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B-124985, Aug 17, 1955

Number: B-124985

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B-124985, AUG 17, 1955

HONORABLE PORTER HARDY, JR., HOUSE OF REPRESENTATIVES:

FURTHER REFERENCE IS MADE TO YOUR LETTER OF AUGUST 3, 1955, ACKNOWLEDGED AUGUST 4, CONCERNING RESTRICTIONS PLACED UPON THE DEPARTMENT OF DEFENSE BY THE PROVISIONS OF SECTION 638 OF THE DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1956, PUBLIC LAW 157, APPROVED JULY 13, 1955, 69 STAT. 321, READING AS FOLLOWS:

"NO PART OF THE FUNDS APPROPRIATED IN THIS ACT MAY BE USED FOR THE DISPOSAL OR TRANSFER BY CONTRACT OR OTHERWISE OF WORK THAT HAS BEEN FOR A PERIOD OF THREE YEARS OR MORE PERFORMED BY CIVILIAN PERSONNEL OF THE DEPARTMENT OF DEFENSE UNLESS JUSTIFIED TO THE APPROPRIATIONS COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, AT LEAST NINETY DAYS IN ADVANCE OF SUCH DISPOSAL OR TRANSFER, THAT ITS DISCONTINUANCE IS ECONOMICALLY SOUND AND THE WORK IS CAPABLE OF PERFORMANCE BY A CONTRACTOR WITHOUT DANGER TO THE NATIONAL SECURITY: PROVIDED, THAT NO SUCH DISPOSAL OR TRANSFER SHALL BE MADE IF DISAPPROVED BY EITHER COMMITTEE WITHIN THE NINETY-DAY PERIOD BY WRITTEN NOTICE TO THE SECRETARY OF DEFENSE."

YOU REFER TO A STATEMENT OF THE PRESIDENT OF THE UNITED STATES DATED JULY 13, 1955, TO THE CONGRESS IN WHICH THE VIEWS ARE EXPRESSED - BASED UPON ADVICE OF THE ATTORNEY GENERAL - TO THE EFFECT THAT SECTION 638 CONSTITUTES AN UNCONSTITUTIONAL INVASION OF THE PROVINCE OF THE EXECUTIVE; AND THAT TO THE EXTENT IT SEEKS TO GIVE TO THE APPROPRIATION COMMITTEES OF THE SENATE AND HOUSE AUTHORITY TO VETO OR PREVENT EXECUTIVE ACTION, IT WILL BE REGARDED AS INVALID BY THE EXECUTIVE BRANCH OF THE GOVERNMENT IN THE ADMINISTRATION OF THE ACT, UNLESS OTHERWISE DETERMINED BY A COURT OF COMPETENT JURISDICTION. YOU EXPRESS DISAGREEMENT WITH THE VIEW THAT THE PRESIDENT HAS THE RIGHT TO DETERMINE UNCONSTITUTIONAL THE PROVISIONS OF ANY LAW PRIOR TO A BINDING DECISION BY THE SUPREME COURT OF THE UNITED STATES.

IN CONNECTION THEREWITH, YOU EXPRESS THE BELIEF THAT FORMER COMPTROLLERS GENERAL HAVE TAKEN THE POSITION THAT IT IS NOT A PROPER FUNCTION OF THE GENERAL ACCOUNTING OFFICE TO DETERMINE THE CONSTITUTIONALITY OF LAWS ENACTED BY THE CONGRESS. TOO, THAT WHEN NOTICE OF INTENDED VIOLATIONS OF LAW WERE BROUGHT TO THE ATTENTION OF THE GENERAL ACCOUNTING OFFICE, APPROPRIATE STEPS WERE TAKEN TO OBVIATE SUCH UNLAWFUL ACTION.

YOU REQUEST TO BE ADVISED AS TO THE AUTHORITY AND RESPONSIBILITY OF THE GENERAL ACCOUNTING OFFICE TO DISALLOW CREDIT, IN THE PERFORMANCE OF ITS AUDIT FUNCTIONS, FOR IMPROPER PAYMENTS MADE IN CONTRAVENTION OF PROVISIONS IN APPROPRIATION ACTS OR OTHER APPLICABLE STATUTES AND, PARTICULARLY, ADVICE AS TO WHAT THIS OFFICE

INTENDS TO DO IN THE SITUATION OUTLINED ABOVE.

ON THE FUNDAMENTAL BASIS THAT IT IS FOR THE CONGRESS TO SAY HOW AND ON WHAT CONDITIONS PUBLIC MONEYS SHALL BE SPENT, THE POSITION OF THE GENERAL ACCOUNTING OFFICE, AS THE AGENT OF THE CONGRESS, MUST BE, IN THIS CASE AND ALWAYS, TO ACCORD FULL EFFECT TO THE CLEAR MEANING OF AN ENACTMENT BY THE CONGRESS SO LONG AS IT REMAINS UNCHANGED BY LEGISLATIVE ACTION AND UNIMPAIRED BY JUDICIAL DETERMINATION.

THE GENERAL ACCOUNTING OFFICE, AS THE AGENT OF THE CONGRESS, IS RESPONSIBLE FOR SEEING THAT THE APPROPRIATIONS MADE BY THE CONGRESS TO CARRY OUT THE PROVISIONS OF LAW ARE DISBURSED AND ACCOUNTED FOR IN ACCORDANCE WITH THE LAWS RELATING THERETO. IT IS OUR VIEW THAT THE CONGRESS HAS MADE ITSELF UNMISTAKABLY CLEAR AS TO ITS INTENT BY THE PLAIN AND POSITIVE PROVISIONS OF SECTION 638.

ACCORDINGLY, YOU ARE ADVISED THAT WHERE WE ASCERTAIN THAT EXPENDITURES OF FUNDS ARE MADE IN CONTRAVENTION OF THE PROVISIONS OF SECTION 638 OF THE DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1956, WE WILL TAKE APPROPRIATE ACTION TO DISALLOW CREDIT FOR SUCH EXPENDITURES IN THE ACCOUNTS OF ACCOUNTABLE OFFICERS, AND HOLD SUCH OFFICIALS, AND THEIR SURETIES, FINANCIALLY LIABLE FOR SUCH PAYMENTS. ALSO, WE WILL FURNISH A FULL REPORT THEREON TO THE CONGRESS FOR ITS CONSIDERATION.