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B-112840, DECEMBER 10, 1952, 32 COMP. GEN. 282

VENDING MACHINES - OPERATION BY EMPLOYEE GROUPS AND BLIND PERSONS - DISPOSITION OF RECEIPTS BLIND PERSONS WHO ARE GRANTED PERMISSION TO OPERATE VENDING STANDS ON GOVERNMENT-OWNED OR CONTROLLED PROPERTY, UNDER THE ACT OF JUNE 20, 1936, AND WHO, WITH THE ADMINISTRATIVE APPROVAL OF THE AGENCY CONCERNED, OPERATE VENDING MACHINES AS PART OF OR IN CONJUNCTION WITH THE OPERATION OF SUCH STANDS, MAY RETAIN THE PROCEEDS DERIVED FROM THE MACHINES, WHETHER THE MACHINES ARE SITUATED ADJACENT TO THE VENDING STANDS OR LOCATED IN SOME OTHER PART OF THE BUILDING. WHERE CONTRACTUAL ARRANGEMENTS FOR THE INSTALLMENT PURCHASE, INSTALLATION, AND OPERATION OF VENDING MACHINES ON GOVERNMENT-OWNED OR CONTROLLED PROPERTY ARE MADE BY EMPLOYEE GROUPS WITH ADMINISTRATIVE APPROVAL AND WITH THE UNDERSTANDING THAT ANY FUNDS RECEIVED BY SUCH GROUPS FROM THE OPERATION OF THE MACHINES COULD BE RETAINED BY THE EMPLOYEES FOR GENERAL WELFARE ACTIVITIES, THE GENERAL ACCOUNTING OFFICE WILL NOT OBJECT TO THE CONTINUED USE OF SUCH FUNDS FOR EMPLOYEE GENERAL WELFARE ACTIVITIES PENDING THE ENACTMENT OF CLARIFYING LEGISLATION, EVEN THOUGH THE LEGAL AUTHORITY OF ADMINISTRATIVE OFFICIALS TO AGREE TO SUCH ARRANGEMENTS IS DOUBTFUL IN VIEW OF THE MISCELLANEOUS RECEIPT DEPOSIT REQUIREMENTS OF SECTION 3617, REVISED STATUTES.

COMPTROLLER GENERAL WARREN TO THE POSTMASTER GENERAL, DECEMBER 10, 1952:

REFERENCE IS MADE TO YOUR LETTER OF NOVEMBER 17, 1952, WITH ENCLOSURE, IN WHICH YOU REFER TO OFFICE DECISION OF AUGUST 29, 1952, B 111086, 32 COMP. GEN. 124, TO THE ATTORNEY GENERAL, RELATIVE TO THE DISPOSITION OF VENDING MACHINES ON GOVERNMENT-OWNED OR CONTROLLED PROPERTY, AND REQUEST A DECISION ON THREE QUESTIONS HEREINAFTER SET FORTH.

YOU CITE THE ACT OF JUNE 20, 1936, 49 STAT. 1559, OFTEN REFERRED TO AS THE SHEPPARD-1RANDOLPH ACT, WHICH AUTHORIZES BLIND PERSONS TO OPERATE VENDING STANDS IN FEDERAL BUILDINGS, AND STATE THAT, IN ACCORDANCE THEREWITH, BLIND PERSONS OPERATE STANDS IN THE LOBBIES OF GOVERNMENT-OWNED POST OFFICE BUILDINGS UNDER YOUR ADMINISTRATION, BUT THAT SALES THEREAT HAVE BEEN LIMITED TO GOODS OF A ,DRY" NATURE UNDER THE PROVISIONS OF SECTION 2 (A) (4) THEREOF. IT IS STATED FURTHER THAT, RECENTLY, THE DEPARTMENT APPROVED THE INSTALLATION OF SOFT DRINK VENDING MACHINES IN BOTH GOVERNMENT-OWNED AND LEASED PREMISES ON AN EXPERIMENTAL BASIS; THAT, IN THE CASE OF THESE PROPERTIES WHERE A BLIND OPERATED STAND HAS BEEN FUNCTIONING, THE POSTMASTER HAS BEEN INSTRUCTED TO DETERMINE THE LOCATION OF SUCH MACHINES AND TO HAVE THE OPERATION AND SERVICING THEREOF UNDER THE DIRECTION OF THE OPERATOR OF THE STAND, THE PROFITS ACCRUING TO THAT PERSON SUBJECT TO THE REGULATIONS OF THE STATE LICENSING AGENCY DESIGNATED BY THE OFFICE OF VOCATIONAL REHABILITATION TO SUPERVISE THE OPERATION OF SUCH STANDS; AND THAT, WHERE THERE IS NO STAND OPERATED BY A BLIND PERSON, POSTAL EMPLOYEES,

