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B-147731, Dec. 28, 1961

Number: B-147731

Date: 1961-12-28

B-147731, DEC. 28, 1961

TO CHIEF, KERN COUNTY FIRE DEPARTMENT:

REFERENCE IS MADE TO YOUR CLAIM DATED SEPTEMBER 19, 1961, IN THE AMOUNT OF $19,662.22 FOR SERVICES AND SUPPLIES USED IN EXTINGUISHING A FIRE STARTED BY THE CRASH OF A UNITED STATES NAVY AIRCRAFT ON PRIVATELY-OWNED PROPERTY WITHIN KERN COUNTY ON AUGUST 4, 1961. THE CLAIM WAS FORWARDED HERE BY THE DEPARTMENT OF THE NAVY WITH THE SUGGESTION THAT IT BE CONSIDERED FOR POSSIBLE PAYMENT AS A MERITORIOUS CLAIM.

BY LETTER DATED OCTOBER 19, 1961 (REFERENCE 028.1), THE COUNTY COUNSEL, COUNTY OF KERN, ADVISED THE DEPARTMENT OF THE NAVY THAT HE DID NOT KNOW OF ANY AGREEMENT WHEREBY THE UNITED STATES GOVERNMENT HAD AGREED TO REIMBURSE KERN COUNTY FOR FIGHTING FIRES IN KERN COUNTY, AND THAT THE KERN COUNTY FIRE DEPARTMENT IS A DEPARTMENT OF THE COUNTY ESTABLISHED TO PROTECT LIFE AND PROPERTY OF RESIDENTS OF THE COUNTY. HE CALLED ATTENTION TO THE FOLLOWING SECTIONS OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFORNIA WHICH READ AS FOLLOWS:

"SEC. 13007. ACTS GIVING RISE TO LIABILITY FOR FAILURE TO CONTROL FIRE. ANY PERSON WHO PERSONALLY OR THROUGH ANOTHER WILFULLY, NEGLIGENTLY, OR IN VIOLATION OF LAW, SETS FIRE TO, ALLOWS FIRE TO BE SET TO, OR ALLOWS A FIRE KINDLED OR ATTENDED BY HIM TO ESCAPE TO, THE PROPERTY OF ANOTHER, WHETHER PRIVATELY OR PUBLICLY OWNED, IS LIABLE TO THE OWNER OF SUCH PROPERTY FOR ANY DAMAGES TO THE PROPERTY CAUSED BY THE FIRE.

"SEC. 13008. ESCAPING FIRES. ANY PERSON WHO ALLOWS ANY FIRE BURNING UPON HIS PROPERTY TO ESCAPE TO THE PROPERTY OF ANOTHER, WHETHER PRIVATELY OR PUBLICLY OWNED, WITHOUT EXERCISING DUE DILIGENCE TO CONTROL SUCH FIRE, IS LIABLE TO THE OWNER OF SUCH PROPERTY FOR THE DAMAGES TO THE PROPERTY CAUSED BY THE FIRE.

"SEC. 13009. EXPENSES OF FIGHTING FIRES. THE EXPENSES OF FIGHTING ANY FIRES MENTIONED IN SECTIONS 13007 AND 13008 ARE A CHARGE AGAINST ANY PERSON MADE LIABLE BY THOSE SECTIONS FOR DAMAGES CAUSED BY SUCH FIRES. SUCH CHARGE SHALL CONSTITUTE A DEBT OF SUCH PERSON, AND IS COLLECTIBLE BY THE PERSON, OR BY THE FEDERAL, STATE, COUNTY, OR PRIVATE AGENCY, INCURRING SUCH EXPENSES IN THE SAME MANNER AS IN THE CASE OF AN OBLIGATION UNDER A CONTRACT, EXPRESSED OR IMPLIED.'

HE EXPRESSES HIS BELIEF THAT A CONCLUSION THAT THERE WAS SOME DEGREE OF NEGLIGENCE ON THE PART OF THE AGENCY CAUSING THE FIRE WOULD JUSTIFY REIMBURSEMENT TO THE COUNTY, UNDER THE FOREGOING STATE LAW, FOR ITS EXPENSES IN FIGHTING THE FIRE.

