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B-122228 December 23, 1954

Number: B-122228

Date: 1954-12-23

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Mr. H.E. Cleek, Authorized Certifying Officer Small Business Administration

Dear Mr. Cleek:

Reference is made to your letter of December 1, 1954, requesting a decision whether you may certify for payment certain invoices, therewith transmitted, rendered by two law firms, namely, Mudge, Stern, Williams & Tucker and Daly, Hillis & McCormick, for legal services performed, and expenses incurred under agreements of November 13, 1953, and May 14, 1954, respectively, entered into under authority of section 205 (b)(7) of the Small Business Act of 1953, 67 Stat. 235.

In explanation of the situation which led to the making of the agreements referred to, your letter reads as follows:

"Shortly after the inception of SBA lending operations, and in connection with the making of loans under the provisions of Section 207(a) of the Act, private law firms were retained to perform professional services in connection with the closing of loans at a fee rate of $15.00 per hour for senior attorneys and $10.00 per hour for junior attorneys. In the Agreement with Mudge, Stern, Williams & Tucker for a $25.00 hourly fee rate for services of partners was approved with the definite understanding that partners' services, at rates obviously below those customarily charged by such firms. At the time of such retention, no staff attorneys had been employed for SBA field office.

"As disasters occurred, and SBA utilized its authority to make loans under Section 207(b) of the Act, counsel were also retained to close the" less demanding" disaster loans at a standard national fee rate of $5.00 per hour, at which rate performance of services for SBA is tantamount to a public service.

"Because of the 60-day provision contained in the RFC Liquidation Act, SBA did not commence lending operations until September 29, 1953. Since the lending jurisdiction of SBA and RFC would have overlapped, the SBA Loan Policy Board determined that SBA would not commence its lending operations until the expiration of the RFC lending authority. Actually, the first loan was not 'closed' until some time in January, 1954. Thus, the soundness of the determination not to hire staff attorneys is underscored by the fact that lending operations did not begin until 60 days after the creation of SBA, and that it was almost four months thereafter before the first loan was closed. The savings in salaries and related expenses for six months of staff attorneys in the 14 SBA Regional Offices are self- evident."

Also, your letter relates that as the program expanded it became evident in certain regional areas that the increase in business warranted the employment of staff attorneys and that such attorneys now are employed in seven SBA regional offices. It is not clear from your letter whether the services of attorneys or firms of attorneys still are being engaged under agreements.

The doubt concerning the propriety of the proposed payment of the invoices, that is, whether the agreements properly were entered into under authority of section 205 (b)(7) or whether the legal services required should have been engaged pursuant to section 205 (c) of the act, apparently arises because of the fact that services under one of the agreements were rendered over a period of more than six months after the effective date of such agreement in contravention of section 205 (c). Authority, therefore, is requested to regard the agreements as properly having been executed under section 205 (b)(7) of the act.

Section 205 (a) of the Small Business Act of 1953 67 Stat. 235 authorizes the Administrator, subject to civil service and classification laws, to select, employ, appoint and fix the compensation of such officers, employees, attorneys and agents as shall be necessary to carry out the provisions of the act.

Section 205 (b) of the act enumerates the powers of the Administrator. Subsection 7 thereof, under authority of which the agreements purportedly were made, provides as follows:

"(7) in addition to any powers, functions, privileges, and immunities otherwise vested in him, take any and all actions determined by him to be necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this title."

Section 205 (c) of the act 67 Stat. 234, reads as follows:

"(C) To such extent as he finds necessary to carry out the provisions of this title, the Administrator is hereby authorized to procure the temporary (not in excess of six months) service of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such service shall be without regard to the civil-service and classification laws, and, except in the case of stenographic reporting services by organizations, without regard to section 3709, Revised Statutes, as amended (41 U.S.C. 5).*

The express authority to appoint and employ attorneys contained in section 205 (a) would appear to be exclusive and, normally, all legal services required in carrying out the functions (other than in litigation) of the Administrator should be rendered by staff attorneys; yet, having regard for the circumstances related in your letter concerning the difficulties encountered in the initial stages of the Administration, for the economies apparently effected by resort to the practice of procuring legal services under agreements, at a stage when the full time services of staff attorneys were not required, and the broad authority contained in section 205 (b)(7) of the act, this Office is not required to object to payment for services rendered under the agreements as executed.

In view of the provisions of section 365 of the Revised Statutes, 5 U.S.C. 314, and the express authority contained in section 205 (a) of the Small Business Act of 1953, it is not believed that procurement of legal services by agreement for

periods of even less than six months is to be found in section 205 (c) of the act, that section apparently being designed to authorize the procurement of services of experts and consultants in fields other than the law.

As the agreements are for strictly personal services, ??? payments made thereunder should be charged to the appropriations for the fiscal year in which the particular items of service actually were rendered. See 10 Comp. Dec. 284. Compare 23 comp. Gen. 370.

The invoices and related papers are returned herewith, and, if correct in other respects, they may be certified for payment from the applicable fiscal year appropriations.

Sincerely yours,

FRANK H WEITZEL Acting Comptroller General of the United States

Enclosures