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B-169141, Nov. 17, 1970

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APPROPRIATION AVAILABILITY - EMPLOYEE CAFETERIA SUBSIDY DECISION CONCLUDING THAT APPROPRIATED FUNDS MAY BE USED TO PARTIALLY SUBSIDIZE THE OPERATION OF THE EMPLOYEE CAFETERIA AT THE TRANSPORTATION SYSTEMS CENTER IN CAMBRIDGE, MASS., UNDER CONCESSION WITH STOUFFER FOODS CORPORATION SINCE IT HAS BEEN ADMINISTRATIVELY DETERMINED THAT UNINTERRUPTED OPERATION IS ESSENTIAL.

TO MR. SECRETARY:

REFERENCE IS MADE TO LETTER OF OCTOBER 20, 1970, FROM YOUR GENERAL COUNSEL, REQUESTING ADVICE AS TO WHETHER THE DEPARTMENT OF TRANSPORTATION MAY LEGALLY APPLY APPROPRIATED FUNDS TO PARTIALLY SUBSIDIZE THE OPERATION OF THE EMPLOYEE CAFETERIA AT THE TRANSPORTATION SYSTEMS CENTER (FORMERLY NASA'S ELECTRONICS RESEARCH CENTER), AT CAMBRIDGE, MASSACHUSETTS.

THE LETTER OF OCTOBER 20, 1970, STATES THE FOLLOWING:

"AS YOU ARE AWARE, EFFECTIVE JULY 1, 1970, THE DEPARTMENT OF TRANSPORTATION ASSUMED THE RESPONSIBILITY FOR OPERATING THE TRANSPORTATION SYSTEMS CENTER AT CAMBRIDGE, MASSACHUSETTS. PRIOR THERETO, THAT FACILITY HAD SERVED THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AS ITS ELECTRONICS RESEARCH CENTER. SHORTLY BEFORE ITS TRANSFER FROM NASA TO DOT, THE CENTER MOVED FROM RENTED SPACE INTO A NEWLY-COMPLETED, FEDERALLY- OWNED HIGH-RISE BUILDING. I REALIZE THAT YOU ARE WELL ACQUAINTED WITH THIS FACILITY, BUT ALLOW ME TO REFRESH YOUR RECOLLECTION THAT THE CENTER IS LOCATED IN THE KENDALL SQUARE URBAN RENEWAL AREA OF CAMBRIDGE WHICH HAS UNDERGONE EXTENSIVE CLEARING. THE CITY PLANS FURTHER RENEWAL FOR THIS GENERAL VICINITY WHICH WILL REQUIRE THE CLEARING OF STILL MORE LAND. SHORT, THE FACILITY IS LOCATED IN AN AREA WHICH IS LARGELY DEVOID OF COMMERCIAL RETAIL ACTIVITIES INCLUDING EATING PLACES.

"THE NEW BUILDING CONTAINS A FULLY EQUIPPED CAFETERIA WHICH WAS AND IS THE ONLY REASONABLY LOCATED EATING PLACE WHICH CAN SATISFY THE NEEDS OF THE CENTER'S STAFF. THE STAFF CURRENTLY NUMBERS OVER 400 BUT THIS FIGURE IS SUBSTANTIALLY LESS THAN THE NUMBER EMPLOYED BY NASA AT THE TIME THE BUILDING WAS PLANNED. IT APPEARS THAT IT WILL NOT BE POSSIBLE, AT LEAST UNTIL AN ANTICIPATED INCREASE IN THE STAFF MATERIALIZES, TO PROVIDE FOR CONTINUED OPERATION OF THE CAFETERIA AT REASONABLE PRICE LEVELS UNDER PRESENT ARRANGEMENTS."

