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B-126374, Feb. 14, 1956

Number: B-126374

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B-126374, FEB. 14, 1956

TO MR. SCHUBERT E. SMITH, SECOND SECRETARY, AMERICAN EMBASSY, DAMASCUS, SYRIA:

THERE HAS BEEN REFERRED TO US YOUR LETTER OF AUGUST 1, 1955, ADDRESSED TO THE CHIEF, SUSPENSION AND CLAIMS STAFF, DIVISION OF AUDIT, OFFICE OF FINANCE, DEPARTMENT OF STATE, IN REGARD TO THE EXCEPTION IN THE AMOUNT OF SR. 200 ($53.50) STATED AGAINST YOU IN YOUR FORMER CAPACITY AS AUTHORIZED CERTIFYING OFFICER ON VOUCHER 349, IN THE JANUARY 1953 ACCOUNT OF C. J. MCCULLARS, DISBURSING OFFICER, JIDDA, SAUDI ARABIA. THE EXCEPTION WAS STATED BY OUR AUDIT DIVISION IN THE ABSENCE OF A CITATION TO THE SPECIFIC STATUTORY AUTHORITY FOR THE EXPENDITURE. YOU REQUEST RELIEF FROM PERSONAL RESPONSIBILITY PURSUANT TO THE PROVISIONS OF THE ACT OF DECEMBER 29, 1941, 55 STAT. 875, 876.

THE EXCEPTION INVOLVED REPRESENTS A PAYMENT MADE TO HASABULLAH FADAN FOR THE HIRE OF A BOAT AND CREW FOR A RECREATIONAL TRIP TO THE RED SEA FOR EMPLOYEES OF THE TECHNICAL COOPERATION ADMINISTRATION. YOU STATE YOU FEEL YOUR CERTIFICATION OF THIS VOUCHER WAS JUSTIFIED SINCE YOU RELIED ON INFORMATION THAT "WASHINGTON DESIRED TO PROVIDE ANY RECREATION POSSIBLE FOR ITS ISOLATED EMPLOYEES.'

IN REPLY TO THE EXCEPTION THERE WERE FORWARDED VARIOUS LETTERS INCLUDING A MEMORANDUM DATED OCTOBER 25, 1953, FROM MR. J. A. DUNAWAY, ACTING DIRECTOR AT THE TIME OF PAYMENT, WHEREIN IT IS STATED, IN EFFECT, THAT ALTHOUGH ADMINISTRATIVELY AWARE THAT THERE WAS NO STATUTORY AUTHORITY THE BOAT NEVERTHELESS WAS HIRED RELYING ON A QUOTED PARAGRAPH CONTAINED IN A LETTER OF DECEMBER 19, 1952, FROM MR. WALTER O. OLSON, ACTING ASSISTANT DIRECTOR, NEAR EASTERN AFFAIRS. HOWEVER, A READING OF SAID PARAGRAPH INDICATES THAT MR. OLSON DISCUSSED GENERALLY A CONSTRUCTIVE PROGRAM OF ENTERTAINMENT FOR THE FEDERAL EMPLOYEES HERE INVOLVED, BUT THERE IS FOUND THEREIN NO INDICATION OF A DETERMINATION THAT APPROPRIATED FUNDS OF THE AGENCY WOULD BE AVAILABLE FOR SUCH PURPOSE. OTHER CORRESPONDENCE ATTACHED TO THE VOUCHER INDICATES THAT EFFORTS TO COLLECT THE AMOUNT INVOLVED FROM THE EMPLOYEES--- OR SOME OF THEM--- WHO PARTICIPATED IN THE TRIP WERE OF NO AVAIL, BUT THIS FACT DOES NOT AFFECT YOUR LIABILITY FOR THE ERRONEOUS PAYMENT.

THE GENERAL RULE RESPECTING THE USE OF APPROPRIATED FUNDS FOR FURNISHING RECREATIONAL AND ENTERTAINMENT FACILITIES TO GOVERNMENT EMPLOYEES IS FOUND IN 18 COMP. GEN. 147, AUGUST 10, 1938, WHEREIN IT IS SET FORTH THAT SUCH USE IS UNAUTHORIZED IN THE ABSENCE OF SPECIFIC STATUTORY AUTHORITY OR AUTHORITY BY NECESSARY IMPLICATION. THUS, NOTWITHSTANDING THAT THE FURNISHING OF SUCH FACILITIES MAY HAVE BEEN DEEMED HIGHLY DESIRABLE, SUCH EXPENSES WERE PERSONAL TO THE EMPLOYEES AND ARE NOT PERMITTED TO BE PAID FOR FROM APPROPRIATED FUNDS UNLESS PROVIDED IN APPROPRIATION EITHER SPECIFICALLY OR BY NECESSARY

IMPLICATION. SEE R.S. 3678 (31 U.S.C. 628); 27 COMP. GEN. 679; 31 ID. 653.

UNDER THE PROVISIONS OF THE ACT OF DECEMBER 29, 1941, SUPRA, PURSUANT TO WHICH YOU NOW REQUEST RELIEF, IT IS THE RESPONSIBILITY OF THE CERTIFYING OFFICER TO DETERMINE THE PROPRIETY OF THE PROPOSED PAYMENT, AND THE COMPTROLLER GENERAL MAY RELIEVE THE CERTIFYING OFFICER OF LIABILITY FOR ANY PAYMENT OTHERWISE PROPER UPON A FINDING OF COMPLIANCE WITH THE STATED CONDITIONS. SEE 23 COMP. GEN. 181. ALTHOUGH YOU HAD THE RIGHT TO APPLY TO US FOR A DECISION WHICH WOULD HAVE PROTECTED YOU FROM THE EXCEPTION HER TAKEN--- AS AUTHORIZED IN SECTION 3 OF THE ABOVE-MENTIONED STATUTE--- YOU APPEAR NEVERTHELESS TO HAVE ACCEPTED THE ADVICE AND INSTRUCTIONS OF AN ADMINISTRATIVE OFFICER IN LIEU OF SUCH A DECISION.

ACCORDINGLY, IN THE LIGHT OF THE ABOVE, THERE APPEARS NO BASIS FOR THE GRANTING OF RELIEF UNDER THE PROVISIONS OF THE ACT OF DECEMBER 29, 1941, SUPRA, FROM THE EXCEPTION HERE TAKEN, AND YOUR REQUEST FOR SUCH RELIEF IS DENIED.