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B-137516 October 28, 1958

Number: B-137516

Date: 1958-10-28

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Mr. F. W. Hearn, Authorized Certifying Officer Public Health Service Department of Health, Education and Welfare

Dear Mr. Hearn:

Reference is made to your letter of September 26, 1958 (file FIN: PO), stating that an invoice has been presented to you for certification by the Bento-Medical Tapes for one year's subscription to "The Audio Journal of Dentistry," covering certain tape-recording material and requesting a decision as to whether such subscription may be paid for in advance.

While decision will not be denied in this case by reason of your failure to forward the voucher here with your request, you are advised that future requests for decisions must be accompanied with properly prepared vouchers. See 35 Comp. Gen 28.

Advance payments generally are prohibited by the provisions of section 3648 Revised Statutes, 31 U.S.C. 529. However, exceptions to such prohibition are contained in those provisions of law set forth in 31 U.S.C. 530, as follows:

"Subscriptions for publications for the Department of Agriculture, to be paid for by the Secretary of Agriculture; subscriptions to newspapers, magazine, periodicals, and other publications, purchased from funds of the branch, office, or officers of the Army the Secretary of the Army may from time to time designate; subscriptions for publications for the Veterans' Administration, to be paid for by the director; subscriptions for newspapers and periodicals for the naval services; subscriptions charges for newspapers, magazines, and other periodicals for official use of any office under the Government of the United States or the municipal government of the District of Columbia, to be paid from appropriations available therefor, may be paid in advance." (Under-scoring supplied.)

You state that you have been guided in the past by the definition of the term "periodical" referred to in 17 Comp. Gen. 748. That decision quoted from the case of Houghton v. Payne, 194 U.S. 88, wherein the term was defined as "a publication appearing at stated intervals * * * devoted either to general literature or some special branch of learning * * *" and "indicates a relation with prior or subsequent members of the some series * * *." You also refer to 21 Comp. Gen. 524 which held that the term "publications" may not be construed to include phonograph records, radio transcriptions, or motion picture film. Following such observations you state:

"The Audio Journal of Dentistry would seem to be a subscription to a periodical in view of the fact that it is a series of issuances running over a year's period normally requiring an advance payment in order to assume continuity, but does not appear to meet the definition of a 'publication' as expressed in the two decisions referred toherein in that the material is not printed but instead is recorded on tapes for audit reception."

Following the definition of a periodical, supra, by the Supreme Court of the United States, the tpe recorded material here involved must qualify as a publication before it could be considered a periodical. In considering the term "publication" which also appears in 31 U.S.C. 530, supra, it was stated in B-125979, dated June 14, 1957, as follows:

"* * * There is nothing in the legislature history of the provision to suggest that the Congress thereby intended to authorize advance payment other than for publications in the customary and usually understood sense of the word, that is, as encompassing books, pamphlets, newspapers, periodicals or prints, etc. See United States v. Chase, 135 U.S. 255. * * *"

The decision went on to hold that phonograph records offered under a subscription plan are not "pubications" within the meaning of 31 U.S.C. 530.

In view of the similarity of the items involved in the cited decisions to tape-recorded material, it is our view that the conclusion reached therein is equally applicable to tape-recorded material. Accordingly, you are advised that the subscription charges for such material properly may not be paid in advance.

Sincerely yours,

JOSEPH CAMPBELL Comptroller General of the United States