AS A GROUP OR THROUGH A REPRESENTATIVE COMMITTEE, HAVE BEEN PERMITTED, SUBJECT TO THE APPROVAL OF THE POSTMASTER, TO HANDLE ARRANGEMENTS FOR INSTALLING AND SERVICING THE VENDING MACHINES, WITH PROFITS, IF ANY, TO BE USED FOR GENERAL WELFARE ACTIVITIES AND NOT TO ACCRUE TO ANY INDIVIDUAL.

IT IS EXPLAINED IN THE LETTER ENCLOSING A COPY OF LETTER FROM THE SECRETARY OF THE UNITED NATIONAL ASSOCIATION OF POST OFFICE CLERKS THAT POSTAL EMPLOYEE GROUPS OF THE PHILADELPHIA, PENNSYLVANIA, POST OFFICE, WITH APPROVAL OF THE DEPARTMENT, ENTERED INTO A CONTRACT WITH MUZAK COMPANY FOR THE INSTALLATION OF PIPED-IN MUSIC TO THE SAID POST OFFICE, AND THAT, IN ADDITION TO A PARTIAL PAYMENT OF APPROXIMATE $3,500, A BALANCE OF OVER $9,000 AND MONTHLY OPERATING CHARGES REMAIN TO BE PAID FROM THE PROCEEDS TO BE DERIVED FROM INDICATED TO BE YOUR UNDERSTANDING THAT EMPLOYEE GROUPS AT OTHER POST THE MACHINES. IT IS ALSO INDICATED TO BE YOUR UNDERSTANDING THAT EMPLOYEE GROUPS AT OTHER POST WHICH CONTRACTS CONTEMPLATE PAYMENT THEREFOR ON AN INSTALLMENT BASIS FROM THE PROFITS TO BE DERIVED FROM THE OPERATION THEREOF.

IN VIEW OF THE ABOVE, YOU REQUEST DECISION AS FOLLOWS:

1. IN THE EVENT PERMISSION IS GRANTED TO A BLIND PERSON TO OPERATE A VENDING STAND IN A BUILDING UNDER THE ADMINISTRATION OF THE POST OFFICE DEPARTMENT IN ACCORDANCE WITH THE PROVISIONS OF THE SHEPPARD 1RANDOLPH ACT, MAY THE PROCEEDS ACCRUE TO THE OPERATOR OF THE STAND?

A. IF THE VENDING MACHINE IS IMMEDIATELY ADJACENT TO THE VENDING

STAND?

B. IF THE VENDING MACHINE IS LOCATED IN SOME OTHER PORTION OF THE

BUILDING?

2. IF THERE IS NO STAND IN THE BUILDING OPERATED UNDER THE PROVISIONS OF THE SHEPPARD-1RANDOLPH ACT, MAY THE PROFITS OF VENDING MACHINES IN THE BUILDING BE USED FOR GENERAL WELFARE ACTIVITIES OF THE EMPLOYEES, OR MUST THEY BE DEPOSITED INTO THE TREASURY AS MISCELLANEOUS RECEIPTS?

3.IF YOUR ANSWER TO QUESTION NUMBER TWO (2) IS TO THE EFFECT THAT SAID PROFITS MUST BE DEPOSITED IN THE TREASURY OF THE UNITED STATES, MAY SUCH ACTION BE HELD IN ABEYANCE PENDING THE LIQUIDATION OF CONTRACTUAL OBLIGATIONS ENTERED INTO BY POSTAL PERSONNEL ON THE ASSUMPTION THAT THOSE PROFITS COULD BE USED FOR SUCH PURPOSE?

