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B-122596 February 18, 1955

Number: B-122596

Date: 1955-02-18

B-122596 February 18, 1955

Mr. H. E. Clock Authorized Certifying Officer Small Business Administration

Dear Mr. Clock:

Your letter of January 14, 1955, requests a decision as to the fiscal your appropriation to be charged in payment of the enclosed invoice for legal services performed by Wood, Perner, Francs & Cully, under an agreement dated January 26, 1954.

The services were performed during the period June 11 to July 28, 1954, and your doubt concerning the proper appropriation from which payment should be made arisen from decision to you of December 23, 1954, B-122228. In that decision, which authorized payment of invoices for similar services, it was stated that, as the agreements are for strictly personal services, the payments for the services should be charged to the appropriations for the fiscal year in which the particular item of service actually were rendered.

In explanation of the services contemplated by the agreement and the appropriation obligation procedure used, your letter reads as follows:

"The agreement does not operate to obligate the Government unless and until services are specifically ordered by our Regional Director or other authorized representative. Accordingly, there appears to be no basis for recording an obligation under the agreement until a specific order is given for services for an individual case. The services to be performed by counsel are related to all actions necessary in connection with the "closing" of a loan and as such do not appear to be sevicable with respect to the services performed. By way of further explanation, it in pointed out that the official approval of a proposed loan may be executed on June 1 but the Regional Director is not ready to proceed with loan closing until June 15. At that time he sends a written communication to the Fee Counsel ordering the services preparatory to the 'closing' of a particular loan, such work to be completed as soon as possible. Counsel proceeds with the work on June 20 but does not complete the assignment until July 15. As suggested above, it appears that in this example our order of June 15 for services and the counsel's acceptance result in an obligation properly chargeable to the fischal year current at that time (see in this regard attached copy of Regional Director's letter of June 11, 1954). An obligation document is recorded at the time of counsel's acceptance. The amount reserved is based on counsel's estimate of the total costs. It is emphasized that legal services are ordered for each approved loan application, and no attempt has been or will be made be record a general obligation based on the agreement as a whole or was its date of

execution as a basis for determining the applicable fiscal year appropriation."

It now appears thus the agreements did not contemplate the furnishing of purely personal services under the supervision and control of the Government as usually prevails in the case of employer-employee relationships, but that it contemplated furnishing the facilities of the firm together with the coordinated services of its employees for the closing of each loan at a fixed rate for services, plus necessary travel expenses and other necessary expenses such as recording and filing fees. Under thers circumstances, the services performed waiver the agreement were those of the firm itself and may be considered as within the category of nonpersonal services. See 26 Comp. Gen. 188. Accordingly, the appropriation current at the time of the acceptance of an order for closing out of a particular loans may be considered as obligated for the work required by the order. See 23 Comp. Gen. 370.

The invoice, with attached papers, is returned and may be certified for payment from the appropriation 7340100, Salaries and Expenses, Small Business Administration, 1954, if otherwise correct.

Sincerely yours,

FRANK H. WEITZEL Assistant Comptroller General of the United States

Enclosure