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FEES - MEMBERSHIP - APPROPRIATION AVAILABILITY ALTHOUGH THE PROHIBITION IN 5 U.S.C. 5946 AGAINST THE USE OF APPROPRIATED FUNDS TO PAY MEMBERSHIP FEES FOR INDIVIDUAL EMPLOYEES IN PROFESSIONAL ASSOCIATIONS APPLIES TO EMPLOYEES OF THE NATIONAL ENVIRONMENTAL RESEARCH CENTER OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WHO JOIN PROFESSIONAL SOCIETIES CONCERNED WITH ENVIRONMENT, NOTWITHSTANDING SUCH MEMBERSHIP WOULD BE OF PRIMARY BENEFIT TO THE AGENCY RATHER THAN THE EMPLOYEE, THERE IS NO OBJECTION TO THE USE OF THE FUNDS FOR THE PAYMENT OF MEMBERSHIP FEES IN THE NAME OF THE AGENCY IF THE EXPENDITURE IS JUSTIFIED AS NECESSARY TO CARRY OUT THE PURPOSES OF THE AGENCY'S APPROPRIATION. GENERAL ACCOUNTING OFFICE DECISIONS - ADVANCE - VOUCHER ACCOMPANIMENT EVEN THOUGH A U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) CERTIFYING OFFICER (C.O.) IS NOT ENTITLED TO A DECISION AS TO THE AVAILABILITY OF APPROPRIATED FUNDS FOR THE PAYMENT OF MEMBERSHIP FEES FOR EMPLOYEES IN PROFESSIONAL ORGANIZATIONS BECAUSE HIS REQUEST WAS NOT ACCOMPANIED BY A VOUCHER AS REQUIRED BY 31 U.S.C. 82D, WHICH LIMITS THE U.S. GENERAL ACCOUNTING OFFICE TO RESPONDING TO A QUESTION OF LAW WITH RESPECT TO PAYMENT ON A SPECIFIC VOUCHER PRESENTED TO THE C.O. FOR CERTIFICATION PRIOR TO PAYMENT, IN VIEW OF THE FACT THE QUESTION NO DOUBT WILL RECUR, IT IS CONSIDERED AS HAVING BEEN SUBMITTED BY THE HEAD OF EPA WHO IS ENTITLED TO A DECISION UNDER SECTION 8 OF THE ACT OF JULY 31, 1894, AS AMENDED (31 U.S.C. 74), UNDER WHICH GAO HAS AUTHORITY TO PROVIDE DECISIONS TO HEADS OF EXECUTIVE DEPARTMENTS OR OTHER ESTABLISHMENTS ON ANY QUESTION INVOLVING PAYMENTS WHICH MAY BE MADE BY THEIR AGENCY.

TO THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, DECEMBER 26, 1973:

WE HAVE RECEIVED A LETTER DATED OCTOBER 29, 1973, FROM MR. MARCUS W. PUGH, AUTHORIZED CERTIFYING OFFICER, CHIEF, FISCAL POLICIES AND PROCEDURES BRANCH, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA), ASKING WHETHER APPROPRIATED FUNDS OF EPA ARE AVAILABLE FOR THE PAYMENT OF MEMBERSHIP FEES FOR EMPLOYEES IN PROFESSIONAL ORGANIZATIONS WHEN, IT IS ALLEGED, "THE BENEFITS OF THE MEMBERSHIP ACCRUE NOT TO THE INDIVIDUAL - BUT TO THE ORGANIZATION AS A WHOLE."

WE MUST POINT OUT THAT THE STATUTORY AUTHORITY UNDER WHICH THIS OFFICE MAY RENDER A DECISION TO A CERTIFYING OFFICER (SECTION 3 OF THE ACT OF DECEMBER 29, 1941, 55 STAT. 876, 31 U.S.C. 82D) LIMITS US TO INSTANCES INVOLVING A QUESTION OF LAW WITH RESPECT TO PAYMENT ON A SPECIFIC VOUCHER PRESENTED TO HIM FOR CERTIFICATION PRIOR TO PAYMENT OF THE VOUCHER. THE VOUCHER MUST ALSO ACCOMPANY THE SUBMISSION TO THIS OFFICE. (SEE 21 COMP. GEN. 1128 (1942); 52 ID. 83 (1972).)

