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B-151668, Dec. 5, 1963

Number: B-151668

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B-151668, DEC. 5, 1963

TO THE SECRETARY OF COMMERCE:

THIS IS IN REFERENCE TO YOUR LETTER OF OCTOBER 17, 1963, AND ENCLOSURE, REQUESTING RECONSIDERATION OF THE CONCLUSION STATED IN OUR LETTER OF JUNE 28, 1963, TO YOU, ADVISING THAT THE PROCUREMENT OF CUFF LINKS AND BRACELETS UNDER CONTRACT NO. CC-4784 WITH INTERPUBLIC, INCORPORATED, WAS UNAUTHORIZED AND THAT ANY PAYMENTS COVERING THE SUBJECT ITEMS WOULD BE DISALLOWED.

THE LEGALITY OF THE PROCUREMENT OF THE CUFF LINKS AND BRACELETS WAS THE SUBJECT OF OUR LETTER OF JUNE 12, 1963, TO THE HONORABLE CLARENCE CANNON, CHAIRMAN OF THE HOUSE APPROPRIATIONS COMMITTEE, AND THE CONCLUSION WAS EXPRESSED THEREIN THAT THE PURCHASE AND DISTRIBUTION OF CUFF LINKS AND BRACELETS WERE MORE IN THE NATURE OF PERSONAL GIFTS THAN PROMOTIONAL MATERIAL AND, THEREFORE NOT AUTHORIZED BY THE INTERNATIONAL TRAVEL ACT OF 1961, APPROVED JUNE 29, 1961, PUB.L. 87 63, 75 STAT. 129.

THERE WAS ENCLOSED WITH YOUR LETTER OF OCTOBER 17 A MEMORANDUM FROM YOUR GENERAL COUNSEL SETTING FORTH THE BACKGROUND OF THE PRESENT UNITED STATES TRAVEL SERVICE; THE BASIC PURPOSE AND SCOPE OF THE INTERNATIONAL TRAVEL ACT OF 1961; A CITATION TO A DECISION OF OUR OFFICE STATING THE RULE THAT WHERE AN APPROPRIATION IS MADE FOR A PARTICULAR OBJECT, BY IMPLICATION IT CONFERS AUTHORITY TO INCUR EXPENSES WHICH ARE NECESSARY OR PROPER OR INCIDENT TO THE PROPER EXECUTION OF THE OBJECT (29 COMP. GEN. 419, 421); A CITATION TO A DECISION STATED TO INDICATE THAT WHERE THERE HAS BEEN AN ADMINISTRATIVE DETERMINATION OF NECESSITY THIS DETERMINATION WILL CONTROL (31 COMP. GEN. 364); AND A LIST OF TRAVEL PROMOTION OFFICES OF OTHER NATIONS, AND STATE AND LOCAL GOVERNMENTS WITHIN THE UNITED STATES, WHICH DISTRIBUTES PROMOTIONAL GIFTS.

THE CONCLUSION REACHED IN OUR ORIGINAL CONSIDERATION OF THIS MATTER NECESSARILY INVOLVED A DETERMINATION OF WHETHER THE PROCUREMENT OF CUFF LINKS AND BRACELETS COULD BE CONSIDERED AS A NECESSARY AND PROPER USE OF APPROPRIATED FUNDS WITHIN THE RULE STATED IN 29 COMP. GEN. 419. ADMINISTRATIVE DETERMINATIONS AS TO WHETHER EXPENDITURES ARE NECESSARY AND PROPER ARE OF COURSE GIVEN CONSIDERABLE WEIGHT BUT ARE NOT CONTROLLING WHERE SUBSTANTIAL DOUBT EXISTS AS TO THE PROPRIETY OF THE EXPENDITURE. THE INSTANT CASE THE PROPRIETY OF THE EXPENDITURE WAS QUESTIONED BY THE COMMITTEE ON APPROPRIATIONS OF THE HOUSE OF REPRESENTATIVES. PURSUANT TO THIS, THERE BEING NO SPECIFIC AUTHORITY FOR SUCH PROCUREMENT, WE REVISED THE LEGISLATIVE HISTORY OF THE INTERNATIONAL TRAVEL ACT OF 1961, AND RELATED APPROPRIATION ACTS. AS A RESULT OF THIS REVIEW AND IN CONSIDERATION OF THE QUESTION IN LIGHT OF THE DECISIONS OF OUR OFFICE CONCERNING THE USE OF APPROPRIATIONS FOR PURPOSES NECESSARY AND PROPER TO CARRY OUT THE

OBJECTIVES OF AN AUTHORIZING ACT, THE CONCLUSION WAS REACHED THAT THE PROCUREMENT OF THE CUFF LINKS AND BRACELETS DID NOT CONSTITUTE A NECESSARY AND PROPER USE OF FUNDS APPROPRIATED TO CARRY OUT THE OBJECTIVES OF THE INTERNATIONAL TRAVEL ACT OF 1961.

THE COMPILATION SETTING FORTH THE PRACTICES OF OTHER NATIONS, AND STATES AND LOCAL GOVERNMENTS WITHIN THE UNITED STATES, IN THE DISTRIBUTION OF PROMOTIONAL GIFTS, INCLUDING SUCH ITEMS AS CUFF LINKS, HAS BEEN INCLUDED IN THE GENERAL COUNSEL'S MEMORANDUM IN LIGHT OF THE STATEMENT IN SENATE REPORT NO. 48, 87TH CONGRESS, 1ST SESSION, THAT THE "TRAVEL SERVICE SHOULD UTILIZE THE SAME GENERAL TECHNIQUES EMPLOYED WITH SUCH SUCCESS BY THE NATIONAL TOURIST OFFICES OF OTHER COUNTRIES * * *.' WHILE THIS LENDS SOME WEIGHT TO THE VIEW OF YOUR OFFICE THAT THE PRESENTATION OF CUFF LINKS AND BRACELETS TO INDIVIDUALS AS AN EXPRESSION OF APPRECIATION FOR ASSISTANCE IN THE PROGRAM CONSTITUTED A PROPER EXPENDITURE, WE WOULD NOT IMPUTE FROM THE WORDS THE "SAME GENERAL TECHNIQUE," IN THE SENATE REPORT, THAT CONGRESS EVER CONTEMPLATED THAT FUNDS AVAILABLE TO THE UNITED STATES TRAVEL AGENCY COULD PROPERLY BE USED FOR GIFTS OF PERSONAL ACCESSORIES TO INDIVIDUALS. THEREFORE WE MUST ADHERE TO THE CONCLUSION STATED IN OUR LETTER TO YOU OF JUNE 28, 1963.

THE SET OF CUFF LINKS AND THE BRACELET FORWARDED WITH YOUR LETTER ARE RETURNED AS REQUESTED.