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B-168300, Dec. 4, 1969

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Date: 1969-12-04

B-168300, DEC. 4, 1969

AGENTS--GOVERNMENT--GOVERNMENT LIABILITY FOR ACTS BEYOND AUTHORITY- FINANCIAL RESPONSIBILITY OF BORROWERS UNDER GOVERNMENT LOAN PROGRAMS CLAIM OF CREDITOR WHO PURPORTEDLY WOULD NOT HAVE ADVANCED SUPPLIES AND SERVICES TO BORROWER FROM FARMERS HOME ADMINISTRATION (FHA) BUT FOR ASSURANCES OF PAYMENT FROM FHA EMPLOYEE, MAY NOT BE ALLOWED SINCE NO GOVT. OFFICER HAS POWER TO BIND U.S. ABSENT CONGRESSIONAL AUTHORITY, AND PERSONS DEALING WITH GOVT. MUST TAKE NOTICE OF EXTENT OF AUTHORITY GOVT. HAS CONFERRED UPON ITS AGENT. MOREOVER, GUARANTEES OF REPAYMENT OF ADVANCES FROM OTHER CREDIT SOURCES IS PROHIBITED TO FHA EMPLOYEES UNDER TITLE 7, CODE OF FEDERAL REGULATIONS, SUBSEC. 1871.10.SINCE IT IS GAO POLICY TO USE REPORTING AUTHORITY UNDER MERITORIOUS CLAIMS ACT SPARINGLY AND ONLY IN CASES WHICH ARE UNLIKELY TO CONSTITUTE RECURRING PROBLEM, REPORTING OF SUBJECT CLAIM IS NOT JUSTIFIED.

TO MR. STANLEY G. KNAPP:

YOUR LETTER OF OCTOBER 24, 1969, REQUESTS RECONSIDERATION OF OUR CLAIMS SETTLEMENT Z-2393532, OCTOBER 8, 1969, WHEREIN WE DENIED YOUR CLAIM FOR $3,670.50. THIS CLAIM AROSE INCIDENT TO SUMS ADVANCED, SEED POTATOES SUPPLIED AND SERVICES RENDERED TO MR. GEORGE H. BULL, JR., A BORROWER OF THE FARMERS HOME ADMINISTRATION. YOU CONTEND, AND SUBMIT LETTERS IN SUPPORT, THAT BUT FOR ASSURANCES OF PAYMENT RECEIVED FROM AN EMPLOYEE OF FHA YOU WOULD NOT HAVE EXTENDED ASSISTANCE TO MR. BULL BECAUSE OF HIS LACK OF SUCCESS IN HIS FARMING OPERATIONS. ALSO, YOU SUBMIT A PHOTOCOPY OF A CHECK MADE PAYABLE TO FHA IN THE AMOUNT OF $2,000 WHICH WAS ADVANCED TO FINANCE MR. BULL'S HARVEST.

EVEN IF WE ACCEPT THE EVIDENCE YOU HAVE SUBMITTED AS BEING FACTUAL AND WE HAVE NO REASON NOT TO DO SO, THE CENTRAL ISSUE IN THIS MATTER IS WHETHER THE FHA EMPLOYEE'S ACTIONS OBLIGATED THE UNITED STATES TO PAY MR. BULL'S DEBTS.

SUBSECTION 1871.10 OF TITLE 7 OF THE CODE OF FEDERAL REGULATIONS PROVIDES THAT FARMERS HOME ADMINISTRATION EMPLOYEES MAY NOT GUARANTEE, PERSONALLY OR ON BEHALF OF THE GOVERNMENT, REPAYMENT OF ADVANCES FROM OTHER CREDIT SOURCES. THIS PROHIBITION IS A RESTATEMENT FROM THE FEDERAL REGISTER OF NOVEMBER 4, 1966, 31 FED. REG. 14215.

IN VIEW OF THIS PROHIBITION, THE ASSURANCES ALLEGED TO HAVE BEEN GIVEN YOUR COOPERATIVE WERE EXPRESSLY PROHIBITED BY GOVERNING REGULATIONS. IS A RULE OF LONG-STANDING THAT NO OFFICER OF THE GOVERNMENT HAS THE POWER TO BIND THE UNITED STATES IN THE ABSENCE OF CONGRESSIONAL AUTHORITY AND PERSONS DEALING WITH THE GOVERNMENT MUST TAKE NOTICE OF THE EXTENT OF THE AUTHORITY THAT THE GOVERNMENT HAS GIVEN ITS AGENTS. SEE BYRNE ORGANIZATION INC. V UNITED STATES, 287 FD 582,