IN THE INSTANT CASE, NO VOUCHER ACCOMPANIED THE REQUEST FOR A DECISION AND THE

QUESTION IS PRESENTED IN GENERAL TERMS. NORMALLY WE WOULD NOT RENDER A DECISION UNDER SUCH CIRCUMSTANCES. HOWEVER, IT APPEARS FROM THE LETTER THAT SOME VOUCHERS PREVIOUSLY DISAPPROVED BY THE FINANCIAL MANAGEMENT DIVISION, EPA, MAY HAVE BEEN PRESENTED AGAIN WITH A REQUEST FOR RECONSIDERATION. IN ANY EVENT, THE QUESTION SEEMS LIKELY TO RECUR AGAIN. ACCORDINGLY, WE HAVE ELECTED TO TREAT THE REQUEST FOR AN OPINION AS THOUGH IT HAD BEEN SUBMITTED BY YOU, AND ARE RESPONDING UNDER THE BROAD AUTHORITY OF SECTION 8 OF THE ACT OF JULY 31, 1894, 28 STAT. 207, 208 AS AMENDED, 31 U.S.C. 74, UNDER WHICH WE MAY PROVIDE DECISIONS TO HEADS OF EXECUTIVE DEPARTMENTS OR OTHER ESTABLISHMENTS ON ANY QUESTION INVOLVING PAYMENTS WHICH MAY BE MADE BY THEIR AGENCIES.

MR. PUGH'S LETTER STATES THAT THE ORGANIZATION AND PRESUMABLY THE FUNCTION OF THE NATIONAL ENVIRONMENTAL RESEARCH CENTER (NERC)- CINCINNATI, REQUIRE THAT ITS SENIOR MANAGEMENT AND CERTAIN OTHER RESEARCH STAFF MEMBERS MAINTAIN PROFESSIONAL CONTACTS WITH ORGANIZATIONS WHICH SHARE EPA CONCERNS FOR PROTECTION OR ENHANCEMENT OF THE QUALITY OF THE ENVIRONMENT. HE CITES AS EXAMPLES OF SUCH ORGANIZATIONS THE AMERICAN WATERWORKS ASSOCIATION, THE AMERICAN PUBLIC HEALTH ASSOCIATION, THE AMERICAN ACADEMY FOR ADVANCEMENT OF SCIENCE, THE AMERICAN SOCIETY FOR TESTING MATERIALS, WATER POLLUTION CONTROL FEDERATION, THE AMERICAN PUBLIC WORKS ASSOCIATION, THE AMERICAN SOCIETY OF MICROBIOLOGY, THE AMERICAN INSTITUTE OF MINING, SOCIETY OF TECHNICAL WRITERS AND PUBLISHERS, NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION, THE NEW YORK ACADEMY OF SCIENCE, AND THE AIR POLLUTION CONTROL ASSOCIATION.

THE LETTER SUGGESTS THAT MEMBERSHIP IN THE ABOVE ORGANIZATIONS IS PRIMARILY FOR THE BENEFIT OF THE AGENCY AND NOT FOR THE INDIVIDUAL WHO REPRESENTS IT, IN CONTRAST TO SUCH PROFESSIONAL ORGANIZATIONS AS THE AMERICAN SOCIETY OF CHEMICAL ENGINEERS OR THE AMERICAN CHEMICAL SOCIETY IN WHICH MEMBERSHIP PRIMARILY BENEFITS THE PROFESSIONAL CAREER OF THE INDIVIDUAL.