SECTION 1 OF THE ACT OF JUNE 20, 1936, SUPRA, PROVIDES:

THAT FOR THE PURPOSE OF PROVIDING BLIND PERSONS WITH REMUNERATIVE EMPLOYMENT, ENLARGING THE ECONOMIC OPPORTUNITIES OF THE BLIND, AND STIMULATING THE BLIND TO GREATER EFFORTS IN STRIVING TO MAKE THEMSELVES SELF-SUPPORTING BLIND PERSONS LICENSED UNDER THE PROVISIONS OF THIS ACT SHALL BE AUTHORIZED TO OPERATE VENDING STANDS IN ANY FEDERAL BUILDING WHERE, IN THE DISCRETION OF THE HEAD OF THE DEPARTMENT OR AGENCY IN CHARGE OF THE MAINTENANCE OF THE BUILDING, SUCH VENDING STANDS MAY BE PROPERLY AND SATISFACTORILY OPERATED BY BLIND PERSONS.

IN VIEW OF SUCH LANGUAGE AND OF THE NATURE AND PURPOSE OF THE STATUTE, IF IT BE ADMINISTRATIVELY DETERMINED DESIRABLE FOR BLIND PERSONS TO OPERATE VENDING

MACHINES AS A PART OF, OR IN CONJUNCTION WITH THE OPERATION OF, A VENDING STAND, IT WOULD APPEAR IMMATERIAL WHETHER THE VENDING MACHINES ARE SITUATED ADJACENT TO A VENDING STAND OR LOCATED IN SOME OTHER PART OF THE BUILDING. ACCORDINGLY, PARTS A AND B OF QUESTION 1 ARE ANSWERED IN THE AFFIRMATIVE.

WITH RESPECT TO YOUR SECOND QUESTION, IT WAS STATED IN THE REFERRED TO DECISION OF AUGUST 29, 1952, THAT FUNDS DERIVED BY THE GOVERNMENT FROM THE INSTALLATION AND OPERATION OF VENDING MACHINES ON GOVERNMENT OWNED OR CONTROLLED PROPERTY ARE FUNDS RECEIVED "FOR THE USE OF THE UNITED STATES" WITHIN THE MEANING OF THAT PHRASE AS USED IN SECTION 3617, REVISED STATUTES, 31 U.S.C. 484, AND, AS SUCH, ARE REQUIRED TO BE DEPOSITED INTO THE TREASURY OF THE UNITED STATES AS MISCELLANEOUS RECEIPTS, IN THE ABSENCE OF EXPRESS STATUTORY AUTHORITY TO THE CONTRARY. IT WAS THEREIN CONCLUDED THAT THE FUNDS SO RECEIVED BY THE FEDERAL BUREAU OF INVESTIGATION FROM THE INSTALLATION OF VENDING MACHINES ARE REQUIRED TO BE SO DEPOSITED.

HOWEVER, IN THE MATTER UNDER CONSIDERATION IT APPEARS THAT CONTRACTUAL ARRANGEMENTS FOR THE INSTALLMENT PURCHASE, INSTALLATION, AND OPERATION OF VENDING MACHINES AT VARIOUS POST OFFICES WERE MADE BY POSTAL EMPLOYEE GROUPS WITH ADMINISTRATIVE APPROVAL, AND WITH THE UNDERSTANDING THAT ANY PROCEEDS RECEIVED BY THE EMPLOYEE GROUPS FROM THE OPERATION OF THE MACHINES COULD BE RETAINED BY THEM. WHILE THE LEGAL AUTHORITY OF THE ADMINISTRATIVE OFFICIALS TO HAVE AGREED TO SUCH AN ARRANGEMENT IS DOUBTFUL, IT HAS BEEN CONCLUDED THAT THIS OFFICE WILL INTERPOSE NO OBJECTION TO THE CONTINUED USE OF PROCEEDS DERIVED BY EMPLOYEE GROUPS FROM THE OPERATION OF SUCH MACHINES FOR EMPLOYEE GENERAL WELFARE ACTIVITIES PENDING FURTHER ACTION IN THE MATTER BY THE CONGRESS IN THE FORM OF CLARIFYING LEGISLATION AS RECOMMENDED IN THE REPORT OF THIS OFFICE TO THE CONGRESS, AUGUST 10, 1949, B-45101.

IN VIEW OF THE ANSWER TO QUESTION 2, ANSWER WITH RESPECT TO THE THIRD QUESTION APPEARS UNNECESSARY.