ENCLOSED WITH THE LETTER IS A STAFF PAPER, DATED SEPTEMBER 23, 1970, BY EDWARD U. O'DONNELL, ACTING CHIEF COUNSEL OF THE CENTER, SHOWING THAT THE CAFETERIA, WHICH OCCUPIES THE ENTIRE SECOND FLOOR OF THE NEW BUILDING, WAS CONSTRUCTED UNDER AN APPROVED NASA CONSTRUCTION PROGRAM AT A COST OF APPROXIMATELY $600,000;

THAT THE CONVERSION COSTS TO MODIFY THE CAFETERIA FOR OTHER USES WOULD BE CONSIDERABLE; THAT THERE IS A LACK OF OTHER EATING FACILITIES IN THE VICINITY; THAT A ONE-YEAR CONTRACT WAS MADE WITH STOUFFER FOODS CORPORATION TO OPERATE THE CAFETERIA, TERMINABLE BY EITHER PARTY WITHOUT LIABILITY ON 60-DAYS WRITTEN NOTICE; THAT STOUFFERS COMMENCED SERVING ON JULY 22, 1970, AND IS EXPERIENCING A LOSS AND EXPECTS A CONTINUING MONTHLY LOSS OF $1,200, BECAUSE OF WHICH STOUFFERS HAS GIVEN NOTICE OF TERMINATION OF SERVICE ON NOVEMBER 20, 1970; AND THAT, AS AN ALTERNATIVE TO CLOSING, STOUFFERS PROPOSES A MONTHLY ADMINISTRATIVE CHARGE OF $750 OR TEN PERCENT OF SALES, WHICHEVER IS GREATER, IN ADDITION TO ANY OPERATING LOSS OR LESS ANY OPERATING PROFIT, EFFECTIVE AS OF SEPTEMBER 1, 1970.

THE STAFF PAPER NOTES THE IMPORTANCE OF THE CAFETERIA IN RETAINING THE NUMBER AND TYPE OF EMPLOYEES NECESSARY TO RUN THE CENTER, THE ADVERSE EFFECT UPON EFFICIENCY AND MORALE OF CLOSING THE CAFETERIA, AND THE UNPOPULARITY AT THE CENTER OF THE PREVIOUS VENDING MACHINE FOOD SERVICE. THE CONCLUSION ARRIVED AT IS THAT TEMPORARY PARTIAL SUBSIDIZATION OF THE CAFETERIA OPERATION IS THE ONLY FEASIBLE ALTERNATIVE. THE STAFF PAPER STATES IT AS FOLLOWS:

"CONTINUE THE MANUAL-FOOD-SERVICE OPERATION THROUGH PARTIAL SUBSIDIZATION BY TSC

"THIS ALTERNATIVE ALONE, IF SELECTED, WOULD SATISFY TSC REQUIREMENTS, INCLUDING SUCH FACTORS (IDENTIFIED EARLIER IN THIS STAFF PAPER) AS EFFICIENCY OF OPERATIONS, HIRING AND RETAINING EMPLOYEES, AND ADVANCING EMPLOYEE WELFARE AND MORALE. IT WOULD VOUCHSAFE THE CONTINUED USE FOR THE PRECISE PURPOSES INTENDED, OF A SPECIAL-PURPOSE FACILITY (THE TSC CAFETERIA), CONSTRUCTED UNDER AN APPROVED NASA CONSTRUCTION PROGRAM AT A COST OF $600,000.

"THE PARTIAL SUBSIDIZATION WOULD ENTAIL OBLIGATION OF A RELATIVELY NEGLIGIBLE AMOUNT OF FUNDS, ESTIMATED AT $12,000, FOR THE BALANCE OF THE FIRST YEAR, AND ABOUT $12,000 ANNUALLY FOR THE FOLLOWING YEARS, WITH THE POSSIBILITY THAT, AS TSC EMPLOYMENT STRENGTH INCREASES, THE BREAK-EVEN POINT COULD WELL BE REACHED DURING THE THIRD YEAR OF OPERATION. THIS PARTIAL SUBSIDIZATION WOULD REPRESENT LESS THAN 1/1000 (1/10 OF 1%) OF THE TSC OPERATING BUDGET. TSC IS NOT IN A STATIC, BUT ON THE CONTRARY IS IN A GROWTH SITUATION, AND THE PRESENT TSC EMPLOYEE STRENGTH IS AT ITS LOWEST LEVEL, WITH ORDERLY INCREASES PLANNED. THEREFORE, THE PARTIAL SUBSIDIZATION WOULD NOT BE OVER AN UNREASONABLE PERIOD.

