

- 4 Dallas S. Townsend, Assistant Attorney General
4 Office of Alien Property
4 J. Lee Rankin, Assistant Attorney General
4 Office of Legal Counsel
4 German Pension (Mr. Richard E. Newkirk, OAP)

7 Alice

Picked up by
Alien Property Messenger
10-21-54, 1:50 p.m.
ECB.

Reference is made to your memorandum of October 19, 1954, transmitting for information Mr. Newkirk's letter of October 14 on the above subject.

Mr. Newkirk quotes a paragraph from my memorandum of October 4 to the effect that the annuity could be considered exclusively as damages and not affected by the Constitutional clause under question. Treating his letter as an informal request for reconsideration, I am still of the opinion stated in the paragraphs following the one quoted that the payments consist of something more than mere damages and do come within the Constitutional prohibition. By recognizing that the question was novel and not free from doubt, I did not intend to detract from my conclusion that the arrangement was one requiring the consent of Congress.

Mr. Newkirk, while indicating that he does not intend to renounce the award, suggests an escrow arrangement for the payments pending an application to Congress for consent. I understand that this matter was the subject of an informal discussion with the Solicitor General and the Attorney General and also between Mr. Creighton of your Claims Branch and Mr. Cushman of my staff.

It would, of course, be inappropriate for the Attorney General to agree to any temporary arrangement not permitted by the Constitution and the question arises whether an escrow arrangement satisfies the constitutional requirement that no person "holding any office *** shall *** accept" an emolument from a foreign government.

This is an absolute prohibition. In apparent recognition of that fact, Congress enacted 5 U.S.C. 115 and 115a which provides that foreign presents, decorations or other things shall be tendered through the State Department and not delivered to the individual unless authorized by act of Congress. This statute, in effect, makes the State Department an escrow agent in these matters. Since Congress established this procedure, it is my opinion that unless the State Department is willing to act in the premises, the Department of Justice should not.

I have been informally advised by Mr. H. Charles Spruiks, Assistant Chief of Protocol, Department of State, and his legal counsel, Mr. Raymond J. Nolan, that the statute is inapplicable in this instance. Mr. Newkirk has already personally "accepted" the award and any delivery of the fund to that office now would only be as agent or trustee for Mr. Newkirk. Moreover, the State Department has never administered monetary awards under the Act and is of the opinion that it was not intended to apply to them. The practice has been to hold decorations and if

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congressional consent was not obtained, to return them to the foreign government unless the individual resigned before Congress acted. In the instant case there is serious doubt whether the State Department would be in a position to return Mr. Newdirk's annuity payments, assuming the Act applies and assuming Mr. Newdirk was agreeable to such an arrangement. And any agreement whereby Mr. Newdirk merely put the fund out of his immediate control for a temporary period and not absolutely in the event Congress did not consent to the payments would violate the spirit if not the letter of the Constitutional provision.

I fully appreciate your concern in this matter. You might wish to provide Mr. Newdirk with a letter setting forth the reasons why it has been held necessary to release him from government service and also assure him of favorable consideration of an application for reemployment at such time as Congress may authorize it. In this latter connection, you might wish to discuss the matter with the State Department with a view to their securing legislation for all government employees similarly situated. There would be considerable equity in favor of such a bill since the payments result from this government's actions at the termination of World War II. I also understand that this is not an isolated case.

cc: Attorney General
Solicitor General
(Per Mr. Rankin's request).