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B-172945, Jun 22, 1971

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B-172945, JUN 22, 1971

EMERGENCY AND RESCURE SQUAD SERVICES - PAYMENT ADVISING THAT THE VA MAY ENTER INTO A CONTRACT WITH THE MORRISTOWN EMERGENCY AND RESCURE SQUAD FOR THE FURNISHING OF AUTHORIZED AMBULANCE SERVICES FOR THE TRANSPORTATION OF VETERAN PATIENTS TO THE VA CENTER, MOUNTAIN HOME, TENN. FEDERAL AGENCIES MAY PAY FOR SERVICES FINANCED BY LOCAL GOVERNMENT OR STATE TAXATION FROM WHICH THE U.S. IS EXEMPT BECAUSE OF ITS CONSTITUTIONAL IMMUNITY ONLY IF A LOCAL GOVERNMENT IS NOT REQUIRED BY STATE LAW TO FURNISH THE SERVICES COST-FREE. SINCE NO RULING BY A BRANCH OF THE TENNESSEE STATE GOVERNMENT REQUIRES THAT A LOCAL COMMUNITY PROVIDE FREE AMBULANCE SERVICE, VA MAY CONTRACT FOR SUCH SERVICE.

TO MR. JOHNSON:

BY LETTER OF MAY 13, 1971, YOU REQUESTED OUR DECISION AS TO WHETHER THE VETERANS ADMINISTRATION (VA) MAY ENTER INTO A CONTRACT WITH THE MORRISTOWN EMERGENCY AND RESCUE SQUAD FOR THE FURNISHING OF AUTHORIZED AMBULANCE SERVICES FOR THE TRANSPORTATION OF VETERAN PATIENTS TO THE VA CENTER, MOUNTAIN HOME, TENNESSEE. HOSPITAL AND DOMICILIARY CARE TO ELIGIBLE VETERANS INCLUDES TRANSPORTATION PURSUANT TO 38 U.S.C. 601(5) AND (7).

YOU INDICATE THAT THE MORRISTOWN EMERGENCY AND RESCUE SQUAD IS A VOLUNTEER NONPROFIT ORGANIZATION SERVING THE GENERAL PUBLIC OF HAMBLEN COUNTY, TENNESSEE, AS WELL AS PATIENTS OF THE VA CENTER. FOR ITS FINANCIAL SUPPORT, IT HAS A SUGGESTED SCALE OF "CONTRIBUTIONS" HONORED BY MOST USERS. AT OUR REQUEST THE OFFICE OF THE GENERAL COUNSEL, VETERANS ADMINISTRATION, HAS FORWARDED A COPY OF A LETTER OF FEBRUARY 8, 1971, FROM THE CHAIRMAN OF THE HAMBLEN COUNTY COURT TO CONGRESSMAN JOHN DUNCAN. THE CHAIRMAN STATES THAT THE MORRISTOWN EMERGENCY AND RESCUE SQUAD HAS BEEN GRANTED AN EXCLUSIVE FRANCHISE FOR AMBULANCE SERVICES BY BOTH THE MORRISTOWN CITY COUNCIL AND THE HAMBLEN COUNTY QUARTERLY COURT. NEITHER GROUP, ACCORDING TO THE CHAIRMAN, SUBSIDIZES THE OPERATION WITH ANY TAX FUNDS. HE FURTHER STATES THAT THE RESCUE SQUAD DOES NOT CHARGE FOR ITS SERVICES BUT RELIES INSTEAD ON CONTRIBUTIONS PAID BY MOST PATIENTS, INCLUDING INSURANCE COMPANIES THAT PAY FOR AMBULANCE SERVICES. THE CHAIRMAN BELIEVES IT IS UNFAIR FOR THE VETERANS ADMINISTRATION TO MAKE ITS PATIENTS RIDE FREE IN THE AMBULANCES OF THE RESCUE SQUAD, THE ONLY AMBULANCE SERVICE LEGALLY AVAILABLE IN HAMBLEN COUNTY, WHILE ALMOST EVERYONE ELSE IS CONTRIBUTING TO THE COST OF ITS OPERATION.

YOUR LETTER STATES THAT IN PREVIOUS CASES THE VETERANS ADMINISTRATION HAS DETERMINED THAT IT LACKS AUTHORITY TO PAY FOR THE TRANSPORTATION OF ELIGIBLE VETERANS TO A VA FACILITY FOR CARE OR TREATMENT WHEN SUCH TRANSPORTATION IS FURNISHED BY A NONPROFIT VOLUNTEER ORGANIZATION WHICH DOES NOT CHARGE FOR ITS SERVICES. HOWEVER, YOU INDICATE THAT THIS POLICY WARRANTS FURTHER CONSIDERATION,

