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B-173009, Jul 20, 1971

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CIVILIAN EMPLOYEES ABROAD - REMOTE AREA HOUSING "RELATED ACCOMODATIONS" DECISION CONCERNING PAYMENT TO DILLON CONSTRUCTION, INC., BALBOA, CANAL ZONE, IN THE AMOUNT OF $18,493 FOR TENNIS COURTS IT HAS CONSTRUCTED FOR THE FEDERAL AVIATION AGENCY AT CARDENAS TOWNSITE. AS THIS HOUSING COMMUNITY FOR THE FAA'S 425 EMPLOYEES IS LOCATED IN A REMOTE AREA WHERE RECREATION FACILITIES ARE NOT READILY AVAILABLE, PAYMENT IN THIS INSTANCE FROM THE "FACILITIES AND EQUIPMENT" APPROPRIATION MAY BE CERTIFIED AS THE TENNIS COURTS MAY BE REASONABLY SEEN AS A "RELATED ACCOMODATION" AUTHORIZED BY 83 STAT. 456.

TO MR. R. J. SCHULLERY:

YOUR LETTER OF MAY 17, 1971, WITH ENCLOSURES, REQUESTS OUR DECISION WHETHER YOU MAY CERTIFY FOR PAYMENT A VOUCHER IN FAVOR OF DILLON CONSTRUCTION, INC., BALBOA, CANAL ZONE, IN THE AMOUNT OF $18,493 FOR THE CONSTRUCTION OF TENNIS COURTS AT CARDENAS TOWNSITE, PANAMA, CANAL ZONE. THE COURTS HAVE BEEN COMPLETED AND DILLON CONSTRUCTION IS AWAITING PAYMENT UNDER CONTRACT NUMBER DOT-FA70S0-5741, DATED MAY 20, 1970. YOU BELIEVE CONSTRUCTION OF THE TENNIS COURTS IS WITHIN THE SCOPE OF THE "OPERATIONS" APPROPRIATION AND/OR THE "FACILITIES AND EQUIPMENT" APPROPRIATION OF THE FEDERAL AVIATION AGENCY (FAA) CONTAINED IN THE DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATION, OCTOBER 1970, PUB. L. 91-168, 83 STAT. 454, 456, AND IS ALSO AUTHORIZED BY (9)(1)(6) OF THE DEPARTMENT OF TRANSPORTATION ACT, PUB. L. 89-670, 80 STAT. 944, 49 U.S.C. 1657(1)(6).

YOUR LETTER DESCRIBES THE NEED FOR THE PROJECT AS FOLLOWS:

"THE FAA HAS CONSTRUCTED 120 HOUSING UNITS AT CARDENAS TOWNSITE IN THE PANAMA, CANAL ZONE, FOR USE OF EMPLOYEES. IN ADDITION THERE ARE ELEVEN HOUSING UNITS IN THIS TOWNSITE THAT WERE CONSTRUCTED BY THE NATIONAL INSTITUTE OF HEALTH FOR THEIR EMPLOYEES ASSIGNED TO THE MIDDLE AMERICA RESEARCH UNIT (MARU) IN THE CANAL ZONE. THERE ARE 425 FAA EMPLOYEES AND DEPENDENTS AND 50 EMPLOYEES AND DEPENDENTS OF MARU OCCUPYING THESE HOUSING UNITS AND WHO ARE POTENTIAL USERS OF THE TENNIS COURTS.

"THE CARDENAS TOWNSITE IS THE MOST ISOLATED COMMUNITY IN THE CANAL ZONE WITH RESPECT TO RECREATIONAL FACILITIES. CONVENTIONAL RECREATIONAL FACILITIES, SUCH AS TENNIS COURTS, SWIMMING POOLS, BALL PARKS, ETC., ARE NOT PROVIDED FOR AS THEY ARE IN OTHER CANAL ZONE COMMUNITIES. CONSEQUENTLY, ALL FAA EMPLOYEES AND THEIR DEPENDENTS MUST UTILIZE FACILITIES LOCATED ON MILITARY POSTS OR IN PANAMA CANAL COMPANY RESIDENTIAL AREAS IF THEY ARE TO INDULGE IN NORMAL FORMS OF RECREATION. THESE EXISTING RECREATIONAL FACILITIES, UNFORTUNATELY, ARE NOT LOCATED WITHIN REASONABLE WALKING DISTANCE FROM THE CARDENAS TOWNSITE AND PUBLIC TRANSPORTATION

