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B-130288, Feb. 27, 1957

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B-130288, FEB. 27, 1957

TO THE HONORABLE JOSEPH F. FINNEGAN, DIRECTOR, FEDERAL MEDIATION AND CONCILIATION SERVICE:

YOUR LETTER OF JANUARY 7, 1957, PRESENTS FOR OUR CONSIDERATION TWO QUESTIONS CONCERNING THE AUTHORITY OF YOUR SERVICE TO EXPEND APPROPRIATED FUNDS FOR THE PAYMENT OF CERTAIN TELEPHONE SERVICE AND RENTAL OF EQUIPMENT TO BE INSTALLED IN THE HOMES OF THOSE MEDIATORS OF THE SERVICE WHO ARE STATIONED IN CITIES WHERE OFFICE ACCOMMODATIONS ARE NEITHER AVAILABLE NOR PROVIDED. ALSO, THE LETTER STATES THAT THE USE OF SUCH SERVICE AND EQUIPMENT WOULD BE LIMITED TO OFFICIAL BUSINESS PURPOSES ONLY.

YOU REPORT THAT THE SERVICE EMPLOYS 215 MEDIATORS THROUGHOUT THE UNITED STATES AND THAT APPROXIMATELY 50 OF THESE MEDIATORS ARE STATIONED IN CITIES WHERE OFFICE FACILITIES ARE NEITHER AVAILABLE NOR PROVIDED. YOU SAY THAT LITERALLY, THESE 50 MEDIATORS ARE REQUIRED TO WORK OUT OF THEIR HOMES. IT APPEARS THAT BECAUSE OF THE ABSOLUTE NECESSITY OF TELEPHONE SERVICE AND FACILITIES TO ENABLE MEDIATORSTO CONTACT THE PARTIES TO LABOR- MANAGEMENT DISPUTES AND BECAUSE OF THE REQUIREMENT THAT MEDIATORS BE AVAILABLE 24 HOURS A DAY, ALL 50 OF THESE MEDIATORS HAVE IN THEIR HOMES TELEPHONE FACILITIES WHICH THEY PAY FOR OUT OF PERSONAL FUNDS. YOU REPORT THAT THESE TELEPHONES ARE LISTED IN THE NAMES OF THE INDIVIDUAL EMPLOYEES WITH NO REFERENCE TO THE FEDERAL GOVERNMENT OR TO THE FACT THAT THE INDIVIDUAL LISTED REPRESENTS THE FEDERAL MEDIATION AND CONCILIATION SERVICE.

IT APPEARS THAT THE FOLLOWING TWO PROBLEMS HAVE ARISEN FROM THE ABOVE- STATED FACTS:

"* * * FIRST, PARTIES TO LABOR-MANAGEMENT DISPUTES WHO DESIRE THE ASSISTANCE OF A MEDIATOR OF THE SERVICE STATIONED, FOR EXAMPLE, IN PHOENIX, ARIZONA, CANNOT DO SO UNLESS THEY PERSONALLY KNOW HIM BY NAME. THE SERVICE HAS NO GOVERNMENT-LISTED PHONE IN PHOENIX, NOR, FOR THAT MATTER, IN THE ENTIRE STATE OF ARIZONA, WHICH ENTIRE STATE IS SERVICED BY THE PHOENIX MEDIATOR. WHEN THE PHOENIX MEDIATOR IS SERVICING A CASE IN A DISTANT PART OF THE STATE, HE MAY BE AWAY FROM HIS DUTY STATION FOR AS LONG AS ONE WEEK. THIS CAUSES A SECOND PROBLEM. PARTIES TO DISPUTES, WHO KNOW HIM BY NAME AND THEREFORE HAVE AVAILABLE HIS TELEPHONE NUMBER, MAY BE UNSUCCESSFUL IN GETTING AN ANSWER DURING THOSE PERIODS WHEN THERE IS NO ONE IN HIS HOME TO ANSWER THE PHONE. THE ALTERNATE POINT FOR USE BY THE PARTIES IS THE REGIONAL OFFICE OF THE SERVICE IN SAN FRANCISCO, CALIFORNIA.'

