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B-126228, Jan. 6, 1956

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B-126228, JAN. 6, 1956

TO THE HONORABLE SECRETARY OF THE INTERIOR:

REFERENCE IS MADE TO LETTER OF NOVEMBER 30, 1955, FROM THE ADMINISTRATIVE ASSISTANT SECRETARY, REQUESTING OUR ADVICE AS TO WHETHER THE ALASKA RAILROAD MAY ENTER INTO AN AGREEMENT WITH THE CITY OF ANCHORAGE, ALASKA, WHEREBY THE LATTER WOULD BE COMPENSATED FOR FIRE FIGHTING SERVICES RENDERED TO THE RAILROAD. THE QUESTION IS SAID TO BE PRESENTED FOR DECISION AT THE BEHEST OF OFFICIALS OF THE CITY OF ANCHORAGE.

IT APPEARS THAT THE ALASKA RAILROAD HAS FOR MANY YEARS MAINTAINED ITS OWN FIRE DEPARTMENT AT AN ESTIMATED COST OF APPROXIMATELY $75,000 TO $80,000 ANNUALLY. FOR REASONS OF ECONOMY AND BECAUSE THE FIRE DEPARTMENT WAS REQUIRED TO ANSWER RELATIVELY FEW CALLS, A DECISION HAS BEEN MADE TO ABOLISH THAT FACILITY AND TO RELY INSTEAD UPON THE FIRE PROTECTION SERVICES PROVIDED BY THE CITY OF ANCHORAGE. THE RAILROAD YARDS AND ITS PRINCIPAL SHOPS AND BUILDINGS ARE SAID TO BE LOCATED WITHIN THE CITY CORPORATE LIMITS. UNDER THE AGREEMENT IT IS UNDERSTOOD THAT THE RAILROAD WOULD PAY THE CITY $30,000 ANNUALLY FOR FIRE PROTECTION.

THE ADMINISTRATIVE ASSISTANT SECRETARY REFERS TO OUR DECISIONS REPORTED AT 24 COMP. GEN. 599, 26 ID. 382, AND 32 ID. 91, AND EXPRESSES THE VIEW THAT, IN THE LIGHT OF THE PRINCIPLE ENUNCIATED THEREIN, THE RAILROAD IS WITHOUT AUTHORITY TO COMPENSATE THE CITY FOR FIRE PROTECTION SERVICES. ALSO MENTIONS PUBLIC LAW 46, APPROVED MAY 27, 1955, 69 STAT. 66, WHICH AUTHORIZES FEDERAL AGENCIES TO ENTER INTO MUTUAL-AID FIRE PROTECTION AGREEMENTS WITH LOCAL GOVERNMENTAL UNITS, PUBLIC OR PRIVATE ORGANIZATIONS, OR FOREIGN GOVERNMENTAL PUBLIC OR PRIVATE UNITS, ENGAGED IN FIRE FIGHTING ACTIVITIES IN THE VICINITY OF FEDERAL INSTALLATIONS OR ACTIVITIES, AND SUGGESTS THAT SUCH LAW WOULD NOT AUTHORIZE THE RAILROAD TO PAY THE CITY FOR FIRE PROTECTION SERVICES RENDERED UNILATERALLY.

THE REFERRED-TO DECISIONS, AS WELL AS A NUMBER OF OTHER DECISIONS, HELD THAT FEDERAL FUNDS MAY NOT BE PAID TO A MUNICIPALITY FOR FIGHTING FIRES ON A GOVERNMENT RESERVATION WITHIN THE LIMITS OF A CITY WHICH LEGALLY IS REQUIRED TO EXTINGUISH SUCH FIRES. SUCH HOLDINGS WERE BASED UPON THE PREMISE, STATED GENERALLY, THAT WHERE THERE EXISTED A STATUTORY DUTY OF A STATE OR MUNICIPALITY TO RENDER FIRE PROTECTION OR FIRE FIGHTING SERVICES TO PROPERTY WITHIN ITS LIMITS, WITHOUT COST TO THE OWNERS OF THE PROPERTY, SUCH DUTY EXTENDED TO PROTECTING THE PROPERTY OF THE UNITED STATES LOCATED WITHIN SUCH LIMITS WITHOUT CHARGE THEREFOR.