TO AND FROM CARDENAS IS IRREGULAR AND INADEQUATE. TEENAGE DEPENDENTS, WHO MIGHT OTHERWISE TAKE ADVANTAGE OF THE RECREATIONAL OPPORTUNITIES, ARE DISCOURAGED BY THE INCONVENIENCE AND LOOK ELSEWHERE FOR AMUSEMENT. SOME OF THE LESS DESIRABLE FORMS OF AMUSEMENT ARE VANDALISM, USE OF NARCOTICS, IMMORAL CONDUCT, ETC. NEEDLESS TO SAY, SUCH CONDITIONS HAVE ADVERSE EFFECTS ON MORALE AND EFFICIENCY OF EMPLOYEES AND IMPAIR THE ABILITY OF THE AGENCY TO RECRUIT AND RETAIN NEEDED PERSONNEL."

BY LETTER OF JUNE 7, 1971, THE ACTING ADMINISTRATOR OF FAA REFERS TO YOUR SUBMISSION AND REQUESTS A FAVORABLE DECISION ALLOWING PAYMENT. HE CITES AS ADDITIONAL AUTHORITY SECTION 303(A) OF THE FEDERAL AVIATION ACT, PUB. L. 85-726, 72 STAT. 747, 49 U.S.C. 1344(A) AND SECTION 10(A)(4) OF THE INTERNATIONAL AVIATION FACILITIES ACT, CHAPTER 473, 62 STAT. 454, 49 U.S.C. 1159(A)(4). HE STATES THAT:

"IT HAS BEEN ADMINISTRATIVELY DETERMINED THAT THE CONSTRUCTION OF THE TWO TENNIS COURTS AT CARDENAS TOWNSITE, PANAMA, CANAL ZONE, ARE ESSENTIAL TO ENABLE FAA EMPLOYEES STATIONED IN THE CANAL ZONE TO PERFORM THEIR DUTIES ADEQUATELY. THE LACK OF RECREATIONAL FACILITIES WITHIN REASONABLE COMMUTING DISTANCE FROM THE CARDENAS TOWNSITE HAS HAD A DIRECT AND SERIOUS ADVERSE IMPACT UPON THE ACCOMPLISHMENT OF THE AGENCY'S STATUTORY FUNCTIONS."

WITH YOUR SUBMISSION IS A MEMORANDUM, DATED SEPTEMBER 18, 1969, BY THE AREA MANAGER, FAA BALBOA AREA OFFICE, BALBOA HEIGHTS, CANAL ZONE. INDICATED ABOVE, THERE ARE 425 FAA EMPLOYEES AND DEPENDENTS AT CARDENAS VILLAGE (TOWNSITE). MENTIONED IN THE MEMORANDUM AS MINIMUM REQUIREMENTS FOR RECREATION AND SOCIAL MEETINGS ARE TWO TENNIS COURTS AND A COVERED GYMNASIUM, ALTHOUGH IT WAS NOT PROPOSED TO CONSTRUCT THE GYMNASIUM AT THAT TIME. ACCORDING TO THE MEMORANDUM, DURING THE PREVIOUS SUMMER (EVIDENTLY THE SUMMER OF 1969) A YOUTH OPPORTUNITY EMPLOYEE HAD BEEN HIRED, AND WITH THE COOPERATION OF THE CARDENAS VILLAGE WOMEN'S CLUB, SUPERVISED RECREATION FOR DEPENDENTS WAS PROVIDED. HOWEVER, THE PROGRAM WAS SOMEWHAT HAMPERED BY THE LACK OF PROPER FACILITIES AND EQUIPMENT. AT LEAST AT THE TIME THE MEMORANDUM WAS WRITTEN, THE PLANS WERE TO MARK OFF THE TENNIS COURTS FOR USE AS SHUFFLE BOARD, BASKETBALL, VOLLEYBALL AND BADMINTON COURTS. UNDER THESE PLANS, THE TENNIS COURTS COULD THEN BE USED FOR SUPERVISED RECREATION FOR ADULTS AND CHILDREN WITH THE ASSISTANCE OF MEMBERS OF THE CARDENAS WOMEN'S CLUB, FA CLUB AND BOY SCOUTS.