YOU DESIRE TO ELIMINATE THOSE PROBLEMS BY (1) INSTALLING, FOR THE CONDUCT OF OFFICIAL BUSINESS ONLY, GOVERNMENT-LISTED TELEPHONES IN THE HOMES OF INDIVIDUAL

EMPLOYEES IN AREAS WHERE NO GOVERNMENT FACILITIES ARE PROVIDED, AND (2) PROVIDE TELEPHONE ANSWERING SERVICE, TO BE AVAILABLE FOR THOSE TIMES WHEN THESE MEDIATORS ARE NOT IN THEIR HOMES. YOU SAY THAT HERETOFORE SUCH FACILITIES HAVE NOT BEEN FURNISHED BECAUSE OF THE RESTRICTIVE LANGUAGE OF THE ACT OF AUGUST 23, 1912, AS AMENDED, 31 U.S.C. 679, WHICH PROVIDES:

"EXCEPT AS OTHERWISE PROVIDED BY LAW, NO MONEY APPROPRIATED BY ANY ACT SHALL BE EXPENDED FOR TELEPHONE SERVICE INSTALLED IN ANY PRIVATE RESIDENCE OR PRIVATE APARTMENT OR FOR TOLLS OR OTHER CHARGES FOR TELEPHONE SERVICE FROM PRIVATE RESIDENCES OR PRIVATE APARTMENTS, EXCEPT FOR LONG-DISTANCE TELEPHONE TOLLS REQUIRED STRICTLY FOR THE PUBLIC BUSINESS, AND SO SHOWN BY VOUCHERS DULY SWORN TO AND APPROVED BY THE HEAD OF THE DEPARTMENT, DIVISION, BUREAU, OR OFFICE IN WHICH THE OFFICIAL USING SUCH TELEPHONE OR INCURRING THE EXPENSE OF SUCH TOLLS SHALL BE EMPLOYED. * * *"

AS AUTHORITY FOR FURNISHING THE TELEPHONE SERVICES INVOLVED YOU REFER TO SECTION 202 (B) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED, 29 U.S.C. 172 (B), WHICH PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"* * * THE DIRECTOR IS AUTHORIZED TO MAKE SUCH EXPENDITURES FOR SUPPLIES, FACILITIES, AND SERVICES AS HE DEEMS NECESSARY. SUCH EXPENDITURES SHALL BE ALLOWED AND PAID UPON PRESENTATION OF ITEMIZED VOUCHERS THEREFOR APPROVED BY THE DIRECTOR OR BY ANY EMPLOYEE DESIGNATED BY HIM FOR THAT PURPOSE.'

YOUR LETTER STATES THAT:

"I AM OF THE OPINION THAT THE AUTHORITY QUOTED IMMEDIATELY ABOVE IS A PROVISION BY LAW WHICH ENABLES ME TO EXPEND FUNDS FOR FACILITIES I "DEEM NECESSARY" AND GIVES ME AUTHORITY TO INSTALL GOVERNMENT-LISTED TELEPHONE SERVICE AND FACILITIES IN THE HOMES OF THESE FIFTY MEDIATORS. I AM REQUESTING YOUR DECISION ON THESE TWO POINTS:

"1. DOES THE LANGUAGE REFERRED TO ABOVE, AS QUOTED FROM PUBLIC LAW 101, AUTHORIZE THE EXPENDITURE OF APPROPRIATED FUNDS FOR INSTALLING, FOR OFFICIAL USE, GOVERNMENT-LISTED TELEPHONES IN THE HOMES OF MEDIATORS OF THE SERVICE STATIONED IN AREAS WHERE NO SERVICE FACILITIES ARE AVAILABLE.

"2. SIMILARLY, DOES THE LANGUAGE OF PUBLIC LAW 101 AUTHORIZE THE EXPENDITURE OF APPROPRIATED FUNDS FOR THE SERVICE TO ENTER INTO CONTRACTUAL RELATIONS FOR THE PROVISION OF TELEPHONE-ANSWERING SERVICES OR DEVICES TO COVER TELEPHONES INSTALLED IN THE HOMES OF THESE MEDIATORS OF THE RVICE.'

