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B-137976, Dec 4, 1958

Number: B-137976

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B-137976, DEC 4, 1958

HONORABLE ERNEST R. FEIDLER:

YOUR LETTER OF NOVEMBER 13, 1958, REQUESTS OUR DECISION WHETHER YOU ARE AUTHORIZED BY SECTION 9 OF THE GOVERNMENT EMPLOYEES TRAINING ACT, PUBLIC LAW 85-507, APPROVED JULY 7, 1958, OR BY ANY OTHER LAW, TO ENTER INTO AN AGREEMENT WITH THE WORTHINGTON CORPORATION, TO INDEMNIFY THAT CORPORATION AGAINST SUITS, CLAIMS, LOSS, DAMAGE, OR EXPENSE WHICH MAY ARISE BY INJURIES TO OR DEATH OF YOUR EMPLOYEES WHILE UNDERGOING FACTORY TRAINING WITH THE CORPORATION.

YOU SAY THAT THE WORTHINGTON CORPORATION WHOSE AIR CONDITIONING EQUIPMENT IS USED IN THE NATIONAL GALLERY HAS INVITED YOU TO SEND CERTAIN OF YOUR ENGINEERING STAFF TO TAKE A FACTORY TRAINING COURSE IN THE OPERATION AND MAINTENANCE OF SUCH EQUIPMENT AND THAT YOU HAVE DETERMINED THAT THE TRAINING WOULD BE OF VALUE TO THE UNITED STATES.

THE INVITATION APPARENTLY IS CONDITIONED ON THE EXECUTION BY YOU, AS A REPRESENTATIVE OF THE GOVERNMENT, OF THE AGREEMENT REFERRED TO ABOVE WHICH READS AS FOLLOWS:

"WE AGREE IN CONSIDERATION OF THE FOREGOING TO PROTECT, HOLD YOU HARMLESS AND INDEMNIFY YOU, YOUR OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY AND ALL SUITS, CLAIMS, LOSS, DAMAGE OR EXPENSE WHICH MAY ARISE BY REASON OF INJURIES TO OR DEATH OF OUR EMPLOYEES WHILE IN OR ABOUT YOUR ANPERE WORKS FOR THE ABOVE PURPOSE, WHETHER SAID INJURIES OR DEATH BE CAUSED BY YOUR NEGLIGENCE, THE NEGLIGENCE OF YOUR OFFICERS, AGENTS OR EMPLOYEES, OR OTHERWISE."

IMPLICIT IN YOUR QUESTION IS A RECOGNITION (1) OF THE IMMUNITY OF THE UNITED STATES TO SUITS AND CLAIMS IN THE ABSENCE OF SPECIFIC STATUTORY AUTHORITY OTHERWISE, AND (2) OF THE NECESSITY FOR AUTHORITY TO PAY CLAIMS WHICH MIGHT ARISE UNDER SUCH AN AGREEMENT, IN APPROPRIATIONS MADE FOR THE NATIONAL GALLERY OF ART.

SUBSECTION 9(A) OF PUBLIC LAW 507 READS AS FOLLOWS:

"SEC. 9. (A) THE HEAD OF EACH DEPARTMENT IS AUTHORIZED TO ENTER INTO AGREEMENTS OR MAKE OTHER APPROPRIATE ARRANGEMENTS FOR THE TRAINING OF EMPLOYEES OF SUCH DEPARTMENT BY, IN, OR THROUGH NON-GOVERNMENT FACILITIES IN ACCORDANCE WITH THIS ACT, WITHOUT REGARD TO SECTION 3709 OF THE REVISED STATUTES (41 U.S.C. 5)."

WHILE SECTION 9(A) AUTHORIZES THE HEAD OF EACH DEPARTMENT TO ENTER INTO AGREEMENTS WITH NON-GOVERNMENT FACILITIES FOR TRAINING WITHOUT REQUESTING BIDS

AS REQUIRED BY SECTION 3709 OF THE REVISED STATUTES WE FIND NOTHING THEREIN WHICH AUTHORIZES THE INSURRANCE OF OBLIGATIONS TO PAY EXPENSES OTHER THAN THOSE FOR WHICH PROVISION IS MADE IN SECTION 10 OF THE TRAINING ACT. THE OBLIGATIONS SOUGHT TO BE ERECTED BY THE AGREEMENT ARE OF A NATURE SO REMOTE FROM TRAINING AS TO BE BEYOND THE PURVIEW OF SECTION 10 OF THAT ACT.

WE ARE AWARE OF NO OTHER STATUTE WHICH WOULD AUTHORIZE YOU TO EXECUTE THE AGREEMENT, AND WE FIND NO APPROPRIATION TO THE NATIONAL GALLERY OF ART WHICH WOULD BE AVAILABLE FOR PAYMENT OF CLAIMS THAT MIGHT ARISE UNDER THE AGREEMENT IF EXECUTED.

YOUR QUESTION, THEREFORE, MUST BE ANSWERED IN THE NEGATIVE.