IN THE INSTANT CASE IT APPEARS THAT TITLE 16-1-35 (SIXTH) OF THE ALASKA COMPILED

LAWS ANNOTATED, 1949, QUOTED IN THE LETTER, PLACES THE RESPONSIBILITY FOR FIRE PROTECTION UPON THE CITY OF ANCHORAGE, AND THAT SUCH FUNCTION IS CARRIED OUT WITH FUNDS DERIVED BY A GENERAL TAX LEVIED ON A CITYWIDE BASIS. TITLE 16-1-111. SEE 31 COMP. GEN. 405, 408. IN THIS LATTER CONNECTION, TITLE 4-2-1 RECOGNIZES THE CONSTITUTIONAL IMMUNITY OF THE FEDERAL GOVERNMENT FROM TAXATION OF ITS PROPERTY. SUCH BEING THE FACT, IT MUST BE CONCLUDED THAT IT IS THE STATUTORY DUTY OF THE CITY OF ANCHORAGE TO PROVIDE FIRE PROTECTION WITHIN ITS CORPORATE LIMITS. FOLLOWING THE RATIONALE OF OUR DECISIONS, SUPRA, THE ALASKA RAILROAD IS ENTITLED TO THE BENEFITS OF SUCH SERVICES WITHOUT PAYMENT THEREFOR UNLESS, OF COURSE, PAYMENT MAY BE SAID TO BE SANCTIONED UNDER THE PROVISIONS OF THE CITED ACT OF MAY 27, 1955.

THE ACT OF MAY 27, 1955, AUTHORIZES DEPARTMENTS AND AGENCIES IN THE EXECUTIVE BRANCH, CHARGED WITH THE DUTY OF PROVIDING FIRE PROTECTION FOR FEDERAL PROPERTY, TO ENTER INTO A RECIPROCAL AGREEMENT WITH ANY FIRE ORGANIZATION MAINTAINING FIRE PROTECTION FACILITIES IN THE VICINITY OF SUCH PROPERTY FOR MUTUAL AID IN FURNISHING FIRE PROTECTION FOR SUCH PROPERTY AND FOR OTHER PROPERTY FOR WHICH SUCH ORGANIZATION NORMALLY PROVIDES FIRE PROTECTION. THE ACT FURTHER PROVIDES THAT ANY SUCH AGREEMENT MAY PROVIDE FOR THE REIMBURSEMENT OF ANY PARTY FOR ALL OR ANY PART OF THE COST INCURRED BY SUCH PARTY IN FURNISHING FIRE PROTECTION FOR OR ON BEHALF OF ANY OTHER PARTY.

CLEARLY, NO LANGUAGE IN SAID ACT, EITHER EXPRESS OR IMPLIED, MAY BE REGARDED AS GIVING IT THE EFFECT OF AUTHORIZING FEDERAL DEPARTMENTS AND AGENCIES TO ENTER INTO AGREEMENTS WITH LOCAL GOVERNMENTAL OR PRIVATE ORGANIZATIONS ENGAGED IN FIRE FIGHTING ACTIVITIES WHEREBY FEDERAL FUNDS WOULD BE EXPENDED FOR UNILATERAL FIRE PROTECTION SERVICES WHICH OTHERWISE ARE LEGALLY REQUIRED TO BE FURNISHED WITHOUT PAYMENT. ALSO, THE LEGISLATIVE HISTORY THEREOF PLAINLY INDICATES THAT IT WAS ENACTED SOLELY TO SUPPLY THE STATUTORY AUTHORITY WHICH WAS CONSIDERED IN 32 COMP. GEN. 91, 95, TO BE NECESSARY FOR THE USE OF FEDERAL FUNDS FOR MUTUAL AID FIRE FIGHTING AGREEMENTS, THERETOFORE HELD UNAUTHORIZED, FOR PROTECTION OF FEDERAL OR NONFEDERAL PROPERTY. SEE SENATE REPORT 274 ON S. 1006, 84TH CONGRESS, WHICH BECAME THE ACT OF MAY 27, 1955.

ACCORDINGLY, WE CONCUR IN THE CONCLUSION REACHED BY YOUR DEPARTMENT THAT PAYMENT BY THE ALASKA RAILROAD TO THE CITY OF ANCHORAGE FOR FIRE PROTECTION SERVICES, RENDERED IN THE CIRCUMSTANCES OUTLINED ABOVE, IS NOT AUTHORIZED AND, THEREFORE, THERE IS NO LEGAL BASIS FOR ENTERING INTO AN