OSD1.941007.016

~~CONFIDENTIAL~~ Col R B Firehock/78188/vlb
Written 15 Apr 53

15 April 1953

CS: 303 (1 Apr 53)

MEMORANDUM FOR: MR. J. N. DAVIS,
OFFICE OF THE UNDER SECRETARY OF THE ARMY

SUBJECT: Use of Human Volunteers in Experimental Research

1. Legal review by the Judge Advocate General's Office of the proposed program insofar as legality of accepting volunteers from various categories of personnel and compensation for disability or death incident to such research is summarized as follows:

Military or Civilian Personnel of the National Military Establishment - Volunteers may legally be accepted from this category of personnel. Compensation for the death or disability of a civilian employee resulting from personal injury or disease proximately caused by his employment is payable under the Federal Employees Compensation Act. The amount and type of disability compensation or other benefits payable by reason of death or disability of a member of the Army resulting from injury or disease incident to service depends upon the individual status of each member and is covered by various provisions of law. In general under present laws no additional rights against the Government accrue to this category of personnel as a result of their participation in experimental research. The payment of premiums from appropriated funds for the benefit of persons whose compensation is fixed by law is prohibited.

Private citizen - No provision of law specifically authorizing acceptance. Statutes prohibit acceptance of voluntary services which may provide a basis for future claims. JAGO opines that this class of personnel should not be accepted.

Contractors' employees - Appears to be no provision of law preventing a contractor from accepting services. Question of acceptance by Government does not arise. It is not possible to generalize upon the right of an employer-contractor to claim reimbursement for additional costs. In cost-reimbursable contracts the expense of group accident or life insurance may be an allowable cost. In special cases life insurance for employees may be authorized by heads of procuring services even in fixed price contracts.

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Irregular and fee-basis employees — In general the employment status of such persons must be determined individually. The terms of the statutory authority for the employment and the provisions for the employment must be examined to determine the legality of accepting the services thereunder in a voluntary sense. It would appear that the broad coverage of the Federal Employees Compensation Act applies. However, only the Department of Labor can provide a definitive ruling. Subject to such limitations as may appear in the applicable statutory authority it would appear that the Government may legally bear the expenses of life insurance premiums incident to the use of this category of individuals.

2. It is the interpretation of this office that the legality of accepting volunteers from the various categories of personnel is well established or can be readily determined by consulting appropriate statutes. The same statement applies to compensation for death or disability. The opinion of the Judge Advocate General's Office regarding the utilization of private citizens in this research is noted and will be regarded in any consideration of the employment of individuals from this category. Copies of the complete discussion by the Judge Advocate General's Office will be forwarded to the Chief Chemical Officer for his information and guidance.

3. There may be one other point in General Lemnitzer's memorandum of 30 March which should be clarified. In paragraph 2b(5)(c) the approval of The Surgeon General of the Army should not be construed to mean final approval. The directive to Department of the Army agencies to implement the approved program will state that no experiment in the considered fields will be conducted without the written approval of the Secretary of the Army. This is in accordance with Mr. Wilson's memorandum, subject as above, dated 26 February 1953.

FOR THE CHIEF OF RESEARCH AND DEVELOPMENT:

1 Incl. (less incl)
MRS 1 Apr 53 frm Mr Davis
inclosing Cy #1 & 2, Memo for
S/A Frm Gen Lemnitzer, dtd
30 Mar 53, same subj. TS.
w/1 Incl

A. W. BETTS
Colonel, GS
Executive

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