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COMPENSATION OF CERTAIN CUSTOMS EMPLOYEES

JUNE 30 (calendar day, JULY 1), 1930.—Ordered to be printed

Mr. WATSON, from the Committee on Finance, submitted the following

R E P O R T

[To accompany H. R. 12742]

The Committee on Finance, to whom was referred the bill (H. R. 12742) to amend the act entitled "An act to adjust the compensation of certain employees in the Customs Service," approved May 29, 1928, having considered the same, report it back to the Senate without amendment and recommend that the bill do pass.

Following is the House report on the bill:

[House Report No. 1877, Seventy-first Congress, second session]

The Committee on Ways and Means, to whom was referred the bill (H. R. 12742) to amend the act entitled "An act to adjust the compensation of certain employees in the Customs Service," approved May 29, 1928, having had the same under consideration, report it back to the House without amendment and recommend that the bill do pass.

On May 29, 1928, President Coolidge approved the act of Congress (Public Law 575) commonly known as the Bacharach Act, which provided increased salary ranges for certain employees in the Customs Service. This legislation was adopted by Congress after a very thorough investigation of the needs of the Customs Service. Its provisions did not represent all the adjustments in salary ranges which your committee felt were warranted by the facts brought out by the investigation. It did, however, give relief to employees in the lower grades, and it was the best adjustment that could be made at that time.

In accordance with the provisions of the act of May 29, 1928, the Treasury officials made various changes in the pay status of certain customs employees in harmony with what the administrative officers of the department believed to be a correct interpretation of the intent of Congress. After these changes and promotions had been made, the Comptroller General rendered a number of decisions bearing upon his interpretation of the several provisions of the act, which decisions completely nullified the interpretation made by the department officials and set aside the action taken by the department in certain transfers and promotions made. In a number of cases the decision of the comptroller has resulted in ordering certain employees who had been transferred from one branch of the service to another,

supposedly at an increase in salary, to accept a lower salary than they were receiving and to refund back to the Treasury the difference between the higher salary which they had been paid (prior to the comptroller's decision) and the lower salary in the grade to which they had been transferred. Of course the money had been spent by these employees before the comptroller's decision was rendered, and they have been called upon to pay back to the Treasury something which they do not now possess. The amount ordered refunded is about \$6,000 and payment of the refund must be made not later than June 30, 1930, unless relieved by Congress. The purpose of this bill is to afford relief to these employees and to so amend the original act that there can be no misinterpretation of the intent of Congress.

The interpretation of the act of May 29, 1928, by the comptroller and the decisions rendered by him bearing upon the scope of the authority of the Treasury officials under the provisions of the act, may be legally sound and correct, but they do not, in the opinion of the committee, reflect the plain intent of Congress.

There is attached hereto the correspondence transmitted to the Speaker of the House by the Secretary of the Treasury bearing upon the need of this legislation. The Secretary's letter and accompanying documents set out the situation in detail.

THE SECRETARY OF THE TREASURY,
Washington, May 10, 1930.

DEAR MR. PRESIDENT: I submit herewith draft of a bill to amend the act of Congress approved May 29, 1928, entitled "An act to adjust the compensation of certain employees in the Customs Service" (45 Stat. 955), so as to make certain changes therein, necessitated in the interest of good administration of the Customs Service by interpretations placed upon the act by the Comptroller General, and to afford relief to certain of the customs field employees of the Treasury Department.

Under the provisions of the act of May 29, 1928, referred to, known as the Bacharach Act, various changes have been made in the pay status of customs employees in accordance with what the administrative officers of the Treasury Department believed to be a correct interpretation of the provisions of the act. In certain classes of cases the salary status fixed by the administrative officers has been disapproved by the Comptroller General. In view of the adverse rulings, the employees affected thereby will lose the benefit of the promotions given them, and, in addition, will be compelled to refund considerable amounts which they have already received, unless Congress sees fit to alleviate their situation by remedial legislation. A statement is attached showing the employees who have been affected by the Comptroller General's rulings, and a detailed discussion of the cases involved follows.

For convenient reference in considering the cases, the act of May 29, 1928, is quoted in part below:

"That the following annual rates of compensation are hereby established for the employees in the Customs Service hereinafter specified:

"(a) Laborers, \$1,500.

"(b) Verifiers, openers, and packers, \$1,680, \$1,740, \$1,800, \$1,860, \$1,920, \$1,980, and \$2,040.

"(c) Clerks, entrance salary, \$1,700; clerks having one year's satisfactory service, \$1,800; clerks having two years' satisfactory service, \$1,900; clerks having three years' satisfactory service, \$2,000; clerks having four years' satisfactory service, \$2,100; thereafter promotion of clerks to higher rates of compensation shall be in accordance with existing law.

"(d) Customs guards, \$1,860, \$1,920, \$1,980, \$2,040, \$2,100, \$2,200, \$2,300, and \$2,400.

"(e) Inspectors, \$2,100, \$2,200, \$2,300, \$2,400, \$2,500, \$2,600, \$2,700, \$2,800, \$2,900, \$3,000, \$3,100, \$3,200, and \$3,300.

"(f) Station inspectors, \$3,000, \$3,100, \$3,200, \$3,300, \$3,400, \$3,500, and \$3,600.

"SEC. 2. All new appointments of employees specified in section 1 shall be made at the minimum rate of the appropriate salary range.

"SEC. 3. Nothing in this act shall be construed to prevent the promotion of any employee at any time to a vacant position in a higher grade, and when so promoted such employee shall receive the compensation fixed in accordance with law for such position; and nothing herein contained shall be construed to reduce the rate of compensation of any employee in the Customs Service.

"SEC. 4. There are hereby authorized to be appropriated such sums as may be necessary to pay the rates of compensation herein established."

The cases in which the Comptroller General disapproved the action of the administrative officers are classified as follows, and they are considered in the order in which they appear:

1. Clerks given increases in pay under section 1 (c) of the act, allowing credit for previous service in positions in the Customs Service requiring a first grade civil service examination, such service not having been continuous.

2. Clerks given increases in pay under section 1 (c) of the act, allowing credit for previous service in positions in the Customs Service requiring a first grade civil service examination with designations other than clerk.

3. Employees promoted, transferred, or reinstated to positions of clerk, allowing credit under section 1 (c) of the act for previous service in positions in the Customs Service requiring a first grade civil service examination, such service not having been continuous.

4. Employees promoted, or transferred to positions of clerk, allowing credit under section 1 (c) of the act for previous service in positions in the Customs Service requiring a first grade civil service examination with designations other than clerk.

5. Clerks given increases in pay and employees transferred to positions of clerk allowing credit under section 1 (c) of the act for previous clerical service in the Bureau of Customs, Washington, D. C.