THE LANGUAGE OF SECTION 7 OF THE ACT OF AUGUST 23, 1912, AS AMENDED, IS PLAIN AND COMPREHENSIVE AND CONSTITUTES A MANDATORY PROHIBITION AGAINST THE PAYMENT FROM APPROPRIATED FUNDS OF ANY PART OF THE EXPENSE OF FURNISHING TELEPHONE SERVICE TO A GOVERNMENT OFFICER OR EMPLOYEE IN A PRIVATE RESIDENCE OR APARTMENT, IRRESPECTIVE OF THE DESIRABILITY OR NECESSITY OF SUCH SERVICE FROM AN OFFICIAL STANDPOINT AND REGARDLESS OF THE FACT THAT NO OFFICE IS ASSIGNED OR AVAILABLE TO THE EMPLOYEE. SEE 21 COMP. GEN. 239; ID. 997; 26 ID. 668; 33 ID. 530; 35 ID. 28; AND ID. 615. WHILE SECTION 202 (B) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, VESTS AUTHORITY IN YOU TO EXPEND FUNDS FOR FACILITIES YOU "DEEM NECESSARY," SUCH AUTHORITY MAY NOT BE SO CONSTRUED AS TO AUTHORIZE YOU TO ACCOMPLISH THE EXPENDITURES DETERMINED UPON IN A MANNER CONTRARY TO OR INCONSISTENT WITH EXISTING LAW OR TO RENDER INEFFECTIVE THE SPECIFIC AND MANDATORY STATUTORY RESTRICTIONS APPLICABLE TO APPROPRIATED FUNDS. UNDER SECTION 7 OF THE ACT OF

AUGUST 23, 1912, AS AMENDED, TO AUTHORIZE EXPENDITURES FOR TELEPHONE SERVICE IN A PRIVATE RESIDENCE OR APARTMENT, SUCH EXPENDITURE MUST SPECIFICALLY BE PROVIDED FOR BY LAW. GENERAL TERMS SUCH AS QUOTED BY YOU FROM SECTION 202 (B) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, ARE NOT SUFFICIENT TO MAKE AN APPROPRIATION AVAILABLE FOR SUCH PURPOSES. SEE 14 COMP. GEN. 851 AND 35 ID. 615. IN THAT CONNECTION, WE NOTE THAT YOUR APPROPRIATION FOR FISCAL YEAR 1957 SPECIFICALLY AUTHORIZES CERTAIN EXPENDITURES WHICH OTHERWISE WOULD BE PROHIBITED BY LAWS CONTROLLING OR LIMITING EXPENDITURES OF PUBLIC FUNDS, THUS INDICATING THAT THE AUTHORITY CONTAINED IN SECTION 202 (B) WAS NOT INTENDED TO RENDER INAPPLICABLE THERETO SPECIFIC STATUTORY PROHIBITIONS OR LIMITATIONS.

IN VIEW OF THE FOREGOING, YOUR FIRST QUESTION IS ANSWERED IN THE NEGATIVE. HOWEVER, WE SHOULD LIKE TO POINT OUT THAT THERE IS NO STATUTORY PROHIBITION AGAINST LISTING, AT GOVERNMENT EXPENSE, A PRIVATE TELEPHONE USED FOR PUBLIC BUSINESS UNDER THE OFFICIAL NAME OF THE PARTICULAR SERVICE INVOLVED, AND THE QUESTION AS TO THE NECESSITY THEREFOR IS ONE FOR ADMINISTRATIVE DETERMINATION. WE SHOULD ALSO LIKE TO POINT OUT THAT THERE IS NO STATUTORY PROHIBITION AGAINST LISTING IN THE TELEPHONE DIRECTORIES OF THE CITIES WHERE THESE 50 MEDIATORS RESIDE, THE TELEPHONE NUMBER OF THE NEAREST REGIONAL OFFICE OF YOUR SERVICE. IT APPEARS THAT THE REGIONAL OFFICE INVOLVED WOULD OR SHOULD BE AWARE OF THE WHEREABOUTS OF ALL THE MEDIATORS WITHIN ITS REGION.

CONCERNING YOUR SECOND QUESTION, IN VIEW OF THE ANSWER TO YOUR FIRST QUESTION THE SECOND QUESTION MUST BE ANSWERED IN THE NEGATIVE ALSO, SINCE THERE WOULD APPEAR TO BE NO AUTHORITY TO EXPEND APPROPRIATED FUNDS FOR TELEPHONE ANSWERING SERVICES OR DEVICES TO COVER PRIVATE TELEPHONES. THIS SERVICE WOULD BE DISTINGUISHABLE FROM LISTING AT GOVERNMENT EXPENSE A PRIVATE TELEPHONE USED FOR PUBLIC BUSINESS UNDER THE OFFICIAL NAME OF THE SERVICE INVOLVED SINCE SUCH A LISTING WOULD BENEFIT ONLY THE GOVERNMENT WHILE IT APPEARS THAT ANSWERING SERVICES OR DEVICES TO COVER PRIVATE TELEPHONES SUCH AS CONTEMPLATED HERE WOULD PRESUMABLY INCLUDE OR COVER PERSONAL AS WELL AS OFFICIAL CALLS.