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THE HONORABLE JOSEPH M. MONTOYA, CHAIRMAN SUBCOMMITTEE ON TREASURY, U.S. POSTAL SERVICE, GENERAL GOVERNMENT COMMITTEE ON APPROPRIATIONS UNITED STATES SENATE:

IN CONNECTION WITH THE REPROGRAMMING OF THE FUNDS APPROPRIATED TO THE UNITED STATES TAX COURT AS AN ADDITIONAL AMOUNT FOR "SALARIES AND EXPENSES" BY THE SUPPLEMENTAL APPROPRIATIONS ACT, 1973, PUBLIC LAW 92 607, APPROVED OCTOBER 31, 1972, 86 STAT. 1498, 1518, YOU QUESTIONED THE INCLUSION OF THE AMOUNT OF $9,500 REQUESTED TO COVER THE COSTS OF PORTRAITS OF THE CHIEF JUDGES OF THE TAX COURT.

THERE HAVE BEEN FIVE CHIEF JUDGES SINCE 1942 WHEN THE BOARD OF TAX APPEALS WAS FIRST DESIGNATED AS A COURT. IT IS PROPOSED TO ACCOMPLISH THEIR PORTRAITS WHILE FOUR OF THOSE FIVE JUDGES ARE STILL ALIVE. THE PORTRAITS WOULD BE HUNG IN THE MAIN COURTROOM OF THE NEW TAX COURT BUILDING WHICH IS SCHEDULED TO BE COMPLETED IN THE SUMMER OF 1974. DOUBT IN THE MATTER ARISES BECAUSE OF A DECISION RENDERED BY OUR OFFICE SOME TIME AGO WHICH HELD THAT THE EXPENDITURE OF AN AMOUNT BY THE BUREAU OF ENGRAVING AND PRINTING FOR PUBLICATION OF ITS HISTORY WAS IMPROPER AND UNAUTHORIZED.

THE DECISION REFERRED TO APPEARS TO BE OUR DECISION OF FEBRUARY 14, 1964, 43 COMP.GEN. 564 WHICH WAS DIRECTED TO THE QUESTION OF WHETHER THE COST OF COMPILATIONS AND PUBLICATION OF THE 100-YEAR HISTORY OF THE BUREAU OF ENGRAVING AND PRINTING, TREASURY DEPARTMENT, TO COMMEMORATE THE CENTENNIAL ANNIVERSARY OF ITS ESTABLISHMENT WAS CHARGEABLE TO THE BUREAU'S REVOLVING FUND AS AN ADMINISTRATIVE EXPENSE. WE EXPRESSED THE VIEW THAT SUCH COST COULD NOT BE CONSIDERED AS INCIDENTAL TO THE WORK OR SERVICES REQUISITIONED BY OTHER GOVERNMENT AGENCIES. WE FOUND NO EXPRESS OR IMPLIED AUTHORITY FOR THE EXPENDITURE. WE NOTED THAT IN A NUMBER OF CASES OTHER GOVERNMENT DEPARTMENTS AND AGENCIES HAD CELEBRATED SIMILAR ANNIVERSARIES AND, WHERE THE PUBLISHING OF THEIR HISTORIES WAS INCLUDED, HAD IN SOME INSTANCES BROUGHT THE MATTER TO THE ATTENTION OF AND OBTAINED THE APPROVAL OF THE APPROPRIATE CONGRESSIONAL COMMITTEES. WE ALSO EXPRESSED THE BELIEF THAT IT WAS FOR THE PURPOSE OF CONTROLLING SUCH EXPENDITURES THAT CONGRESS HAD GRANTED SPECIFIC AUTHORITY TO DISSEMINATE INFORMATION ONLY TO CERTAIN DEPARTMENTS AND AGENCIES. RECOGNITION OF SUCH CONTROL WAS EVIDENCED BY THE FACT THAT A NUMBER OF DEPARTMENTS AND AGENCIES HAD SOUGHT CONGRESSIONAL APPROVAL PRIOR TO PUBLISHING HISTORIES COMMEMORATING THEIR ESTABLISHMENTS.

WE ALSO CONSIDERED SECTION 1 OF THE ACT OF MARCH 3, 1905, 33 STAT. 1249 WHICH NOW HAS BEEN REENACTED AND CODIFIED AS 44 U.S.C. 1118. IT PROVIDES THAT A BOOK OR DOCUMENT NOT HAVING TO DO WITH THE ORDINARY BUSINESS TRANSACTIONS OF THE EXECUTIVE DEPARTMENTS MAY NOT BE PRINTED ON THE REQUISITION OF A DEPARTMENT

UNLESS EXPRESSLY AUTHORIZED BY CONGRESS.

IN VIEW OF ALL OF THE ABOVE WE CONCLUDED THAT THE REVOLVING FUND WAS NOT AVAILABLE TO MEET THE COST OF COMPILING AND PUBLISHING THE 100-YEAR HISTORY OF THE BUREAU OF ENGRAVING AND PRINTING WITHOUT AUTHORIZATION BY THE CONGRESS.

WE DO NOT REGARD THE DECISION OF FEBRUARY 14, 1964, WHICH RELATES TO THE COMPILING AND PUBLISHING OF A HISTORY AS BEING APPLICABLE TO THE PRINTING AND DELIVERY OF A PORTRAIT. THE ACCOUNTING OFFICERS OF THE GOVERNMENT HAVE HELD FOR MANY YEARS THAT PAINTINGS SUITABLE FOR THE DECORATION OF ROOMS IN A PUBLIC BUILDING ARE WITHIN THE MEANING OF THE TERM "FURNITURE." SEE 7 COMP.DEC. 1 (1900). SEE ALSO 9 COMP.DEC. 807 (1903).

IN THE APPLICATION OF THOSE DECISIONS, AND IF OTHERWISE PROPER, WE HAVE NOT QUESTIONED THE REASONABLE EXPENSES OF SECURING PORTRAITS OF AGENCY HEADS WHERE THE APPROPRIATION IS AVAILABLE FOR THE PROCUREMENT OF FURNITURE. AS TO OTHER THAN AGENCY HEADS, IT HAS BEEN OUR POLICY TO REQUEST THE ADMINISTRATIVE OFFICE TO FURNISH A CITATION TO THE LEGAL BASIS FOR THE PROCUREMENT OF THE PORTRAIT AT GOVERNMENT EXPENSE, TOGETHER WITH A SHOWING AS TO THE NECESSITY FOR THE EXPENDITURE IN THE ACCOMPLISHMENT OF A PURPOSE FOR WHICH THE APPROPRIATION IS MADE.

THERE DOES NOT APPEAR TO BE ANY QUESTION THAT THE 1973 "SALARIES AND EXPENSES" APPROPRIATION TO THE UNITED STATES TAX COURT IS AVAILABLE FOR THE PROCUREMENT OF FURNITURE. ACCORDINGLY IN OUR OPINION AND IN LINE WITH WHAT HAS BEEN STATED ABOVE THAT APPROPRIATION WOULD BE LEGALLY AVAILABLE FOR THE COST OF PROCURING THE PORTRAITS OF THE CHIEF JUDGES OF THE UNITED STATES TAX COURT FOR THE PURPOSES STATED. WHETHER ANY PART OF THAT APPROPRIATION SHOULD BE REPROGRAMMED FOR THAT PURPOSE, HOWEVER, IS A MATTER SOLELY WITHIN THE DISCRETION OF THE COMMITTEES ON APPROPRIATIONS.

THE FEBRUARY 16, 1973, REPROGRAMMING REQUEST OF THE UNITED STATES TAX COURT IS RETURNED.