6. Clerks promoted under authority of section 3 of the act, before completion of more than four years' clerical service, and other employees specified in section 1 of the act, promoted to clerk vacancies allocated to Grade CAF-5, or a higher grade, at a salary of \$2,000 per annum, or above.

7. A clerk promoted from a temporary position at \$1,700 per annum to a vacant position of clerk, CAF-5, \$2,000 per annum, before the completion of three years' continuous clerical service in the Customs Service.

8. Employees transferred from positions in the Customs Service to positions specified in section 1 of the act and given a salary above the minimum rate of the range provided in that section for the position to which transferred.

Classes 1 to 4, inclusive: In increasing the pay of clerks on July 1, 1928, and on subsequent dates, under the provisions of the Bacharach Act, they were given credit for all previous service in first-grade civil-service positions in customs, with the exception of the position of sampler, regardless of whether such service was continuous. The same practice was followed in transferring, promoting, or reinstating persons to clerical positions. The Comptroller General holds that transfers from one position to another within the Bacharach Act and that transfers from any other position in the Customs Service or from a position in the Bureau of Customs, to one within the Bacharach Act, are all new appointments within section 2 of the Bacharach Act, and that, therefore, they must be at the minimum salary, notwithstanding the fact that the employee transferred may have had the requisite number of years of satisfactory customs service. He holds further that in any such case no credit may be allowed for previous satisfactory customs service in fixing the salary of a clerk under section 1 (c) of the act, unless: (1) Such service was rendered in a clerical position or in a position the paramount duties of which are clerical in character; (2) such service was rendered in the Customs Field Service; (3) such service was continuous; and (4) such service was rendered immediately preceding the date of the transfer or reinstatement. The decisions of the Comptroller General to the foregoing effect are cited below, and copies of those decisions, as well as any other decisions referred to herein, are inclosed:

A-24392, dated September 29, 1928; 8 Comp. Gen. 152.

A-26082, dated February 27, 1929; 8 Comp. Gen. 467.

A-28672, dated September 24, 1929; not reported.

A-28057, dated October 2, 1929; not reported.

A-24392, dated July 17, 1929; not reported.

Class 5: In increasing the pay of certain clerks on July 1, 1928, and later in making a transfer to the field, credit was given for services rendered in the Bureau of Customs. The Comptroller General, in his decision A-24634 (not reported), dated July 19, 1929, construes the act to be limited in application to employees in the field service of customs, and as precluding any credit being given for service rendered in the Bureau of Customs in Washington in fixing the pay status of a clerk transferred from the bureau to the field service.

Class 6: Certain clerks not having more than four years' continuous clerical service, and other employees specified in section 1 of the Bacharach Act, were promoted to vacancies in clerical positions in grade CAF-5, or higher, under the provisions of section 3 of the Bacharach Act. However, the Comptroller General, in his decision A-29202 (9 Comp. Gen. 198), dated November 9, 1929, construes the act as limiting the pay of customs clerks with less than four years' service to the salary rates provided in section 1 (c), notwithstanding the provisions of section 3 of the act.

Class 7: A clerk was promoted from a temporary position at \$1,700 per annum to a vacant position as clerk, grade CAF-5, at \$2,000, before the completion of three years' continuous clerical service in the Customs Service. The Comptroller General's decision, A-29202 (9 Comp. Gen. 198), dated November 9, 1929, holds this action to be illegal.

Class 8: Employees have been transferred from one of the positions named in section 1 of the Bacharach Act, such as inspector, verifier-opener-packer, etc., to another of the positions named therein and given more than the entrance salary for the position to which transferred. In some instances, the employee was receiving prior to transfer a higher salary than the minimum of the position to which transferred. The disapproval of the Comptroller General of the pay status fixed by the administrative officers in the case of employees in this class is based upon his construction of the statute as outlined in connection with classes 1 to 4, inclusive, above.

As construed by the administrative officers of the Treasury, section 1 (c) required that automatic promotion in \$100 steps be made for satisfactory service over periods of 1, 2, 3, and 4 years, but since section 3 of the act expressly provides that nothing in the act was to be construed to prevent the promotion of any employee at any time to a vacant position in a higher grade, the act contemplated that promotions would be made where a vacancy in a position in a higher grade occurred and where an employee exhibited unusual ability and aptitude for the position, regardless of his length of service, so long as he possessed the necessary civil-service status. It is not in the interest of good administration that an employee who has shown exceptional ability should be barred from the higher grades until he has served four years in the lower grades.

In making changes in the pay status of customs employees within section 1, subsection (c) of the act, the administrative officers of the Treasury Department also felt that that section did not intend that the 1, 2, 3, or 4 years of satisfactory service necessarily need be continuous. The reasonable view of the act seemed to be that when clerks had rendered the specified number of years of satisfactory customs service they were entitled to the specified increase in salary, without regard to whether or not such service may have been continuous. As construed by the administrative officers of the Treasury, section 2 of the act applies only to original appointments in the Customs Service or to transfers from branches of the Government other than customs of persons having no previous service or insufficient service in customs work. The knowledge and experience gained by an employee in certain positions in section 1 of the act add materially to his qualifications for certain other positions. That is true regardless of whether or not the service was continuous or immediately preceded the date of transfer or reinstatement. Consequently, in transferring an employee from certain positions to certain other positions in the same service, or in reinstating a person having previous customs service of the requisite character, it is highly desirable that allowance should be made for the knowledge and experience gained by him in his former position in fixing his salary status in his new position.

The act of May 29, 1928, as construed by the Comptroller General, does not permit of a wise and equitable adjustment of the salaries of the employees affected thereby or in a manner deemed to be in the best interest of the service.

For example, it is often extremely advantageous at the smaller ports, particularly Canadian and Mexican border ports, to fill vacancies in clerical positions by transferring and promoting inspectors of customs to such positions. The salary range for inspectors of customs fixed in the act of May 29, 1928, is from \$2,100 to \$3,300

per annum. The salary range for clerks, fixed in the same act, is from \$1,700 to \$2,100 per annum, i. e., for 1, 2, 3, and 4 years of satisfactory service. Under the provisions of section 2 of the act, as construed by the Comptroller General, such transfers constitute new appointments and must be made at the minimum salary for clerks, namely, \$1,700 per annum. Such a transfer, although in the interest of good administration, can not be made without a substantial reduction in salary. Moreover, frequently it becomes very advantageous to fill vacancies in clerical positions by transferring and promoting to such positions other customs employees, such as verifier-opener-packer, customs guard, sampler, storekeeper, etc. However, to make such transfers would in most cases result in a reduction in the salary of the employee under the Comptroller General's construction of the act and the transfers thereby are in effect prohibited. In other words, regardless of the knowledge and experience the employee may have acquired in the other positions and notwithstanding the fact that it is such knowledge and experience that makes it advantageous to make the change, he can be given no credit for previous service in any of those positions in fixing his salary as clerk under the provisions of section 1 (c) of the act.

