



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

Ms. Waterman

15109

B-198265

October 6, 1980

*[Indebtedness Resulting From Agency Failure to Deduct Annuity Payments]*

Mr. Harlan Cleveland, Director  
Aspen Institute for Human Studies  
Rosedale Road, P.O. Box 2820  
Princeton, New Jersey 08540

Dear Mr. Cleveland:

Your letter of January 23, 1980, points out that you have refunded the overpayment of salary as a consultant to the Department of Commerce resulting from its failure to reduce your salary by the amount of your Federal annuity. Although you do not ask for a reversal of the denial by the General Accounting Office of your request for waiver of that overpayment, you do request that we review the use in waiver cases of the "he should have known" doctrine.

Your January 23, 1980, letter points out that you had suggested that your service to the Advisory Board take the form of a contract. The Department of Commerce chose, however, to pay you as a consultant, even though the rest of the arrangement with your office was being handled by contract. You explain that since the same payments could have been made by contract, you assumed the Department of Commerce had made an exception in your case to the general rule regarding annuitants and had not reduced your salary by the amount of your annuity.

The issue as we see it is the reasonableness of your assumption that an exception had been made in your case to the rule requiring a reduction from an employee's salary of the amount of the Federal annuity. You made this assumption even though you were aware of the general rule as a result of your considerable high-level experience in the Federal Government. Our view is that in the circumstances we could not support the reasonableness of your assumption and, therefore, we could not conclude that you were not at least partially at fault in the matter.

We are well aware of the pitfalls and implications inherent in the use of the "he should have known" doctrine. We strive to apply it in an objective and reasonable manner.

We regret that our application of it in your case is not in accord with the way you would have applied it.

Sincerely yours,

For The Comptroller General  
of the United States

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