THE FAA "FACILITIES AND EQUIPMENT" APPROPRIATION FOR FISCAL YEAR 1970, WHICH APPEARS AT 83 STAT. 456, READS AS FOLLOWS:

"FACILITIES AND EQUIPMENT

"FOR AN ADDITIONAL AMOUNT FOR THE ACQUISITION, ESTABLISHMENT, AND IMPROVEMENT BY CONTRACT OR PURCHASE AND HIRE OF AIR NAVIGATION AND EXPERIMENTAL FACILITIES, INCLUDING THE INITIAL ACQUISITION OF NECESSARY SITES BY LEASE OR GRANT; THE CONSTRUCTION AND FURNISHING OF QUARTERS AND RELATED ACCOMMODATIONS FOR OFFICERS AND EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION STATIONED AT REMOTE LOCALITIES WHERE SUCH ACCOMMODATIONS ARE NOT AVAILABLE, BUT AT A TOTAL COST OF CONSTRUCTION OF NOT TO EXCEED $50,000 PER HOUSING UNIT IN ALASKA; $224,000,000, TO REMAIN AVAILABLE UNTIL EXPENDED. *** "

SINCE FAA HAS CONSTRUCTED 120 HOUSING UNITS AT CARDENAS TOWNSITE WE ASSUME THAT THE TOWNSITE IS CONSIDERED A "REMOTE LOCALITY" AND OUR DECISION HEREIN IS BASED ON THAT ASSUMPTION. FURTHER, SINCE FACILITIES FOR TENNIS AND PLAYGROUND GAMES -

FOR WHICH PURPOSE THE TENNIS COURTS ARE ALSO TO BE USED - ARE BY CONTEMPORARY STANDARDS NORMALLY WITHIN WALKING DISTANCE OF THE COMMUNITY USING THE FACILITIES, THE REPORTED FACTS APPEAR TO SATISFY THE REQUIREMENT IN THE FISCAL YEAR 1970 FAA "FACILITIES AND EQUIPMENT" APPROPRIATION THAT THE ACCOMMODATIONS SET FORTH THEREIN BE UNAVAILABLE TO FAA EMPLOYEES AND THEIR DEPENDENTS.

THE LEGISLATIVE HISTORY OF THE QUOTED APPROPRIATION PROVISION DISCLOSES THAT IT WAS INTENDED THAT THE QUARTERS AND RELATED ACCOMMODATIONS FOR OFFICERS AND EMPLOYEES WAS TO INCLUDE FAMILY HOUSING, I.E., HOUSING FOR DEPENDENTS LIVING WITH THE OFFICER AND EMPLOYEES. SEE PAGES 854-856, PART II, HOUSE HEARINGS ON INDEPENDENT OFFICES APPROPRIATIONS (FAA) FOR FISCAL YEAR 1964 AND PAGES 1381-1386, PART I, HOUSE HEARINGS ON INDEPENDENT OFFICES APPROPRIATIONS FOR FISCAL YEAR 1966. CF., ALSO 49 U.S.C. 1657(1)(6). IN THIS CASE THE QUESTION THAT ARISES UNDER THE QUOTED APPROPRIATION PROVISION IS WHETHER TENNIS COURTS AND PLAYGROUND FACILITIES MAY REASONABLY BE CONSIDERED AS "RELATED ACCOMMODATIONS" TO QUARTERS FOR FAA OFFICERS AND EMPLOYEES AND THEIR DEPENDENTS AT REMOTE LOCATIONS WHERE SUCH ACCOMMODATIONS ARE NOT OTHERWISE AVAILABLE.