Under the provisions of the act, as construed by the Comptroller General, a customs clerk in one of the grades created by the act may not be given an increase in pay when promoted to fill a vacancy in a clerical position in a higher grade until after he has completed four years' service, notwithstanding the fact that he may have all the qualifications for the higher position and may be the only clerk with the necessary qualifications available. For example, a Bacharach clerk having two years' service and receiving \$1,900 per annum, when promoted to a vacancy in a position of clerk CAF-6, the minimum salary rate of which is \$2,300 per annum, can be given no increase in pay at the time of promotion and can not be given the minimum of the grade (\$2,300) until after he has completed two additional years of continuous satisfactory clerical service.

Under the present act, as construed by the Comptroller General, a clerk who resigns after years of service and is reappointed must be reappointed at the entrance salary of \$1,700 per annum and may be promoted only in successive steps of \$100 per annum, after 1, 2, 3, and 4 years' service, dating from his reappointment.

The bill which I submit is designed to give relief to the employees affected by the Comptroller General's ruling and to so change the language of the Bacharach Act that in future credit may be given for previous satisfactory continuous Customs Service, rendered in the Customs field service or in the Bureau of Customs, when transfers are made from one position to another within the Bacharach Act, or from any other position in the Customs Service or in the Bureau of Customs to one within the Bacharach Act, and that vacant positions in the Customs Service may be filled by promotion on merit from the ranks of employees in customs without the employees being forced to accept the minimum rate of the range provided for such position—which latter often would involve a reduction in salary for the employee notwithstanding the fact that the change is a promotion for the employee and an increase in the importance of his duties or responsibilities.

Inasmuch as the situation created by the Comptroller General's interpretation of the provisions of the present act imposes a serious handicap upon the administration by the Treasury Department of the Customs Field Service, seriously interfering with the proper carrying on of the customs business and affecting the morale of the personnel, may I ask that you submit the bill to the proper committee, and that you use your good offices to secure enactment of the measure into law at this session of Congress?

The Comptroller General has agreed to postpone until June 30, 1930, the demands for refund from the employees whose salaries already have been increased upon the basis of the administrative interpretation of the statute, in order to permit of relief and remedial legislation, and, therefore, the matter is urgent.

The Director of the Bureau of the Budget has advised that the proposed legislation will not be in conflict with the financial program of the President.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.

THE PRESIDENT OF THE SENATE.

A-24392.

CUSTOMS SERVICE—COMPENSATION UNDER ACT OF MAY 29, 1928 (45 STAT. 955)

Under the act of May 29, 1928 (45 Stat. 955), authorizing the adjustment of compensation of certain employees in the Customs Service, all new appointments to the classes of positions specified in section 1 of the act, including employees transferred from some other branch of the Customs Service or some other branch of the Government service, and appointments from private life, are required by section 2 of said act to be made at the minimum salary rate provided for each of the classes of positions specified by the act, the saving clause in section 3 thereof against loss of salary having relation only to employees holding the same position subsequent to July 1, 1928, as they held prior thereto.

Comptroller General McCarl to the Secretary of the Treasury, September 29, 1928:

"Consideration has been given to your letter of September 5, 1928, as follows: In connection with the administration of the Bacharach bill (H. R. 13143), which fixes the entrance salary of clerks in the Customs Service at \$1,700 per annum and authorizes increases in their pay to \$1,800 after one year's satisfactory service, \$1,900 after two years' satisfactory service, \$2,000 after three years' satisfactory service, and \$2,100 after four years' satisfactory service, information on the following questions is requested:

"1. The appraiser of merchandise at New York has recommended the promotion of an employee in grade CAF-4, who receives \$1,800 per annum and has no clerical service to his credit, to a vacancy as clerk at \$2,000 per annum. Has the Treasury Department the authority to approve the promotion of this man to clerk at \$2,000 per annum? If answer is negative, please state salary to which employee is entitled under proposed change.

"2. The collector of customs at Philadelphia, Pa., has recommended the promotion of an employee in grade CAF-4, who receives \$1,920 per annum and who has less than three years' clerical service to his credit, to a vacancy as clerk at \$2,100 per annum. Is his promotion to clerk at \$2,100 permissible? If answer is negative, please state salary to which employee is entitled under proposed change.

"The act to which you refer, dated May 29, 1928 (45 Stat. 955), entitled 'An act to adjust the compensation of certain employees in the Customs Service,' is subsequent to the Welch Act, of May, 28, 1928. Accordingly, section 3 of the Welch Act and the prior act of December 6, 1924 (43 Stat. 704), mentioned in said section 3, as extended through subsequent fiscal years until July 1, 1928, are not applicable to the classes of employees and positions for which salary rates are specifically fixed by the act of May 29, 1928.

"In so far as here material, the act of May 29, 1928, provides as follows:

"The following annual rates of compensation are hereby established for the employees in the Customs Service hereinafter specified:

* * * * *

"(c) Clerks, entrance salary \$1,700; clerks having one year's satisfactory service, \$1,800; clerks having two years' satisfactory service, \$1,900; clerks having three years' satisfactory service, \$2,000; clerks having four years' satisfactory service, \$2,100; thereafter promotion of clerks to higher rates of compensation shall be in accordance with existing law.

* * * * *

"SEC. 2. All new appointments specified in section 1 shall be made at the minimum rate of the appropriate salary range.

"SEC. 3. Nothing in this act shall be construed to prevent the promotion of any employee at any time to a vacant position in a higher grade, and when so promoted such employee shall receive compensation fixed in accordance with law for such position, and nothing herein contained shall be construed to reduce the rate of compensation of any employee in the Customs Service.

* * * * *

"SEC. 5. (a) Sections 1 and 2 of this act shall take effect on July 1, 1928.

"(b) The remainder of this act shall take effect from the date of its enactment.

"The questions are answered in the order stated as follows:

"1. You do not state the character of the duties of the position held by this employee prior or subsequent to July 1, 1928, or whether the position is being paid in any of the grades or classifications as prescribed by the above quoted act.

