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B-138081, Jan 13, 1959

Number: B-138081

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B-138081, JAN 13, 1959

MR. ARTHUR A. KIESAR:

WE REFER TO YOUR LETTER OF DECEMBER 1, 1958, TRANSMITTING A VOUCHER FOR $14.92 IN FAVOR OF MR. EDWARD H. GADSBY, CHAIRMAN OF THE SECURITIES AND EXCHANGE COMMISSION, COVERING THE COST OF A BREAKFAST MEETING INCURRED BY HIM DURING HIS RECENT ATTENDANCE AT THE CONVENTION OF THE NORTH AMERICAN SECURITIES ADMINISTRATORS IN MEXICO CITY. YOU ASK OUR FAVORABLE CONSIDERATION OF THE CLAIM.

THE CIRCUMSTANCES UNDER WHICH THE EXPENSE WAS INCURRED ARE RELATED IN YOUR LETTER, AS FOLLOWS:

"ON SEPTEMBER 28, CHAIRMAN GADSBY, AT HIS REQUEST, MET WITH SEVERAL OF THE CANADIAN PROVINCIAL OFFICIALS TO DISCUSS THE MANY DIFFICULT ENFORCEMENT PROBLEMS OF THE COMMISSION WITH RESPECT TO CANADIAN SECURITIES AS WELL AS THE OVER-ALL CANADIAN AND SPECIFIC PROVINCIAL POLICIES OF ENFORCEMENT. SINCE THE DISCUSSION WAS NOT COMPLETED THAT DAY, CHAIRMAN GADSBY WAS INTENT UPON CONTINUING THIS MEETING FOR THE PURPOSE OF PRESENTING CERTAIN OFFICIAL POLICY CONCLUSIONS PRIOR TO THEIR RETURNING TO THE RESPECTIVE PROVINCES IN CANADA. ACCORDINGLY, THE GROUP OF CANADIAN OFFICIALS ASSEMBLED AT A BREAKFAST MEETING THE FOLLOWING MORNING AT THE REQUEST OF THE CHAIRMAN FOR THAT OFFICIAL PURPOSE, THUS INCURRING THE CLAIM ATTACHED. INCIDENTIALLY, THESE MEETINGS WERE NOT ON THE AGENDA OR PROGRAM OF THE CONVENTION."

"THERE IS NO DOUBT THAT IF THESE MEETINGS BETWEEN CHAIRMAN GADSBY AND THE CANADIAN OFFICIALS DID NOT OCCUR, IT WOULD HAVE BEEN NECESSARY FOR THE CHAIRMAN OR OTHER OFFICIAL OF THE COMMISSION TO MEET WITH THE CANADIAN OFFICIALS AT A LATER DATE AT MONTREAL. SUCH A TRIP WOULD HAVE BEEN TIME CONSUMING AND COSTLY - APPROXIMATELY $125.

"ALTHOUGH THE AMOUNT OF THE CLAIM IS NOT SIGNIFICANT, IT CERTAINLY DISPLAYS THE CHAIRMAN'S ATTITUDE OF ACCOMPLISHING OFFICIAL BUSINESS IN THE MOST PRACTICABLE AND COMMERCIAL MANNER. THE COST OF THE BREAKFAST IS ATTRIBUTABLE DIRECTLY TO OFFICIAL BUSINESS OF THE COMMISSION IN THAT COOPERATION BETWEEN THE CANADIAN PROVINCIAL OFFICIALS AND THIS COMMISSION IS A VITAL ELEMENT OF THE COMMISSION'S ENFORCEMENT PROGRAM. SUCH COOPERATION IS EXTREMELY NECESSARY IF THE COMMISSION IS TO ACCORD THE INVESTING PUBLIC THE PROTECTION TO WHICH IT IS ENTITLED UNDER OUR FEDERAL SECURITIES LAWS."

THE FURNISHING OF MEALS GENERALLY HAS BEEN CONSIDERED ENTERTAINMENT, AND IT IS A GENERAL RULE OF LONG STANDING THAT FUNDS APPROPRIATED FOR GOVERNMENT DEPARTMENTS AND AGENCIES MAY NOT BE USED FOR ENTERTAINING INDIVIDUALS EXCEPT WHEN

SPECIFICALLY AUTHORIZED BY STATUTE. SEE 26 COMP. GEN. 281, CITED IN YOUR LETTER; 5 ID. 455. YOU DO NOT REFER TO NOR ARE WE AWARE OF ANY SUCH AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION. WE RECOGNIZE, OF COURSE, THAT THE FACTS IN THIS CASE SUGGEST AN UNUSUAL SITUATION. EVEN IF WE WERE TO TREAT THE CASE AS ONE INVOLVING OTHER THAN "ENTERTAINMENT," HOWEVER, THE INFORMATION OF RECORD HERE DOES NOT ADEQUATELY ESTABLISH THAT THE EXPENSE WAS NECESSARY OR ESSENTIAL TO CARRY OUT AN AUTHORIZED FUNCTION OF THE COMMISSION. IN THE CIRCUMSTANCES THE EXPENSE NECESSARILY MUST BE HELD TO BE A PERSONAL MATTER TO THE CHAIRMAN.

THEREFORE, THE VOUCHER, RETURNED HEREWITH, MAY NOT BE CERTIFIED FOR PAYMENT.