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B-164162, Sept. 20, 1968

Number: B-164162

Date: 1968-09-20

B-164162, SEPT. 20, 1968

TO MR. JOHN C. MACKALL:

BY LETTER OF APRIL 25, 1968, YOU REQUESTED OUR OPINION AS TO WHETHER YOU MAY PROPERLY CERTIFY FOR PAYMENT A VOUCHER IN THE AMOUNT OF $3,403.58, DRAWN IN FAVOR OF THE MICHIGAN BANK, DETROIT, MICHIGAN. THE FACTS AND CIRCUMSTANCES AS SET FORTH IN YOUR LETTER AND A SUPPLEMENTAL LETTER DATED AUGUST 28, 1968, ARE AS FOLLOWS:

ON SEPTEMBER 7, 1966, THE SMALL BUSINESS ADMINISTRATION AUTHORIZED A LOAN IN THE AMOUNT OF $10,000, TO ONE GERALDINE J. HAWKINS DOING BUSINESS AS BENGER ASSOCIATES WHICH LOAN WAS DISBURSED ON SEPTEMBER 22, 1966, OUT OF THE BUSINESS AND INVESTMENT REVOLVING FUND. WHILE THE SBA LOAN WAS BEING PROCESSED, THE MICHIGAN BANK IN DETROIT DISBURSED AN INTERIM LOAN OF $3,400, ON SEPTEMBER 11, 1966, TO THE BORROWER. THE INTERIM LOAN WAS APPROVED BY THE BANK AFTER EMPLOYEES OF THE SMALL BUSINESS DEVELOPMENT CENTER IN DETROIT, WHO HAD AUTHORITY FROM THE SMALL BUSINESS ADMINISTRATION TO PROCESS SBA LOANS, PROMISED THE MICHIGAN BANK BY LETTER DATED SEPTEMBER 8, 1966, THAT THE LOAN PROCEEDS WOULD BE REPAID FROM THE PROCEEDS OF THE SBA LOAN.

THE SMALL BUSINESS ADMINISTRATION ATTORNEY WHO CLOSED THE LOAN REQUESTED THE BORROWER TO PROVIDE A CERTIFIED CHECK PAYABLE TO THE MICHIGAN BANK WHICH WAS TO BE USED IN PAYMENT OF THE BANK LOAN. SUCH CHECK IN THE AMOUNT OF $3,468 WAS OBTAINED FROM THE MANUFACTURERS NATIONAL BANK. THE ATTORNEY DID NOT TAKE POSSESSION OF THE CHECK FROM THE BORROWER BUT AGREED TO HAVE THE BORROWER DELIVER IT. THE BORROWER, HOWEVER, DEPOSITED IT TO HER ACCOUNT AT THE MANUFACTURERS NATIONAL BANK IN DETROIT INSTEAD OF TRANSMITTING IT TO THE MICHIGAN BANK AS AGREED. YOUR INVESTIGATION INDICATES THAT THE MANUFACTURERS NATIONAL BANK WAS FOLLOWING ESTABLISHED BANKING PROCEDURES IN ACCEPTING THE CHECK FOR DEPOSIT.

THE BORROWER'S WHEREABOUTS ARE PRESENTLY UNKNOWN AND THE SBA LOAN HAS BEEN PLACED IN LIQUIDATION. THE INTERIM LOAN IS UNPAID AND THE MICHIGAN BANK HAS MADE DEMAND ON SBA FOR PAYMENT.

IN ADDITION TO WHETHER YOU MAY PROPERLY CERTIFY PAYMENT TO THE MICHIGAN BANK, YOU REQUEST THAT WE ADVISE YOU WHETHER SUCH PAYMENT, IF AUTHORIZED, SHOULD BE MADE FROM THE BUSINESS AND INVESTMENT FUND, 73X4154, AND WHETHER INCLUSION OF ACCRUED INTEREST ON THE INTERIM LOAN WOULD BE PROPER.

FROM THE RECORD BEFORE US WE FIND NO BASIS FOR CONCLUDING THAT THE SMALL BUSINESS ADMINISTRATION IS IN ANY WAY OBLIGATED TO THE MICHIGAN BANK. APPEARS

THAT THE ONLY INVOLVEMENT OF SBA IN THE TRANSACTION BETWEEN THE BANK AND THE BORROWER WAS PURSUANT TO REQUEST OF THE SMALL BUSINESS DEVELOPMENT CENTER, A NON-FEDERAL ENTITY, TO AUTHORIZE USE OF A PORTION OF THE SBA LOAN PROCEEDS FOR REPAYMENT OF THE MICHIGAN BANK'S INTERIM LOAN. WE FIND NO EVIDENCE WHICH WOULD ESTABLISH A DUTY ON THE PART OF SBA TO ASSURE SUCH REPAYMENT THROUGH ITS OWN INDEPENDENT ACTION.

WHILE THE PROVISIONS OF SECTION 634 (B) (7) OF TITLE 15, UNITED STATES CODE, CITED IN THE SUPPLEMENTAL LETTER REFERRED TO ABOVE, GRANT THE ADMINISTRATOR OF SMALL BUSINESS BROAD AUTHORITIES WITH RESPECT TO DEALING WITH LOANS, WE DO NOT FIND SUCH AUTHORITY RELATED TO ASSUMING THE OBLIGATION OF A BORROWER TO THIRD PARTIES UNDER THE CIRCUMSTANCES HERE INVOLVED.

ACCORDINGLY, NO PART OF THE MICHIGAN BANK'S CLAIM MAY BE CERTIFIED FOR PAYMENT. YOUR ATTENTION IS INVITED TO OUR DECISIONS REQUIRING THAT THE VOUCHER BEFORE YOU FOR CERTIFICATION ACCOMPANY YOUR REQUEST FOR AN ADVANCE DECISION THEREON. SEE 21 COMP. GEN. 1128 AND 23 ID. 793.