However, from your statements in the question, it is assumed that the position now occupied by the employee is not within any of the grades or classifications specified in the above quoted act but is in grade CAF-4 as fixed by the administrative office under section 3 of the Welch Act. (See act of December 6, 1924, 43 Stat. 710.) If so, section 2 of the above quoted act would authorize the appointment of the employee as a clerk only at the entrance salary of \$1,700 per annum, the saving clause in section 3 having relation only to employees holding the same position subsequent to July 1, 1928, as they held prior thereto. It would seem that the Congress sought by section 2 to protect the advancement of employees already in the grades or classifications or having the designations specified in the act, viz, (a) laborers, (b) verifiers, openers, and packers, (c) clerks, (d) customs guards, (e) inspectors, and (f) station inspectors, by requiring that "All new appointments of employees specified in section 1 shall be at the minimum rate of the appropriate salary range." That is, all employees appointed to any of such positions from some other branch of the Customs Service, some other branch of the Government service, or from private life should be considered as "new appointments," within the meaning of section 2 and paid initially at the minimum salary rate provided for each class of positions. An analogous situation is found in the Railway Mail Service under the act of May 27, 1908 (35 Stat. 413), providing, 'That hereafter railway postal clerks on entering the service shall receive the salary of the lowest grade,' and section 7 of the act of February 28, 1925 (43 Stat. 1065), providing, 'All original appointments shall be made to the rank of substitute railway postal clerk.' (See 4 Comp. Gen. 992, 993.) The same restriction is not applicable to other branches of the Postal Service and the Congress evidently intended thus to protect the advancement of railway mail clerks to vacancies in higher positions. (See 7 Comp. Gen. 295, 297.) Evidently there was a similar intent by the instant law. The provisions of the first part of section 3 of the act have not been overlooked. The right there saved to promotion to 'a vacant position in a higher grade' refers to 'any employee' already in the classifications, grades, or designations as prescribed by the act itself, and not to the Customs Service generally, and the section should not be considered as authorizing the new appointment of employees by transfer and promotion from some other branch of the Customs Service or some other branch of the Government service to a vacant position above the minimum salary rate fixed for the grades, classifications, or designations mentioned in the act itself. Accordingly, question 1 is answered by stating that the law does not authorize the promotion of this man to clerk at \$2,000 per annum. His initial salary rate would be \$1,700 per annum.

"2. Again you do not state the character of the duties performed by this employee before and after July 1, 1928. If this employee was a clerk in the Customs Service prior to July 1, 1928, with more than two years' service and less than three years' service as a clerk in the Customs Service, his salary rate effective July 1, 1928, under the rates fixed under section 1 (c) of the act of May 29, 1928, would have been \$1,900 per annum, but if he was receiving \$1,920 per annum prior to July 1, 1928, as a clerk in the Customs Service, he may continue to receive that salary rate under the saving clause of section 3 of the statute, as long as he holds the same position and until he has had three years' satisfactory service as a clerk, when he would be eligible for the salary rate of \$2,000 per annum. (See 3 Comp. Gen. 937, 938.) However, if this employee was not a clerk in the Customs Service June 30, 1928, nor an employee with a classification or designation specified in the act of May 29, 1928, he would be required to enter a clerkship at the entrance salary rate of \$1,700 per annum under section 2 of the act. Question 2 is answered accordingly."

A-26082.

COMPENSATION—AUTOMATIC INCREASE—CUSTOMS SERVICE EMPLOYEES

The 1, 2, 3, and 4 years' satisfactory service required to entitle customs clerks to placement in automatic salary grades as of July 1, 1928, and to automatic promotion thereafter under the act of May 29, 1928, 45 Stat. 955, must be continuous and immediately preceding the placement or promotion, and there may not be included time served as a clerk in some other branch of the Government, such as a postal clerk, or as a customs inspector.

DECISION BY COMPTROLLER GENERAL M'CARL, FEBRUARY 27, 1929

In connection with the audit of the July, 1928, accounts of the collector of customs, Anthony Czarnecki, Chicago, Ill., there is for determination whether the initial salary rate of \$2,100 per annum paid Frank G. Toren, clerk, effective

July 1, 1928, is legal and proper, his salary therefore having been at the rate of \$1,860 per annum.

Upon request from this office there was furnished under date of January 24, 1929, a certificate showing the number of years' satisfactory service of the customs clerks who were shown to have been given automatic increases in salary effective July 1, 1928, under the act of May 29, 1928, (3445 Stat. 955). With respect to Frank G. Toren, it is stated in the certificate that—

"Frank G. Toren served as clerk in the post office from February 11, 1905, to August 8, 1907; and as inspector in the Customs Service at Chicago from August 8, 1907, to July 1, 1920, and was reinstated December 5, 1925."

It is understood the reinstatement on December 5, 1925, was as a clerk in the Customs Service.

The act of May 29, 1928, supra, provides as follows:

"That the following annual rates of compensation are hereby established for the employees in the Customs Service hereinafter specified:

* * * * *

"(c) Clerks, entrance salary, \$1,700; clerks having one year's satisfactory service, \$1,800; clerks having two years' satisfactory service, \$1,900; clerks having three years' satisfactory service, \$2,000; clerks having four years' satisfactory service, \$2,100; thereafter promotion of clerks to higher rates of compensation shall be in accordance with existing law.

* * * * *

"SEC. 2. All new appointments of employees specified in section 1 shall be made at the minimum rate of the appropriate salary range."

The case presents for consideration and decision three questions under the controlling statute, as follows: (1) Whether the 1, 2, 3, and 4 years' satisfactory service must have been continuous to entitle customs clerks to the respective salary grades fixed by the law; (2) whether service as a postal clerk may be included in computing longevity placement in the automatic salary grades of customs clerks effective July 1, 1928, or for automatic promotion thereafter; and (3) whether service as customs inspector may be included in computing such longevity of customs clerks.

(1) Under a similar statute governing automatic promotion of railway postal clerks, act of June 5, 1920 (41 Stat. 1050, 1053; see also act of February 28, 1925, 43 Stat. 1062), it was held, in decision of November 29, 1922 (2 Comp. Gen. 363); as follows (quoting, in part, from the syllabus):

"The one year's satisfactory service required to entitle railway postal clerks to automatic promotion under the act of June 5, 1920 (41 Stat. 1050, 1053), must be continuous and immediately precede the promotion, * * *"

Also, in decision dated February 21, 1922 (1 Comp. Gen. 444), wherein was cited 1 id. 340, and 24 Comp. Dec. 356, it was held as follows (quoting from the syllabus):

"A substitute railway postal clerk who becomes completely separated from the service during the first calendar year of his service as such and who is thereafter reinstated will not be entitled to receive the pay of a substitute of grade 2 until after one full calendar year's service after reinstatement."

The instant case is analogous and question (1) as above stated is answered in the affirmative.

(2) In decision of September 29, 1928 (8 Comp. Gen. 152, 153), wherein was considered the Customs Service act of May 29, 1928, it was held that transfers from some other branch of the Government service should be considered as "new appointments" within the meaning of section 2 of the act, and that employees so transferred should be paid initially at the minimum salary rate provided for each class of positions specified in the act. It follows, therefore, that prior clerical service in some other branch of the Government, such as a postal clerk, could not be included in computing longevity of customs clerks for placement as of July 1, 1928, or for automatic promotion thereafter. See, generally, Fourth Comptroller General 495, as to reinstatements in different positions constituting, in effect, "new appointments" under the classification act of 1923, and article 1308, Customs Regulations, 1923, limiting reinstatements in the Customs Service to "within a period not exceeding five years from their separation from the service under the provisions of Rule IX of the civil-service rules, as amended." See, also, what was stated with respect to railway postal clerks in decision of October 28, 1927 (7 Comp. Gen. 295, 297). Accordingly, even if the service performed by Toren as a postal clerk and as a customs clerk had been continuous, question (2) would be answered in the negative.

