, Washington, D. C., while engaged in treating patients of the hospital, since it appeared that such gowns and caps were worn for the protection of the patients. While there may be a distinction between the gowns and caps used by the medical staff of a hospital and the uniform worn by the Board's staff nurse, it would seem that the nurse's uniform, just as the gowns and caps, is intended for the protection of the individuals whom the nurse attends.

Although it appears that it has been customary for nurses like the Board's staff nurse to furnish their own uniforms, a basis may be found in the Comptroller General's decision noted above for the Board to furnish such uniforms, and it is therefore suggested that the matter be taken up informally with the General Accounting Office.

Myles F. Gibbons
General Counsel

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