Certification of Vouchers for the Expenditure of Confidential Funds

1. On 20 September 1945 the President issued Executive Order No. 9621, effective 1 October 1945, in which he terminated the Office of Strategic Services and disposed of its functions.

2. This order reads in part as follows:

"By virtue of the authority vested in me by the Constitution and Statutes, including Title I of the First War Powers Act, 1941, and as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered as follows:

1. * * *

2. * * *

3. All functions of the Office not transferred by paragraph 1 of this order, together with all personnel, records, property, and funds of the Office not so transferred, are transferred to the Department of War; and the Office, including the office of the Director of Strategic Services, is terminated. The functions of the Director of Strategic Services and of the United States Joint Chiefs of Staff, relating to the functions transferred by this paragraph, are transferred to the Secretary of War. * * *

3. Public Law 156 of the 79th Congress (National Air Agencies Appropriation Act, 1946) in appropriating $15,000,000 for the Office of Strategic Services for the fiscal year, 1946, specifies:

"Provided, That $10,500,000 of this appropriation may be expended without regard to the provisions of law and regulations relating to the expenditure of Govern-
Suspension of conflicting laws; restoration of cities and powers to bureaus, offices, etc., upon termination of sections

"All laws or parts of laws conflicting with the provisions of this title (sections 601-605 of this Appendix) to the extent of such conflict suspended while this title (sections 601-605 of this Appendix) is in force.

"From the termination of this title (sections 601-605 of this Appendix) all executive or administrative instrumental corporations, departmental, national, and local officers and employees, exclusive of the portion transferred to OSH should thereafter be known as the Office of Strategic Services. Therefore, the First War Powers Act is applicable to OSS as an agency whose predecessor was in existence on 10 December 1941.

(b) By the provisions of the First War Powers Act as above quoted, the President does have the authority to transfer a portion of OSS to the War Department and to transfer to the Secretary of War the functions of the Director of the Office of Strategic Services.

(c) The Secretary of War may exercise the powers granted to the Director of OSS in the National War Agencies Appropriation Act, 1946, provided that the funds are expended only for the purposes for which they were appropriated in said act.

6. The exercise of the power to certify vouchers for the expenditure of confidential funds calls for the highest discretion and judgment. It is certainly not a merely administrative function. It is a well recognized principle of the law applying to officers of the Government that where a discretionary power is granted to the head of a department, it must be exercised by the head of the department or an assistant or
In view of the wording of the current War Department Appropriation Act, it is the opinion of this office that funds made available to CIG from the War Department appropriation may not be used for the payment of tuition of CIG employees upon the requisition of the Director, since current Special Funds Regulations do not authorize the expenditure of such funds for the payment of tuition.

Therefore, this office is of the opinion that tuition costs and other related expenses incident to the sending of employees to a language school may not be paid from the funds made available to CIG where there is no operational necessity. If it is determined that it is necessary to send an employee of CIG to a school to acquire certain qualifications or knowledge essential in the performance of his duties and which are not otherwise available, there would appear to be no objection to the payment of tuition costs and other related expenses from the unvouchered funds available to the Director, since current Special Funds Regulations do not authorize the expenditure of such funds for the payment of tuition.

It is the opinion of this office that the approval for the expenditure of unvouchered funds for such a purpose necessarily must rest in the Director, since current Special Funds Regulations do not provide for the payment of such expenses.

JOHN S. WARDER
Assistant General Counsel