(3) The decision of September 29, 1928, *supra*, held, also, that transfers from some other branch of the Customs Service to any of the classes of positions specified in the act of May 29, 1928, should be considered as "new appointments" within the meaning of section 2 thereof. What has been stated in the answer to question (2) is equally applicable in answering this question. Accordingly, even if the service performed by Toren as customs inspector and customs clerk had been continuous, question (3) would be answered in the negative.

On July 1, 1928, Frank G. Toren was entitled to count as longevity under the provisions of the act of May 29, 1928, only the service as customs clerk from December 5, 1925, to and including June 30, 1928, which is more than two years and less than three years service. Therefore, his salary rate from July 1, 1928, to December 4, 1928, inclusive, should have been \$1,900 per annum, and thereafter \$2,000 per annum. Credit for an amount representing the difference between those rates and the rate paid, \$2,100 per annum, will be disallowed in the accounts of the collector. The employee's salary should be adjusted accordingly.

In this connection attention is invited to the following from decision of June 16, 1927 (6 Comp. Gen. 826, 827):

"* * * It may be stated in this connection that the interests of the Government and the others concerned would be best served if doubtful questions of law involving expenditures of public funds under new statutes were submitted to this office as soon as possible after the passage of the act and in advance of any expenditures thereunder."

A-28672

WASHINGTON, September 24, 1929.

There is before this office for consideration the question as to the rate of compensation legally payable to Jesse M. McCormick, an employee of the Customs Service at Pittsburgh, Pa., for periods on and after July 1, 1928, effective date of the customs classification act of May 29, 1928. (45 Stat. 955.)

It appears from the record as disclosed in the accounts of Collector of Customs S. H. Thompson, that Mr. McCormick was originally appointed as an inspector in the Customs Service on March 19, 1925; that his transfer from the position of inspector, CAF-5, in the collector's office, at \$1,860 per annum, to that of clerk, CAF-4, in the appraiser's office at the same salary rate, was approved by the department June 18, 1928; that the transfer was not actually effected until November 20, 1928, during which interval he continued to perform the services and hold the title of inspector; that effective July 1, 1928, his salary was increased as inspector under the provisions of the customs classification act of May 29, 1928, *supra*, from \$1,860 to \$2,100 per annum, the minimum salary rate established under said act for customs inspectors; that on July 30, 1928, the Commissioner of Customs recommended specified increases in pay for certain employees in the appraiser's office, including Jesse M. McCormick, clerk, from \$1,860 to \$2,000, the rate established by such act for clerks having three years' satisfactory service, Mr. McCormick having apparently been allowed longevity credit for his service as inspector, although in decision of February 27, 1929 (8 Comp. Gen. 467), it was held that in computing the longevity of a customs clerk for the purpose of determining his placement under the basic statute, his service as inspector may not be included in the computation; and that under such recommendation which was approved by the Assistant Secretary of the Treasury, August 2, 1928, and which provided, also, that the increases of salary therein authorized would be effective on July 1, 1928, except in cases where the employees had been appointed, transferred, or promoted to their positions on a date subsequent to July 1, 1928, in which case the increases would be effective on the date of such appointment, transfer, or promotion, Mr. McCormick was paid at the rate of \$2,000 per annum for the period November 20, 1928, the date of his appointment as clerk, to December 15, 1928.

It appears, further, that by letter of December 17, 1928, the appraiser of merchandise at Pittsburgh was advised that the Secretary of the Treasury had amended his approval dated June 18, 1928, *supra*, authorizing the transfer of this employee from inspector, CAF-5 at \$1,860 per annum, to clerk, CAF-4, at the same salary, so as to show his transfer as inspector, not graded, at \$2,100, to clerk, not graded, at \$2,100, which action it was stated would have the effect of revoking so much of the department's approval of August 2, 1928, *supra*, as covered the increase in pay from \$1,860 to \$2,000 per annum. Under the rule announced in decision of September 29, 1928 (8 Comp. Gen. 153) that all employees appointed from some other branch of the Customs Service should be considered as "new appointments" within the meaning of section 2 of the con-

trolling statute, and paid initially at the minimum salary rate provided for in each class of position specified in the statute; the action attempted as per the said letter of December 17, 1928, was unauthorized.

The employee was paid on December 27, 1928, per voucher 383, the difference between the rates of \$2,100 and \$2,000 per annum, the rate theretofore paid on vouchers 320 and 350, for the period from November 20 to December 15, 1928, after which date the employee's salary was regularly paid at the rate of \$2,100 per annum.

It is well settled that an appointment or transfer is not finally effected until entrance upon duty. Thus, the mere approval by the administrative office of the transfer on June 18, 1928, would not consummate the transfer if the employee continued to perform the duties of inspector. Accordingly, irrespective of the attempted paper adjustments in the status of this employee, the actual facts are that he held the position and status of inspector on July 1, 1928, when the customs classification act went into effect, and thereafter until November 20, 1928, when he was transferred and appointed to the position of clerk. Therefore, under the statute and decisions above cited, from July 1 to November 19, 1928, this employee was entitled to and apparently received the salary rate of \$2,100 per annum, the minimum fixed for customs inspectors, and on and after November 20, 1928, he was entitled only to the salary rate of \$1,700 per annum, the minimum rate fixed for customs clerks by the controlling statute. Action in the audit will be taken accordingly.

J. R. McCARL,
Comptroller General of the United States.

A-28057.

WASHINGTON, October 2, 1929.

THE SECRETARY OF THE TREASURY.

SIR: Consideration has been given to your letter of September 16, 1929, as follows:

"Reference is made to letter addressed to the chief, audit division, General Accounting Office by the Acting Commissioner of Customs under date of July 1, 1929, and to your decision A-28057, dated August 28, 1929, in which it is stated that Edward T. Allen, clerk in the Customs Service at Mobile, Ala., may not be paid more than \$1,700 from July 1 to November 16, 1928, and not more than \$1,800 from November 17, 1928, up to and including the present time. Mr. Allen's salary was increased to \$2,100 per annum on July 1, 1928, under the provisions of the Bacharach Act, giving him credit for service which was not continuous.

"Mr. Allen's pay was increased to \$2,100 per annum under an administrative construction of the Bacharach Act prior to the receipt of your decision of February 27, 1929, in which it is stated that service for which clerks are given credit in increasing their pay under the Bacharach Act must be continuous. The refund of the difference between \$2,100 and \$1,700 for the period beginning July 1, and ending November 16, 1928, and between \$2,100 and \$1,800 for the period beginning November 17, 1928, will work a great hardship on the employee, who did not solicit the increase in pay and was in no way responsible for the action taken by the department in accordance with its interpretation of the act. It is requested, therefore, that the payment of the salary of \$2,100 from July 1, 1928, until the receipt of the decision of February 27, 1929, be allowed."

