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B-147747, Dec. 28, 1961

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TO THE SECRETARY OF STATE:

BY LETTER OF NOVEMBER 2, 1961, THE ACTING DIRECTOR, OFFICE OF FINANCE, DEPARTMENT OF STATE, TRANSMITTED FOR OUR CONSIDERATION A COPY OF A LETTER DATED OCTOBER 23, 1961, FROM CHARLES F. PICK, JR., FORMER AUTHORIZED CERTIFYING OFFICER AT HABANA, CUBA, REQUESTING RELIEF FROM LIABILITY FOR AN OVERPAYMENT OF $731.72 MADE ON THE BASIS OF HIS CERTIFICATION ON DO VOUCHER 963 IN THE DECEMBER 1956 ACCOUNT OF CLORENE A. MILLER.

ON THE VOUCHER HERE IN QUESTION, MR. PICK CERTIFIED AS CORRECT AND PROPER FOR PAYMENT THE AMOUNT OF $966.10 CLAIMED BY MR. DAVID A. MUNRO AS REIMBURSEMENT OF THE COST OF TRAVEL OF HIMSELF AND HIS DEPENDENTS FROM LAGUNA BEACH, CALIFORNIA, TO SANTIAGO DE CUBA, CUBA, UNDER AUTHORITY OF GRANT AUTHORIZATION NO. 1595-6-A, DATED SEPTEMBER 19, 1956, ISSUED UNDER THE INTERNATIONAL EDUCATIONAL EXCHANGE PROGRAM. SINCE THE GRANT AUTHORIZATION DID NOT AUTHORIZE REIMBURSEMENT FOR DEPENDENTS' TRAVEL, AND LIMITED REIMBURSEMENT FOR TRAVEL BY PRIVATE AUTOMOBILE TO AN AMOUNT NOT IN EXCESS OF THE COST OF TRAVEL FOR THE GRANTEE ALONE BY AVAILABLE COMMON CARRIER INCLUDING PER DIEM, ONLY $234.38 WAS PROPERLY FOR PAYMENT ON THE VOUCHER AND AN EXCEPTION WAS STATED AGAINST THE BALANCE OF THE AMOUNT ACTUALLY PAID, $731.72.

THE AUTHORITY OF OUR OFFICE TO GRANT RELIEF TO CERTIFYING OFFICERS IS CONTAINED IN 31 U.S.C. 82C, WHICH, AFTER ESTABLISHING THE LIABILITY OF SUCH OFFICERS, PROVIDES AS FOLLOWS:

"* * * PROVIDES, THAT THE COMPTROLLER GENERAL MAY, IN HIS DISCRETION, RELIEVE SUCH CERTIFYING OFFICER OR EMPLOYEE OF LIABILITY FOR ANY PAYMENT OTHERWISE PROPER WHENEVER HE FINDS (1) THAT THE CERTIFICATION WAS BASED ON OFFICIAL RECORDS AND THAT SUCH CERTIFYING OFFICER OR EMPLOYEE DID NOT KNOW, AND BY REASONABLE DILIGENCE AND INQUIRY COULD NOT HAVE ASCERTAINED, THE ACTUAL FACTS, OR (2) THAT THE OBLIGATION WAS INCURRED IN GOOD FAITH, THAT THE PAYMENT WAS NOT CONTRARY TO ANY STATUTORY PROVISION SPECIFICALLY PROHIBITING PAYMENTS OF THE CHARACTER INVOLVED, AND THAT THE UNITED STATES HAS RECEIVED VALUE FOR SUCH PAYMENT: * * *.'

IN ACCORDANCE WITH THE ABOVE AUTHORITY, WE MAY GRANT RELIEF IN THIS CASE ONLY IF WE CAN FIND THAT MR. PICK'S CERTIFICATION OF THE VOUCHER WAS BASED ON OFFICIAL RECORDS AND THAT HE DID NOT KNOW, AND BY REASONABLE DILIGENCE AND INQUIRY COULD NOT HAVE ASCERTAINED, THE ACTUAL FACTS. THE VOUCHER HERE INVOLVED SPECIFICALLY STATES THAT THE EXPENSES CLAIMED THEREIN INCLUDE MR. MUNRO'S WIFE AND THREE CHILDREN, AND IT IS OBVIOUS THAT SUCH EXPENSES WERE NOT LIMITED TO THE COST OF