IT HAS REPEATEDLY BEEN HELD THAT SECTION 8 OF THE ACT OF JUNE 26, 1912, NOW CODIFIED AS 5 U.S.C. 5946, PROHIBITS USE OF APPROPRIATED FUNDS FOR PAYMENT OF MEMBERSHIP FEES OR DUES IN ORGANIZATIONS OR SOCIETIES FOR GOVERNMENT EMPLOYEES OR OFFICERS AS INDIVIDUALS, REGARDLESS OF THE RESULTING BENEFIT TO THE AGENCY. (SEE, E.G., 32 COMP. GEN. 15 (1952); 33 ID. 126 (1953).) THE LEGISLATIVE HISTORY OF THE SECTION IN QUESTION INDICATES THAT THE POINT MR. PUGH RAISES WAS CONSIDERED DURING THE COURSE OF HEARINGS ON THE DISTRICT OF COLUMBIA APPROPRIATION ACT FOR 1913 (37 STAT 854) AND REJECTED. AT THAT TIME, REPRESENTATIVE COX QUESTIONED A $10 EXPENDITURE BY THE DISTRICT OF COLUMBIA AUDITOR TO PAY HIS DUES IN THE NATIONAL ASSOCIATION OF COMPTROLLER AND ACCOUNTANTS. D.C. COMMISSIONER RUDOLPH REPLIED "OF COURSE THERE IS NO DOUBT ABOUT THE BENEFIT THIS CITY DERIVES FROM HIS BEING ASSOCIATED WITH MEN WHO COMPRISE AN ASSOCIATION LIKE A NATIONAL ASSOCIATION OF AUDITORS." HIS FELLOW COMMISSIONER, MAJOR JUDSON, THEN STATED, "I DO NOT THINK THAT IS RIGHT, HOWEVER, BECAUSE WE MIGHT AS WELL HAVE ALL THE PEOPLE WHO BELONG TO ASSOCIATIONS OF THAT KIND HAVE THEIR DUES PAID BY THE DISTRICT. I THINK WE HAD BETTER CALL HIS ATTENTION TO THAT AND HAVE IT REFUNDED." (HEARINGS BEFORE THE COMMITTEE ON APPROPRIATIONS OF THE HOUSE OF REPRESENTATIVES ON THE DISTRICT OF COLUMBIA APPROPRIATION BILL FOR 1913, DECEMBER 11, 1911, AT PAGES 65, 66.) ONE MONTH LATER, THE BILL WAS REPORTED BY THE COMMITTEE CONTAINING THE PROHIBITION IN SUBSTANTIALLY THE SAME FORM IN WHICH IT WAS LATER ENACTED. THUS THE FACT THAT SUBSTANTIAL BENEFIT TO THE GOVERNMENT WOULD RESULT FROM AN INDIVIDUAL MEMBERSHIP IS NOT SUFFICIENT TO OVERCOME THE PROHIBITION.

IT IS WELL SETTLED, HOWEVER, THAT THIS PROHIBITION DOES NOT APPLY WHEN THE

MEMBERSHIP IS ENTERED IN THE NAME OF THE FEDERAL AGENCY CONCERNED RATHER THAN THE INDIVIDUAL, THAT SUCH MEMBERSHIP WOULD BE OF PRIMARY BENEFIT TO THE AGENCY, AND THAT AN ADMINISTRATIVE DETERMINATION HAS BEEN MADE THAT AGENCY MEMBERSHIP IN A PARTICULAR PROFESSIONAL ASSOCIATION IS NECESSARY TO CARRY OUT THE ACTIVITIES AUTHORIZED BY THE APPROPRIATION IN QUESTION. SEE 24 COMP. GEN. 814 (1945); 31 ID. 398 (1952); 33 ID. 126 (1953).

IN LIGHT OF THESE DECISIONS, WE MUST ADVISE THAT EPA APPROPRIATIONS MAY NOT BE USED TO PAY MEMBERSHIP FEES FOR INDIVIDUAL EMPLOYEES IN ANY OF THE PROFESSIONAL ORGANIZATIONS LISTED IN YOUR LETTER. WE WOULD NOT BE REQUIRED TO OBJECT, HOWEVER, IF THE EPA WISHES TO PURCHASE AN AGENCY MEMBERSHIP IN ANY SUCH ORGANIZATION AND JUSTIFIES THE EXPENDITURE AS BEING OF DIRECT BENEFIT TO THE AGENCY AND ESSENTIAL TO CARRY OUT THE PURPOSES OF ITS APPROPRIATION.