IN THE ABSENCE OF LEGISLATIVE HISTORY SHOWING A CONTRARY INTENTION IT WOULD NOT BE UNREASONABLE TO CONSIDER "RELATED ACCOMMODATIONS" AS THAT TERM IS USED IN THE APPROPRIATION INVOLVED HERE AS INCLUDING ITEMS OTHER THAN THOSE RELATED TO THE ABSOLUTE ESSENTIALS OF HABITABILITY OF FAA LIVING QUARTERS. IN THIS CONNECTION WE NOTE FROM THE LEGISLATIVE HISTORY OF THE ABOVE-QUOTED APPROPRIATION PROVISION THAT IN 1964 FAA IN ITS BUDGET JUSTIFICATIONS REQUESTED FUNDS FOR THE CONSTRUCTION OF A CHAPEL AT WAKE ISLAND FOR THE USE OF FAA EMPLOYEES AND THEIR FAMILIES, THE CHAPEL ALSO TO BE USED "AS A COMMUNITY CENTER FOR MUCH OF THE BENEFICIAL SOCIAL ACTIVITY WHICH IS NECESSARY IN AN ISOLATED SOCIETY." SEE PAGE 854 OF THE ABOVE- CITED 1964 HOUSE HEARINGS. THE BASIS FOR THE REQUEST WAS THE IMPROVEMENT OF EMPLOYEE MORALE. ALTHOUGH THIS ITEM WAS NOT SPECIFICALLY DISCUSSED IN THE HEARINGS AND WHILE THE TOTAL AMOUNT REQUESTED FOR "FACILITIES AND EQUIPMENT" WAS REDUCED BY THE CONGRESS THERE IS NOTHING IN THE LEGISLATIVE HISTORY INVOLVED TO INDICATE THAT THERE WAS ANY OBJECTION TO CONSTRUCTION OF THE CHAPEL.

CONSIDERING THE FOREGOING, AS WELL AS THE CONTEXT IN WHICH THE TERM "RELATED ACCOMMODATIONS" IS USED IN THE ABOVE-QUOTED APPROPRIATION PROVISION, IT IS OUR VIEW THAT IT WOULD NOT BE UNREASONABLE TO CONSTRUE SUCH TERM AS INCLUDING CERTAIN LIMITED RECREATION FACILITIES SUCH AS TENNIS COURTS AND PLAYGROUND FACILITIES ("AT REMOTE LOCALITIES WHERE SUCH ACCOMMODATIONS ARE NOT AVAILABLE"). THIS CONCLUSION IS NOT TO BE CONSIDERED, HOWEVER, AS A BASIS FOR INCLUDING WITHIN THE SCOPE OF SUCH TERM ALL TYPES OF RECREATIONAL FACILITIES AND MORE PARTICULARLY IT IS OUR VIEW THAT A GYMNASIUM WOULD NOT NECESSARILY FALL WITHIN THE MEANING OF "RELATED ACCOMMODATIONS."

CONCERNING THE FAA APPROPRIATION AVAILABLE FOR CONSTRUCTION OF THE TENNIS COURTS, SECTION 3733, REVISED STATUTES, 41 U.S.C. 12, PROVIDES THAT:

"NO CONTRACT SHALL BE ENTERED INTO FOR THE ERECTION, REPAIR, OR FURNISHING OF ANY PUBLIC BUILDING, OR FOR ANY PUBLIC IMPROVEMENT WHICH SHALL BIND THE GOVERNMENT TO PAY A LARGER SUM OF MONEY THAN THE AMOUNT IN THE TREASURY APPROPRIATED FOR THE SPECIFIC PURPOSE."

ACCORDING TO THE CONSTRUCTION ESTIMATE ATTACHED TO YOUR LETTER, THE TENNIS COURT CONSTRUCTION PROJECT IN QUESTION CONSISTS OF A CONCRETE SLAB, INSTALLATION OF FENCE POSTS, SHELTER COLUMNS, AND ALL CONDUITS AND PIPE UNDER THE SLAB. THUS, IT

IS OUR VIEW THAT THE TENNIS COURTS MUST BE CONSIDERED A "PUBLIC IMPROVEMENT." THEREFORE, EVEN IF 49 U.S.C. 1657(1)(6) BE CONSIDERED AS AUTHORIZING CONSTRUCTION OF THE TENNIS COURTS, THE COST THEREOF WOULD BE PAYABLE ONLY FROM THE FAA APPROPRIATION FOR "FACILITIES AND EQUIPMENT."

ACCORDINGLY, AND IN VIEW OF THE ADMINISTRATIVE DETERMINATION OF NECESSITY, THE VOUCHER WHICH IS RETURNED HEREWITH, MAY BE CERTIFIED FOR PAYMENT IN ACCORDANCE WITH THE FOREGOING, IF OTHERWISE CORRECT.