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B-167709, Sep 9, 1969

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MISCELLANEOUS - FIRE FIGHTING SERVICES - SOVEREIGN IMMUNITY DECISION TO CRESCO COMMUNITY FIRE PROTECTIVE DISTRICT, IOWA, SUSTAINING DISALLOWANCE OF CLAIM FOR SERVICES INCIDENT TO FIRE RESULTING FROM CRASH OF PLANE OPERATED BY MEMBER OF WISCONSIN AIR NATIONAL GUARD. IN ABSENCE OF ANYTHING IN IOWA CODE WHICH WOULD AUTHORIZE CHARGE FOR FIRE -FIGHTING SERVICES, RULE IN 24 COMP. GEN. 599 THAT CHARGE FOR SUCH SERVICES MAY NOT BE LEVIED AGAINST FEDERAL GOVERNMENT IS FOR APPLICATION. THEREFORE CLAIM OF $250 FOR FIRE-FIGHTING SERVICES WAS PROPERLY DISALLOWED.

TO CRESCO COMMUNITY FIRE PROTECTIVE DISTRICT:

CONSIDERATION HAS BEEN GIVEN TO YOUR LETTER OF JULY 28, 1969, WHICH, IN EFFECT, REQUESTS REVIEW OF THE SETTLEMENT DATED JULY 17, 1969, OF THE CLAIMS DIVISION, GENERAL ACCOUNTING OFFICE, WHICH DISALLOWED YOUR CLAIM NO. Z-2367505, IN THE AMOUNT OF $250.

THE AMOUNT CLAIMED IS A CHARGE FOR ANSWERING TWO CALLS ON MARCH 5, 1968, IN CONNECTION WITH FIRES WHICH RESULTED FROM THE CRASH OF A PLANE OPERATED BY A MEMBER OF THE WISCONSIN AIR NATIONAL GUARD AT THE FARM OF EMMA AND CLARENCE MCCARVILLE ABOUT 10 MILES SOUTH AND WEST OF CRESCO, IOWA.

YOUR CLAIM WAS DISALLOWED PRIMARILY BECAUSE THE INFORMATION BEFORE THIS OFFICE FAILED TO SHOW THAT EITHER A VALID CONTRACT HAD BEEN EXECUTED FOR YOUR SERVICES OR THAT THERE WAS AN IMPLIED UNDERSTANDING BETWEEN YOU AND THE GOVERNMENT THAT PAYMENT FOR YOUR SERVICES WOULD BE MADE. WHILE THESE REASONS MIGHT BE SUFFICIENT TO SUSTAIN THE DISALLOWANCE, THERE ALSO IS FOR CONSIDERATION THE QUESTION OF WHETHER A CHARGE FOR SUCH SERVICES IS AUTHORIZED, AND IF SO, WHETHER IT MAY BE PAID BY THE FEDERAL GOVERNMENT.

BECAUSE A FIRE DEPARTMENT USUALLY IS ESTABLISHED TO SERVE A CERTAIN AREA AND, IN THE ABSENCE OF SPECIFIC PROVISION OF LAW TO THE CONTRARY, ANSWERS CALLS IN THAT AREA WITHOUT CHARGE, REGARDLESS OF THE ORIGIN OF THE FIRE, WE HAVE EXAMINED THE IOWA CODE ANNOTATED FOR THE PURPOSE OF DETERMINING WHETHER IT CONTAINS ANY BASIS FOR CONCLUDING THAT THE FEDERAL GOVERNMENT MIGHT BE LIABLE IN THIS CASE.

THE CRESCO COMMUNITY FIRE PROTECTIVE DISTRICT IS A TAX SUPPORTED FIRE DISTRICT WHICH INCLUDES THE CITY OF CRESCO AND THE SURROUNDING RURAL TOWNSHIPS. CHAPTER 357A OF THE IOWA CODE ANNOTATED PROVIDES FOR THE ESTABLISHMENT OF FIRE DISTRICTS. THE CHAPTER ALSO PROVIDES FOR THE LEVY OF A TAX ON ALL THE TAXABLE PROPERTY WITHIN THE FIRE DISTRICT FOR THE PURPOSE OF MEETING THE AUTHORIZED EXPENSES OF THE FIRE DISTRICT AS PROVIDED IN THAT CHAPTER. WE HAVE FOUND NOTHING

IN THE IOWA CODE ANNOTATED WHICH WOULD AUTHORIZE A CHARGE FOR EXPENSES ATTRIBUTABLE TO THE USE OF THE REGULAR EQUIPMENT AND MANPOWER OF A FIRE DEPARTMENT CALLED TO EXTINGUISH A FIRE LOCATED WITHIN THE BOUNDARIES OF THE FIRE DISTRICT.

THERE ALSO SHOULD BE NOTED THE STATEMENT APPEARING IN 24 COMP. GEN. 599, CITED IN THE CLAIMS DIVISION SETTLEMENT OF JULY 17, 1969, WHICH DISALLOWED YOUR CLAIM:

"HOWEVER, IF A CITY MAY CHARGE THE FEDERAL GOVERNMENT FOR THE SERVICE OF ITS FIRE DEPARTMENT UNDER THE CIRCUMSTANCES HERE INVOLVED, WOULD IT NOT FOLLOW THAT A CHARGE COULD BE MADE FOR THE SERVICE OF ITS POLICE DEPARTMENT, THE SERVICE OF ITS STREET-CLEANING DEPARTMENT AND ALL SIMILAR SERVICE USUALLY RENDERED BY A CITY FOR THE BENEFIT AND WELFARE OF ITS INHABITANTS. IN OTHER WORDS, IT WOULD SEEM THAT A DECISION FAVORABLE TO THE CITY OF DETROIT IN THIS CASE WOULD HAVE FAR-REACHING EFFECT. SUCH FACT, ALONE, MIGHT BE CONSIDERED SUFFICIENT FOR THIS OFFICE TO DENY THE CITY'S RIGHT TO PAYMENT IN THE ABSENCE OF CLEAR AND ESTABLISHED JUDICIAL AUTHORITY IN SUPPORT THEREOF; AND THERE HAS BEEN FOUND NO SUCH AUTHORITY."

UNDER THE CIRCUMSTANCES NOW APPEARING, THE ACTION TAKEN BY THE CLAIMS DIVISION, GENERAL ACCOUNTING OFFICE IN THE SETTLEMENT OF JULY 17, 1969, WHICH DISALLOWED YOUR CLAIM MUST BE AND HEREBY IS SUSTAINED.