TRAVEL OF THE GRANTEE ALONE BY AVAILABLE COMMON CARRIER, AS REQUIRED BY THE GRANT AUTHORIZATION. ALSO, IT IS CLEARLY STATED ON THE VOUCHER THAT THE AMOUNT CLAIMED IS FOR TRAVEL AND OTHER EXPENSES "UNDER AUTHORITY NO. 1595-6-A, DATED SEPTEMBER 19, 1956, COPY OF WHICH IS ATTACHED, OR HAS BEEN PREVIOUSLY FURNISHED.' MERE CURSORY EXAMINATION OF GRANT AUTHORIZATION NO. 1595-6-A REVEALS THAT IT DOES NOT AUTHORIZE REIMBURSEMENT FOR DEPENDENTS' TRAVEL AND CONTAINS THE COMMON CARRIER COST LIMITATION REFERRED TO ABOVE. IN ADDITION, ITEM 12 OF THE GRANT AUTHORIZATION STATES THAT PART 65.9 OF TITLE 22, CODE OF FEDERAL REGULATIONS, IS APPLICABLE THERETO. SUBPART (H) OF PART 65.9 CLEARLY STATES THAT COST OF TRANSPORTATION OF DEPENDENTS IS PAYABLE ONLY AS AUTHORIZED IN THE TRAVEL AUTHORIZATION.

THUS, IT IS APPARENT THAT THE CERTIFICATION WAS NOT "BASED ON OFFICIAL RECORDS; " THAT THE ERROR WAS READILY APPARENT FROM AN EXAMINATION OF THE VOUCHER OR THE AUTHORIZATION; AND THAT THE CERTIFYING OFFICER, BY REASONABLE DILIGENCE, COULD HAVE ASCERTAINED THE ACTUAL FACTS. MR. PICK DOES NOT DENY THIS FACT, BUT BASES HIS REQUEST FOR RELIEF PRIMARILY UPON THE ALLEGATION THAT AT THE TIME HE CERTIFIED THIS VOUCHER HE WAS BURDENED WITH THE RESPONSIBILITIES OF TWO FULL TIME ASSIGNMENTS; THAT IT WAS IMPOSSIBLE FOR HIM TO PERFORM A COMPREHENSIVE AUDIT OF EACH VOUCHER SUBMITTED FOR CERTIFICATION; AND THAT HE WAS OBLIGED TO RELY UPON SUBORDINATES.

IT SEEMS OBVIOUS THAT THE MERE PRESS OF WORK CANNOT RELIEVE AN ACCOUNTABLE OFFICER OF HIS LEGAL RESPONSIBILITIES. LIKEWISE, THE MERE STATEMENT THAT THE RELIED UPON SUBORDINATES, STANDING BY ITSELF, CANNOT BE DEEMED TO WARRANT SUCH RELIEF. TO HOLD OTHERWISE WOULD IN EFFECT EXTINGUISH THE STATUTORY RESPONSIBILITY OF SUCH OFFICERS. HENCE, ON THE PRESENT RECORD, RELIEF CANNOT BE GRANTED TO MR. PICK FOR THE PAYMENT HERE IN QUESTION.

WE NOTE THAT A JUDGMENT IN THE AMOUNT OF $1,670.03, WHICH INCLUDES THE OVERPAYMENT HERE INVOLVED, WAS ENTERED AGAINST MR. MUNRO ON AUGUST 22, 1961, IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA. (UNITED STATES V. DAVID A. MUNRO, NO. 910-61 TC CIVIL). WERE INFORMALLY ADVISED BY THE DEPARTMENT OF JUSTICE THAT NO COLLECTION HAD BEEN MADE AGAINST THE JUDGMENT AS OF DECEMBER 15, 1961, AND THAT CONSIDERATION WAS BEING GIVEN TO TAKING FURTHER APPROPRIATE ACTION. OBVIOUSLY, THE JUDGMENT CAN HAVE NO EFFECT UPON MR. PICK'S LIABILITY UNLESS AND UNTIL COLLECTION IS EFFECTED THEREON. HOWEVER, COLLECTION FROM MR. PICK MAY BE HELD IN ABEYANCE FOR A REASONABLE TIME PENDING THE RESULTS OF FURTHER EFFORTS TO COLLECT ON THE JUDGMENT.