The situation in this and a number of other Customs Service cases, wherein this office has been compelled to disallow payments of salaries retroactively effective, has resulted from the failure of the administrative office properly to apply the act of May 29, 1928 (45 Stat. 955), making an entirely different classification of employees for salary purposes than had previously maintained. In view of the change in the law with respect to the basis of fixing rates of compensation, the administrative office should have requested the decision of this office in advance of any payments under the new statute. This was pointed out in the decision rendered February 27, 1929 (8 Comp. Gen. 463), which you mention, wherein there was quoted from the earlier decision of June 16, 1927 (6 Comp. Gen. 826, 827), involving a change in the basis of salary payments in the Postal Service, as follows:

"* * * It may be stated in this connection that the interests of the Government and the others concerned would be best served if doubtful questions of law involving expenditures of public funds under new statutes were submitted to this office as soon as possible after the passage of the act and in advance of any expenditures thereunder."

The excess payments of salary in the cases of Allen and the other employees whose compensation was thus erroneously increased are unlawful, and there is no authority in this office to relieve the payees from the necessity of refunding the same. However, as was done in the Postal Service case, involved in the decision of June 16, 1927, *supra*, this office will defer action in collecting the excess payments of salaries made under the administrative construction of the statute in order to afford the administrative office an opportunity, if it so desires, of presenting the matter to the Congress with a view of obtaining remedial or validating legislation. Accordingly, action in the matter of collecting the excess payments will be deferred until after June 30, 1930.

Respectfully,

J. R. McCARL,
Comptroller General of the United States.

A-24634

WASHINGTON, July 19, 1929.

The Acting Commissioner of Customs has requested review of the action of this office in not allowing credit for an item in the accounts of the collector of customs at Galveston, Tex., covering an increase in the compensation of Mrs. Julia G. Peake, clerk in the office of the customs agent in charge at Galveston, Tex., from \$1,800 to \$2,100 per annum, effective July 1, 1928, under the provisions of the act of May 29, 1928 (45 Stat. 955), known as the Bacharach Act, it appearing that the employee had been given credit unlawfully for service rendered in the Customs Bureau in Washington.

In the decision of October 6, 1928 (A-24634), it was held that the act of May 29, 1928, *supra*, was limited in application to employees in the field service of the Customs Service and had no application to the departmental service in the District of Columbia. In decision of September 25, 1928 (8 Comp. Gen. 152), it was held that transfers to the classes of positions mentioned in section 1 of the act of May 29, 1928, which include clerks, from some other branch of the Customs Service should be considered as new appointments and the initial salary rate fixed at that specified in the statute for that class of positions—in the case of clerks, \$1,700 per annum. It follows, therefore, in fixing the salary rate of an employee in the field service under the Customs Service as of July 1, 1928, in the automatic salary rates prescribed in said statute, no credit may lawfully be allowed for service as clerk in the departmental service in the District of Columbia.

Accordingly, the settlement in question is sustained. Proper adjustment should be made in the salary rate of the employee.

J. R. McCARL,
Comptroller General of the United States.

A-24392.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 17, 1929.

THE SECRETARY OF THE TREASURY.

SIR: Consideration has been given to your letter of March 1, 1929, as follows:

"In connection with your decision of September 29, 1928, (A-24392) (8 Comp. Gen. 152) relating to salaries which may be paid under the provisions of the Bacharach Act to employees transferred to the position of clerk from positions in the Customs Service under other designations, a further ruling is requested covering the following points:

"1. May an employee having the designation of deputy collector, storekeeper, cashier, sampler, who has a first-grade clerical civil service status, and who is receiving more than \$1,700 per annum (the entrance salary for clerks under the Bacharach Act), be transferred to a position of clerk without loss of salary? The duties of deputy collectors, storekeepers, cashiers, samplers, are not wholly clerical, but are at least as difficult and responsible as those of a routine clerk who would be appointed at \$1,700 and advanced to \$2,100 after four years of satisfactory service.

"2. If the answer is in the affirmative, would the same be true of any customs employee regardless of designation, who has a first-grade clerical civil service status, and whose salary is more than \$1,700 per annum, even though the duties he is performing are not wholly clerical in nature?

"3. If such employee may be transferred to a position of clerk without loss of salary, in fixing his initial pay in the position of clerk, may he be given credit for the number of years he has been employed in the Customs Service with a

first-grade clerical service status, even though the duties he has been performing were not wholly clerical in nature? Typical examples of such cases would be: (a) A storekeeper receiving \$1,860 per annum who has had a first-grade clerical civil-service status while employed in the Customs Service for four years; (b) A sampler receiving \$2,000, who has had a first-grade clerical civil-service status while employed in the Customs Service for four years. Would such storekeeper, sampler, or other employee similarly situated, although his duties had not been wholly clerical, be entitled when appointed to a position of clerk, to a salary of \$2,100, provided his services had been satisfactory?

"A ruling is requested also on the following question:

"May a deputy collector, which is a higher position than inspector, and which position carries authority to perform the duties of an inspector, who is receiving more than \$2,100 (the minimum fixed by the Bacharach Act for inspectors), be transferred to a position of inspector without loss of pay?"

Under date of March 20, 1929, the Civil Service Commission, in response to a request from this office, reported as follows:

"The commission is in receipt of your letter of March 14, 1929, requesting information for consideration in connection with the question as to whether employees in the Customs Service having the designation of deputy collector, storekeeper, cashier, and sampler may be considered as clerks within the meaning of the act of May 29, 1928 (45 Stat. 955).

"The positions of deputy collector, storekeeper, and cashier in the Customs Service are filled by selection from the general clerical register. A copy of an announcement of such examination is inclosed herewith. Clerks in the Customs Service are also selected as a result of this examination.

"The commission has held examinations for two kinds of sampler positions in the Customs Service, namely, sugar sampler and sampler of merchandise. Except at the port of New York the former position is filled from the third-grade or subclerical register. A copy of an announcement of such examination is attached. At the port of New York sugar samplers are appointed from the general clerical register.

"The position of sampler of merchandise is now also filled from the general clerical register. Prior to 1909 vacancies in such positions were filled from the second-grade register except at the port of New York, where appointments have been made from the general clerical register since 1904.

"Answering your second question, it may be stated that no examination is required for transfer from clerk to deputy collector, storekeeper, cashier, sampler of merchandise, or sugar sampler in the Customs Service at New York City because these positions have been filled from the same register, namely, the first grade or general clerical register. Hence, transfer from any one to another of the positions mentioned in the preceding sentence is permissible without further examination.