SELECTION OF ALTERNATIVE

"AFTER CAREFUL CONSIDERATION OF THE ALTERNATIVES, TSC HAS CONCLUDED THAT THE TSC MANUAL-FOOD-SERVICE OPERATION SHOULD BE CONTINUED THROUGH PARTIAL SUBSIDIZATION BY TSC; AND THAT THE FOOD CONCESSION AGREEMENT CURRENTLY IN EFFECT BETWEEN THE GOVERNMENT AND STOUFFER FOODS CORPORATION SHOULD, ACCORDINGLY, AND SUBJECT TO LEGAL CONCURRENCE, BE MODIFIED APPROPRIATELY PURSUANT TO NEGOTIATIONS BASED UPON STOUFFER LETTERS TO THE CONTRACTING OFFICER, DATED SEPTEMBER 17 AND 21, 1970.

"ATTENTION IS INVITED TO THE FACT THAT THE LAST DAY OF OPERATIONS OF THE MANUAL FOOD SERVICE AT TSC WILL BE NOVEMBER 20, 1970. ACCORDINGLY, ALL NECESSARY ACTIONS MUST BE TAKEN FORTHWITH TO PREVENT THE SHUTDOWN OF SUCH OPERATIONS."

IN UNPUBLISHED DECISION B-169141, MARCH 23, 1970 (COPY ENCLOSED), WE APPROVED THE USE OF APPROPRIATED FUNDS BY THE RAILROAD RETIREMENT BOARD FOR PARTIAL SUBSIDIZATION OF THE CAFETERIA AT THE BOARD'S HEADQUARTERS IN CHICAGO, ILLINOIS, SUBJECT TO THE ASSUMPTION THAT FOOD PRICES WOULD BE COMPARABLE TO OTHER CAFETERIAS IN THE AREA, BASED ON THE BOARD'S ADMINISTRATIVE DETERMINATION THAT

THE MAINTENANCE OF THE CAFETERIA WAS ESSENTIAL TO THE EFFICIENCY OF OPERATIONS AND WAS A SIGNIFICANT FACTOR IN HIRING AND RETAINING EMPLOYEES AND IN PROMOTING EMPLOYEE MORALE. SEE ALSO UNPUBLISHED DECISION B-45273, OCTOBER 30, 1944; AND 23 COMP. GEN. 867 (1944). CF. 42 COMP. GEN. 149, AND 35 ID. 113 (1955).

THE SITUATION EXISTING AT THE PRESENT TIME AT THE TRANSPORTATION SYSTEMS CENTER APPEARS TO PARALLEL CLOSELY THE ONE INVOLVED IN THE RAILROAD RETIREMENT BOARD DECISION, EXCEPT THAT YOUR NEED FOR A SUBSIDY IS ESTIMATED TO BE ONLY TEMPORARY UNTIL THE TSC STAFF IS INCREASED.

THE ADMINISTRATIVE DETERMINATION IS THAT "UNINTERRUPTED OPERATION OF THE CAFETERIA IS ESSENTIAL FOR EMPLOYEE MORALE AND EFFICIENCY" AND THAT THE PRESENT FOOD SERVICE OPERATION "SHOULD BE CONTINUED THROUGH PARTIAL SUBSIDIZATION BY TSC." IN VIEW OF THIS DETERMINATION, WE SEE NO LEGAL OBJECTION TO THE PROPOSED ARRANGEMENT.