586 (1961) AND CASES THEREIN CITED. ONE OF THE CASES RELIED UPON IN THE BYRNE CASE WAS FEDERAL CROP INS. CORP. V MERRILL, 332 US 380 (1947) WHERE THE COURT IN SPEAKING OF NOTICE BY PUBLICATION OF RULES AND REGULATIONS, STATED: "JUST AS EVERYONE IS CHARGED WITH KNOWLEDGE OF THE UNITED STATES STATUTES AT LARGE, CONGRESS HAS PROVIDED THAT APPEARANCE OF RULES AND REGULATIONS IN THE FEDERAL REGISTER GIVES LEGAL NOTICE OF THEIR CONTENTS.'

WHILE THE APPLICATION OF THESE RULES MAY APPEAR TO BE HARSH, AND UNDOUBTEDLY WILL BE SO CONSIDERED BY YOUR COOPERATIVE, THE COURT IN THE BYRNE CASE CORRECTLY STATED THAT TO HOLD A CONTRARY RESULT COULD CONCEIVABLY CREATE A SITUATION WHERE TWO COLLUSIVE PEOPLE COULD EFFECT A DRAIN ON THE PUBLIC TREASURY.

WE ARE NOT UNMINDFUL OF THE DETRIMENT THAT THIS AND SIMILAR DECISIONS BRING TO THE CREDITORS OF MR. BULL AND, IN ADDITION TO CAREFUL RECONSIDERATION OF THIS AND SEVERAL SIMILAR CLAIMS ARISING IN THE GEORGE BULL MATTER, WE HAVE CONSIDERED REPORTING THEM AS MERITORIOUS CLAIMS TO THE CONGRESS. OUR OFFICE UNDER THE MERITORIOUS CLAIMS ACT, APPROVED APRIL 10, 1928, CH. 334, 45 STAT. 413, 31 U.S.C. 236 IS EMPOWERED TO RECOMMEND TO THE CONGRESS FAVORABLE ACTION ON CLAIMS WHICH ARE NOT SUBJECT TO LAWFUL ADJUSTMENT BUT WHICH CONTAIN SUCH ELEMENTS OF LEGAL LIABILITY OR EQUITY AS TO BE DESERVING OF THE CONSIDERATION OF THE CONGRESS. IT HAS BEEN OUR POLICY TO USE THIS AUTHORITY SPARINGLY AND ONLY IN CASES WHICH ARE UNLIKELY TO CONSTITUTE A RECURRING PROBLEM. IT IS OUR VIEW THAT TO REPORT INDIVIDUAL CASES TO THE CONGRESS WHEN SIMILAR EQUITIES EXIST OR ARE LIKELY TO ARISE WITH RESPECT TO OTHER CLAIMANTS WOULD CONSTITUTE PREFERENTIAL TREATMENT OVER OTHERS SIMILARLY SITUATED. THIS POLICY COULD HAVE NO MORE APPROPRIATE APPLICATION THAN IN THE PRESENT CONSIDERATION FOR WE ARE CONCERNED HERE WITH THE AUTHORITY OF FEDERAL EMPLOYEES OF ALL AGENCIES TO BIND THE GOVERNMENT BY ACTIONS WHICH ARE BEYOND THE SCOPE OF THEIR AUTHORITY AND WHICH -- AS IN THIS CASE -- ARE SPECIFICALLY PRECLUDED. THE PRACTICAL EFFECT OF TAKING A DIFFERENT VIEW WOULD BE TO NULLIFY THE RULES LAID DOWN BY THE COURTS IN THE CASES HEREIN DISCUSSED IN A SITUATION THAT WOULD AT THE SAME TIME OCCASION THE REPORTING OF NUMEROUS CLAIMS ARISING UNDER CONCEIVABLY EVERY FEDERAL PROGRAM TO THE DETRIMENT OF PERSONS SIMILARLY SITUATED WHO DO NOT FILE CLAIMS OR WHOSE CLAIMS WERE NOT REPORTED TO THE CONGRESS.

ACCORDINGLY, WE HAVE NO ALTERNATIVE BUT TO SUSTAIN OUR SETTLEMENT OF OCTOBER 8, 1969, AND TO ADVISE THAT WHILE WE RECOGNIZE YOUR POSITION IN THIS MATTER, WE WOULD NOT FEEL JUSTIFIED IN REPORTING YOUR CLAIM TO THE CONGRESS UNDER THE MERITORIOUS CLAIMS ACT.