IN THIS CONNECTION, WE SHOULD LIKE TO POINT OUT, ASIDE FROM THE FACT THAT THERE HAS BEEN NO EVIDENCE OR ALLEGATION OF NEGLIGENCE ON THE PART OF AN EMPLOYEE OF THE UNITED STATES, THAT WE HAD OCCASION TO CONSIDER AND PASS UPON A QUESTION SIMILAR TO THE ONE PRESENTED REGARDING A CLAIM SUBMITTED BY THE FORESTRY DIVISION OF THE STATE OF WASHINGTON PROVIDING FOR THE RECOVERY BY THE STATE OF THE COST OF EXTINGUISHING A FOREST FIRE FROM "ANY PERSON, FIRM OR CORPORATION RESPONSIBLE FOR EITHER STARTING OR THE EXISTENCE OF SUCH A FIRE.' IN DECISION OF AUGUST 28, 1940, B-6400, TO THE SECRETARY OF INTERIOR, IT WAS HELD:

"* * * ALSO, ASIDE FROM THE FUNDAMENTAL PROPOSITION THAT UNDER THE DUAL SYSTEM OF GOVERNMENT EXISTING IN THE UNITED STATES A STATE CAN NOT IMPOSE AN OBLIGATION UPON THE FEDERAL GOVERNMENT WITHOUT THE CONSENT OF THE CONGRESS, IT IS A WELL-ESTABLISHED CANON OF STATUTORY INTERPRETATION THAT THE GENERAL WORDS OF A STATUTE DO NOT INCLUDE THE GOVERNMENT UNLESS THE CONSTRUCTION BE CLEAR AND INDISPUTABLE UPON THE TEXT OF THE LAW; AND EVEN IF THE STATE OF WASHINGTON CAN ESTABLISH THAT THE FOREST FIRE HERE INVOLVED RESULTED FROM THE NEGLIGENCE OF CERTAIN PERSONS WHILE FUNCTIONING AS EMPLOYEES OF THE UNITED STATES AND CAN RECOVER FROM SUCH PERSONS UNDER THE TERMS OF SAID SECTION 5806 OF THE REVISED STATUTES OF THAT STATE FOR THE COST INCURRED BY IT IN BRINGING THE FIRE UNDER CONTROL, SUCH FACT IN NOWISE IMPOSES ANY LEGAL OBLIGATION UPON THE FEDERAL GOVERNMENT WITH RESPECT TO THE MATTER AND THERE IS NO ROOM FOR DOUBT BUT THAT THE WORDS "PERSON, FIRM OR CORPORATION" APPEARING IN THE STATUTE DO NOT INCLUDE THE FEDERAL GOVERNMENT AND THAT SAID LAW IS NOT FOR APPLICATION HERE.'

WHAT WAS STATED IN THE FOREGOING EXCERPT LIKEWISE IS FOR APPLICATION IN THE PRESENT CASE. SEE ALSO 32 COMP. GEN. 401.

WITH RESPECT TO THE QUESTION AS TO WHETHER YOUR CLAIM MAY BE CONSIDERED AS A MERITORIOUS CLAIM, AS SUGGESTED BY THE DEPARTMENT OF THE NAVY, THE ACT OF APRIL 10, 1928, 45 STAT. 413, 31 U.S.C. 236, PROVIDES AS FOLLOWS:

"WHEN THERE IS FILED IN THE GENERAL ACCOUNTING OFFICE A CLAIM OR DEMAND AGAINST THE UNITED STATES THAT MAY NOT LAWFULLY BE ADJUSTED BY THE USE OF AN APPROPRIATION THERETOFORE MADE, BUT WHICH CLAIM OR DEMAND IN THE JUDGMENT OF THE COMPTROLLER GENERAL OF THE UNITED STATES CONTAINS SUCH ELEMENTS OF LEGAL LIABILITY OR EQUITY AS TO BE DESERVING OF THE CONSIDERATION OF THE CONGRESS, HE SHALL SUBMIT THE SAME TO THE CONGRESS BY A SPECIAL REPORT CONTAINING THE MATERIAL FACTS AND HIS RECOMMENDATION THEREON.'

ALTHOUGH YOUR CLAIM IS NOT ONE FOR DAMAGE TO OR DESTRUCTION OF PROPERTY OR FOR PERSONAL INJURY OR DEATH, NEVERTHELESS, IT IS IN FACT ONE SOUNDING IN TORT. WE HAVE HELD CONSISTENTLY THAT THE QUOTED ACT IS INAPPLICABLE TO CLAIMS SOUNDING IN TORT. 13 COMP. GEN. 406; 16 ID. 642.

ACCORDINGLY, WE CONCLUDE THAT THERE IS NO AUTHORITY TO PAY THE CLAIM AND IT IS NOT ONE WHICH WE WOULD REPORT TO CONGRESS UNDER THE PROVISIONS OF 31 U.S.C. 236.