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B-148826, Jul. 23, 1962

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TO MAJOR C. T. NEVLING:

FURTHER REFERENCE IS MADE TO YOUR REQUEST FOR OUR DECISION ON THE PROPRIETY OF PAYMENTS, IN THE AMOUNT OF $1 EACH, INCIDENT TO THE OBTAINING OF LIABILITY RELEASES FROM STUDENTS PARTICIPATING IN A COURSE OF INSTRUCTION AT SCHOOLS OPERATED BY THE OFFICE OF CIVIL DEFENSE, DEPARTMENT OF DEFENSE.

THE DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1962 (75 STAT. 365), PROVIDED FUNDS "FOR EXPENSES * * * NECESSARY FOR CARRYING OUT CIVIL DEFENSE ACTIVITIES * * *.' THE CIVIL DEFENSE ACTIVITY HERE INVOLVED IS SET FORTH IN SECTION 201 (E) OF THE FEDERAL CIVIL DEFENSE ACT, AS AMENDED (50 U.S.C. APP. 2281 (E) (, WHICH AUTHORIZES THE ESTABLISHMENT AND OPERATION OF "ONE NATIONAL CIVIL DEFENSE COLLEGE AND THREE CIVIL DEFENSE TECHNICAL TRAINING SCHOOLS.'

FROM A REPORT DATED JUNE 25, 1962, FURNISHED BY THE OFFICE OF GENERAL COUNSEL, DEPARTMENT OF DEFENSE, IT APPEARS THE OFFICE OF CIVIL DEFENSE HAS ESTABLISHED A STAFF COLLEGE AT BATTLE CREEK, MICHIGAN, AND TRAINING CENTERS AT ALAMEDA, CALIFORNIA, AND BROOKLYN, NEW YORK. SEVERAL COURSES IN CIVIL DEFENSE ARE GIVEN AT THESE SCHOOLS INCLUDING A SHELTER MANAGEMENT INSTRUCTORS COURSE. THE PURPOSE OF THE LATTER COURSE IS TO DEVELOP A TRAINED CADRE OF PEOPLE CAPABLE OF PROVIDING LEADERSHIP IN A SHELTER UNDER EMERGENCY CONDITIONS. AS PART OF THE CURRICULUM OF THAT COURSE THE STUDENTS OCCUPY SHELTERS FOR A LIMITED PERIOD OF TIME. WHILE ALL POSSIBLE PRECAUTIONS ARE TAKEN TO ASSURE THE SAFETY OF THE STUDENTS, THEY ARE HOWEVER REQUESTED TO SIGN A RELEASE FORM, SET FORTH BELOW:

"RELEASE FORM

"I ----------DO HEREBY STATE THAT IAM ATTENDING THE SHELTER MANAGEMENT INSTRUCTORS COURSE VOLUNTARILY AND OF MY OWN FREE CHOICE.

"I DO HEREBY VOLUNTEER TO OCCUPY SHELTERS LOCATED AT ---------- ----- ----------, UNDER SIMULATED EMERGENCY CONDITIONS FOR SUCH OCCUPANCY AS IS PART OF THE CURRICULUM OF SUCH COURSE.

"IN CONSIDERATION OF ONE DOLLAR ($1), RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, AND OTHER GOOD AND VALUABLE CONSIDERATIONS I HEREBY RELEASE THE UNITED STATES OF AMERICA, ITS AGENTS, EMPLOYEES OR REPRESENTATIVES FROM ANY AND ALL LIABILITY FOR ANY AND ALL INJURIES SUSTAINED OR ILLNESSES DEVELOPED AS THE RESULT OF PARTICIPATION IN SUCH COURSE AND SUCH OCCUPANCY OF SHELTERS.

---------- "DATED: ---------- --, 1962"

THE REPORT OF THE OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF DEFENSE, EXPLAINS THE ADMINISTRATIVE OBJECTIVES IN REQUIRING THE RELEASE AND AND GOES ON TO STATE THAT "IN ORDER TO AVOID ANY POSSIBILITY OF A PARTIAL FAILURE OF CONSIDERATION WHICH MIGHT INVALIDATE THE RELEASE, THE RESPONSIBLE PROGRAM OFFICIALS DETERMINED IT TO BE ADMINISTRATIVELY DESIRABLE TO PAY THE SUM OF $1 TO THE STUDENTS, AS A NECESSARY AND INCIDENTAL EXPENSE OF THE TRAINING PROGRAM.'

THE RELEASE, WHICH IS IN BROAD FORM, IS BELIEVED BY THE OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF DEFENSE, TO BE LEGALLY VALID AND EFFECTIVE, AND TO COVER ANY TORT LIABILITY RESULTING FROM THE ACTS OR OMISSIONS OF THE GOVERNMENT OR ITS EMPLOYEES OR OFFICERS. IN FRIEDMAN V. UNITED STATES, 138 F.SUPP. 530, DECIDED FEBRUARY 10, 1956, INVOLVING A SUIT UNDER THE FEDERAL TORT CLAIMS ACT, THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK REJECTED A CONTENTION THAT A RELEASE SIMILAR TO THAT HERE INVOLVED WAS VOID AS AN UNWARRANTED ENLARGEMENT OF THE EXCEPTIONS CONTAINED IN THE FEDERAL TORT CLAIMS ACT. BUT THE COURT WENT ON TO HOLD THAT THE RELEASE, OTHERWISE EFFECTIVE, DID NOT BAR AN ACTION FOR INJURY SUSTAINED AS THE RESULT OF WILFUL, WANTON, OR GROSS NEGLIGENCE ON THE PART OF THE GOVERNMENT, OR ANY OF ITS AGENTS, OR OFFICERS OR EMPLOYEES. "A PROVISION ABSOLVING THE GOVERNMENT FROM LIABILITY FOR SUCH NEGLIGENCE WOULD, IN MY OPINION, BE VIOLATIVE OF PUBLIC POLICY.'

WHILE WE CANNOT CONCUR IN THE VIEWS OF THE OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF DEFENSE, AS TO THE BROAD EFFECTIVENESS OF THE RELEASES HERE INVOLVED, IT APPEARS THEY ARE OF LIMITED EFFECTIVENESS. FRIEDMAN V. UNITED STATES, SUPRA. THAT BEING SO THE REQUIREMENT OF A RELEASE IS AN ADMINISTRATIVE MATTER, INVOLVING ADMINISTRATIVE POLICY IN THE CONDUCT OF AN AUTHORIZED PROGRAM; AND THE PAYMENT OF $1 TO AVOID FAILURE OF LEGAL CONSIDERATION MAY BE VIEWED AS A NECESSARY EXPENSE INCIDENT TO THE PROGRAM.

ACCORDINGLY, YOU ARE ADVISED WE WOULD NOT OBJECT TO THE PAYMENTS INVOLVED.