"A transfer from sugar sampler (except at New York City) to deputy collector, storekeeper, cashier, or sampler of merchandise, would, in effect, mean a change in status from third grade or subclerical to first grade or clerical. Before such transfer would be allowed the employee concerned would be required to pass, non-competitively, the first grade or general clerical examination."

Under date of June 29, 1929, you furnished at the request of this office dated March 14, 1929, a detailed description of the duties of deputy collector, storekeeper, cashier, sampler, and inspector, and answered specific inquiries, as follows:

"(2) Whether the administrative office considers that the paramount duties of any or all of the positions having the above-mentioned designations are clerical in nature.

"As will be noted from the descriptions of work, each of the classes named above perform a considerable portion of clerical work. Deputy collectors are appointed to positions which are in most instances supervisory in nature, but in connection therewith, in the majority of cases, much clerical work must be done. They must have a civil service clerical status and, as indicated above, usually have been engaged previously in various types of customs clerical work, from which they are promoted to the position of deputy collector. Storekeepers are appointed for the purpose of having charge of bonded warehouses, to see that the customs regulations are enforced in their operation. An essential part of their work, amounting to approximately 75 per cent, is clerical. Cashiers are appointed for the purpose of receiving and carrying responsibility for moneys paid to the Customs Service. A large and essential part of this work is clerical in nature and, as pointed out, the position usually is filled by the promotion of

persons who have performed varied clerical duties connected with customs administration. Samplers (merchandise) are appointed to view and report on imported dutiable merchandise, to take samples when necessary, and to perform allied functions. In order to perform the duties assigned to them, they must of necessity devote from 35 to 50 per cent of their time to duties which are strictly clerical.

"(3) Whether, and to what extent, assignments or transfers have been made prior to July 1, 1928, between the various classes of positions having the above-mentioned designations without change in the pay status of the employee.

"As the employees in question had a first-grade clerical status prior to July 1, 1928, as well as at the present time, they were eligible for transfer between the various classes of positions having the above mentioned designations. Under the regulations governing transfers in the Customs Service, such changes were made without loss in compensation unless the transfer was in the nature of a demotion. It is impracticable to state to what extent transfers or promotions between the classes of positions in question were made, but where employees demonstrated fitness they were eligible and were freely given such transfers or promotions under the regulations indicated. Such transfers, unless they were in the nature of a demotion, were without change in pay status, or with an increase in salary. The same is true as to transfers from the classes of positions in question to positions of clerk.

"As indicated in preceding paragraphs, the positions of deputy collector and of cashier usually are filled by the promotion of clerks; transfers from clerk to storekeeper and from storekeeper to clerk have been frequent and usual, such transfers being without change in salary or at an increase; and transfers from sampler (merchandise) to clerk have been freely made with the approval of the Civil Service Commission without further examination and have been effected at the same or at an increased salary. Furthermore, at some of the smaller customs ports employees with the designation of clerk, are performing the duties of storekeeper and of cashier. In practically every district in the Customs Service clerks perform the duties of deputy collector under special authorization of the department.

* * * * *

"In connection with the positions mentioned in this department's letter of March 1, 1929, it is requested that a decision be made also on the question of transfers from the position of inspector to that of clerk. Inspectors have been appointed during a long period of years from the first-grade clerical register, the same register from which clerks are appointed. During this period the practice has obtained of free intertransfer between these two positions without loss of salary, transfers at the large number of border and smaller seaboard and interior ports from the inspector force to clerical positions usually being considered as a promotion and sometimes carrying an increase in pay. The clerical or 'inside' force, which is usually much smaller than the 'outside' or inspection force at such ports, is recruited for positions involving more than routine duties from the corps of inspectors, by the selection of men who have demonstrated knowledge of customs law, regulations, and procedure, and ability to handle customs problems. The higher positions at such ports, which are a part of the 'inside' force, usually are filled (except 'presidential' positions) by promotion from the clerical ranks. At the larger seaports, especially at New York, it is the usual practice to recruit the inspector ranks from the clerical force, though it is sometimes very desirable from an administrative standpoint, or for the good of the employee, to transfer an inspector to a position of clerk without loss in salary. Inability to transfer inspectors to clerical positions without loss of pay disrupts at many ports the satisfactory and effective method heretofore followed of securing the best-equipped men for 'inside' positions."

Construing the customs classification act of May 29, 1928 (45 Stat. 955), in the light of the past practice of the Customs Service with respect to personnel it may be held that the designation of clerk as used in said statute may be applied to classes of customs field employees, except those given other specific designations in the statute itself, which fulfill the following conditions: (1) The paramount duties of the positions are certified by the administrative office as clerical in character, and (2) the incumbents of the positions are required to have a first grade clerical status under the rules and regulations of the Civil Service Commission. See decision of June 29, 1929, A-27520.

This rule is intended to apply to classes of employees and not to individual positions within a class. It must be assumed that as to the classes of positions given designation other than clerk in the statute with salary ranges differing

from that of clerk, the Congress intended a definite distinction and such classes of employees may not be considered as clerks or credit allowed for services in such positions for computing longevity as clerks. See question and answer 3 in decision of February 27, 1929 (8 Comp. Gen. 467, 469). See also decision of June 28, 1929, A-27392.

Under this rule, and on the basis of the administrative reports received from the Treasury Department and the Civil Service Commission, deputy collectors, storekeepers, and cashiers may be considered as clerks within the meaning of the customs classification act of May 29, 1928, *supra*. All appointments, transfers, and other changes in the personnel and the pay rolls involving such classes of employees should carry the designation of clerk followed by the appropriate administrative designation; for instance, clerk (deputy collector), clerk (storekeeper), and clerk (cashier). Appropriate changes in the regulations are for consideration.

As to samplers outside of New York City, neither of the two conditions above stated to give them the status of clerk within the meaning of the act are present. As to samplers at New York City, your statement that this class of employees devote only from 35 to 50 per cent of their time to duties which are clerical would not appear to fulfill condition (1), although condition (2) apparently is fulfilled. Accordingly, based on the administrative reports from the Secretary of the Treasury and the Civil Service Commission, it must be concluded that samplers do not have the status of clerks within the meaning of the act of May 29, 1929, and that their salaries may not be adjusted under that act.

Referring to your letter of March 1, 1929, question 1 is answered in the affirmative as to deputy collectors, storekeepers, and cashiers and in the negative as to samplers.

Question 2 may be answered by stating that if the other classes of employees not herein specifically considered fulfill the conditions above stated to give them the status of clerk within the meaning of the statute, the question would be answered in the affirmative. The matter should be governed by regulation containing a clear and definite description of the duties of each class of position and a statement that the administrative office considers the paramount duties of such classes of employees as clerical if such be the fact.

Question 3 is answered in the affirmative as to deputy collectors, storekeepers, and cashiers and in the negative as to samplers.