AT LEAST UNDER THE CIRCUMSTANCES PRESENTED BY THE MORRISTOWN EMERGENCY AND RESCUE SQUAD. YOU SUGGEST THAT A CONTRACT AUTHORIZED BY 38 U.S.C. 213 MAY BE AN APPROPRIATE METHOD TO PAY REASONABLE COMPENSATION FOR AMBULANCE SERVICES RECEIVED BY VETERANS. SECTION 213, TITLE 38, UNITED STATES CODE, PROVIDES, IN PERTINENT PART, THAT THE ADMINISTRATOR MAY, FOR THE PURPOSES OF ALL LAWS ADMINISTERED BY THE VETERANS ADMINISTRATION, ACCEPT UNCOMPENSATED SERVICES AND ENTER INTO CONTRACTS OR AGREEMENTS WITH PRIVATE OR PUBLIC AGENCIES OR PERSONS FOR SUCH NECESSARY SERVICES AS HE MAY DEEM PRACTICABLE. YOU STATE THAT ANY PERMISSIBLE CONTRACT WITH THE MORRISTOWN EMERGENCY AND RESCUE SQUAD WOULD BE SUBJECT TO THE PROVISIONS OF THE FEDERAL PROCUREMENT REGULATIONS AND THE VETERANS ADMINISTRATION PROCUREMENT REGULATIONS.

COMPTROLLER GENERAL DECISIONS HAVE EXAMINED THE LEGALITY OF FEDERAL PAYMENTS UNDER PROPOSED CONTRACTS BY FEDERAL AGENCIES FOR FIRE PROTECTION SERVICES FINANCED BY LOCAL GOVERNMENT OR STATE TAXATION FROM WHICH THE UNITED STATES IS EXEMPT BECAUSE OF ITS CONSTITUTIONAL IMMUNITY FROM TAXATION. OUR DECISIONS HAVE HELD THAT WHERE A LOCAL GOVERNMENT OR STATE IS REQUIRED BY STATE LAW TO EXTINGUISH FIRES AT NO COST TO THE PROPERTY OWNER, FEDERAL AGENCIES MAY NOT ENTER INTO A CONTRACT WITH THE LOCAL GOVERNMENT OR STATE TO PAY FOR FIRE PROTECTION SERVICE. SEE, FOR EXAMPLE, 24 COMP. GEN. 599 (1945); 45 ID. 1 (1965). THE SAME RULE APPLIES TO A VOLUNTEER FIRE DEPARTMENT SUPPORTED - AT LEAST IN PART - BY FIRE DISTRICT TAX ASSESSMENTS AND PERFORMING A GOVERNMENTAL FUNCTION FOR A LOCAL GOVERNMENT WHICH IS REQUIRED BY STATE LAW TO PROVIDE FIRE PROTECTION. ID. 382 (1946). READILY DISTINGUISHABLE, HOWEVER, IS A VOLUNTEER ASSOCIATION DEPENDENT SOLELY UPON CONTRIBUTIONS TO PROVIDE A SERVICE IT IS INCAPABLE OF FURNISHING WITHOUT THIS FINANCIAL SUPPORT.

FURTHER, SECTION 6-643 OF THE TENNESSEE CODE ANNOTATED, VOL. 2, 1970 CUMULATIVE SUPPLEMENT, STATES THAT THE GOVERNING BODY OF ANY COUNTY OR CITY OF THE STATE OF TENNESSEE MAY PROVIDE AND MAINTAIN AND DO ALL THINGS NECESSARY TO PROVIDE AMBULANCE SERVICE AS A PUBLIC SERVICE. UNDER SECTION 6-644, THE GOVERNING BODY OF ANY COUNTY OR CITY MAY LICENSE, FRANCHISE, OR CONTRACT FOR PRIVATE OPERATORS OR NONPROFIT GENERAL WELFARE CORPORATIONS TO PROVIDE AMBULANCE SERVICE; AND IT MAY ADOPT AND ENFORCE REASONABLE REGULATIONS TO CONTROL THE PROVISION OF AMBULANCE SERVICE IN ORDER TO PROTECT THE PUBLIC HEALTH AND WELFARE. THUS, IT DOES NOT APPEAR THAT UNDER APPLICABLE TENNESSEE LAW, LOCAL GOVERNMENTS ARE UNDER A MANDATORY DUTY TO FURNISH, OR PROVIDE FOR, FREE AMBULANCE SERVICE TO THEIR RESIDENTS.

IN LIGHT OF ALL THE FACTS AND CIRCUMSTANCES AND IN THE ABSENCE OF A DETERMINATION BY THE ATTORNEY GENERAL OF TENNESSEE OR THE COURTS TO THE EFFECT THAT LOCAL GOVERNMENTS MUST PROVIDE FREE AMBULANCE SERVICES, WE WOULD HAVE NO OBJECTION TO THE PROPOSED CONTRACT, PROVIDED YOU DETERMINE THAT THE RESCUE SQUAD IN QUESTION IS NOT SUPPORTED IN WHOLE OR IN PART BY STATE OR LOCAL TAXES.

AS YOU SUGGEST, ANY CONTRACT SUCH AS YOU PROPOSE SHOULD NOT ONLY PROVIDE FOR PAYMENTS NOT TO EXCEED THE FAIR AND REASONABLE VALUE OF THE SERVICES RECEIVED BY THE GOVERNMENT BUT IN ADDITION IT SHOULD COMPLY WITH FEDERAL PROCUREMENT REGULATIONS.