The unnumbered question contained in the last paragraph of your letter of March 1, 1929, is answered by stating that if deputy collectors are to be classed as clerks, rather than supervisory officials, they may be transferred to a position of inspector only at the minimum salary rate fixed for inspectors. (8 Comp. Gen. 152.)

Referring to your letter of June 29, 1929, you are advised that inspectors may be transferred to the position of clerk only at the minimum salary rate of \$1,700 fixed in the act of May 29, 1928. (8 Comp. Gen. 152.)

Respectfully,

J. R. McCARL,
Comptroller General of the United States.

A-29202

WASHINGTON, November 9, 1929.

THE SECRETARY OF THE TREASURY.

SIR: There has been received, presumably by your authority, from the Assistant Commissioner of Customs, request dated October 3, 1929, for review of the action of this office in withholding credit in the accounts of Collector of Customs Charles H. Holtzman, Baltimore, Md., for payments made to Customs Clerk John F. Burns, representing the difference in salary between the rates of \$1,900 and \$2,300 per annum for the period March 28 to May 31, 1929.

By letter of March 5, 1929, this office was informed by the Commissioner of Customs that "John F. Burns at the close of business on July 21, 1928, completed two years of satisfactory clerical service, having been appointed in the Customs Service on July 22, 1926." His name appears on the March 16 to 31, 1929, pay roll as a clerk "not graded," on which roll he was paid at the rate of \$1,900 per annum for the period March 16 to 31, 1929. On the April 1 to 15, 1929, pay roll he was paid as a grade CAF-6 clerk, at the rate of \$2,300 per annum, the minimum rate established for that grade by the act of May 28, 1928 (45 Stat. 776), known as the Welch Act, amending the original classification act of 1923, together with the difference between the rates of \$1,900 and \$2,300 per annum for the period March 28 to 31, 1929, the pay roll bearing the following notation: "Inc. from \$1,900—3/28-29. D/L 3/27/29."

In the settlement of Collector Holtzman's accounts for April and May, 1929, credit was not allowed for the salary payments made to Burns in excess of the rate of \$1,900 per annum, the rate established by section 1 of the customs classification act of May 29, 1928 (45 Stat. 955), for clerks having two years' but less than three years' satisfactory service.

In the request for review it is contended that Burns became legally entitled to salary at the rate of \$2,300 per annum by reason of his promotion on March 28, 1929, by administrative action, to an existing vacancy in grade CAF-6, under the provision in section 3 of said act of May 29, 1928, which reads:

"Nothing in this act shall be construed to prevent the promotion of any employee at any time to a vacant position in a higher grade, and when so promoted such employee shall receive the compensation fixed in accordance with law for such position; * * *"

Section 1 of said customs classification act of May 29, 1928, provides, in so far as here material, as follows:

"That the following annual rates of compensation are hereby established for the employees in the Customs Service hereinafter specified:

* * * * *

"(c) Clerks, entrance salary, \$1,700; clerks having one year's satisfactory service, \$1,800; clerks having two years' satisfactory service, \$1,900; clerks having three years' satisfactory service, \$2,000; clerks having four years' satisfactory service, \$2,100; thereafter promotion of clerks to higher rates of compensation shall be in accordance with existing law."

Said act was specifically made effective July 1, 1928. The phrase "existing law," in the provision for promotion of clerks to rates above \$2,100, would include section 3 of the act of May 26, 1928, supra, authorizing the heads of the departments to adjust the compensation of certain civilian positions in the field service, the compensation of which was adjusted by the act of December 6, 1924 (43 Stat. 704), as extended through subsequent fiscal years, to correspond, so far as may be practicable, to the rates established by said act of May 28, 1928, for positions in the District of Columbia. But the use of the word "thereafter" in the provisions for promotion of clerks to higher rates precludes from such promotion any clerk with less than four years' satisfactory service. Therefore, on and after July 1, 1928, \$2,100 per annum is the maximum salary rate authorized for customs clerks in the field service who have had not more than four years' continuous satisfactory service, but higher rates are authorized "in accordance with existing law," and within available appropriations, for clerks who have had more than four years' continuous satisfactory service.

Section 3 of the statute quoted above on which the assistant collector of customs is basing his request for removal of the disallowances in the accounts of the collector, is not effective to authorize the administrative office to promote a clerk having not more than four years' continuous satisfactory service to rates of compensation in excess of \$2,100 per annum while retaining the status of clerk. The section would permit the promotion of a clerk having any number of years' service, with the approval of the Civil Service Commission and subject to the usual limitations as to initial salary, to a vacant position not clerical in character with salary of more than \$2,100 per annum, or to promote a clerk having more than four years' satisfactory service to a vacant clerical position with salary of more than \$2,100 per annum. In other words, sections 1 and 3 of the statute are not inconsistent, and under the fundamental principle of statutory construction the two sections are to be construed in connection with each other. It would be most unreasonable to conclude that the Congress intended in section 3 of the statute to provide a means by which the administrative office could disregard the express terms of section 1 fixing a definite automatic increase based on longevity for clerks in the Customs Service.

As clerk John F. Burns had completed only two years' continuous satisfactory service on July 21, 1928, his legal salary rate after that date to and including July 21, 1929, was \$1,900 per annum, and on July 22, 1929, his legal salary rate became \$2,000 per annum. His salary payments must be adjusted accordingly. The action in the audit is sustained.

Respectfully,

J. R. McCARL,
Comptroller General of the United States.

TREASURY DEPARTMENT,
BUREAU OF CUSTOMS,
Washington, July 1, 1950.

Memorandum for Senator Watson.

The bill (H. R. 12742) is a measure to amend the act approved May 29, 1928, which adjusted the compensation of certain employees in the Customs Service. The present bill does not provide for any increases in salary, but simply changes the language of the act of May 29, 1928, in order to meet certain rulings of the Comptroller General.

After the act of May 29, 1928, was approved, the Treasury Department put it into effect as they interpreted the law and the intent of Congress, but later the Comptroller General issued certain rulings which stopped the Treasury Department from carrying out certain practices in connection with transfers of employees which had been followed in the past. As an illustration, an inspector of customs who was receiving \$2,100 per annum was transferred to a higher grade clerical position in the customhouse, and heretofore he was always transferred without any loss in salary, but under the ruling of the Comptroller General he was forced to suffer a reduction of \$400, which was the entrance salary of a clerk.

The Comptroller General has called for the repayment of this money from the employees involved, and has given the Treasury Department until July 1, this year, to obtain remedial legislation. The amount of money involved is about \$6,000 and covers about 30 employees.

As stated above the proposed bill (H. R. 12742) does not increase salaries in the Customs Service but simply changes the language of the former act in order to meet the decisions of the Comptroller General.

FRANK DOW,
Assistant Commissioner of Customs.

