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THE INCLUSION OF SPECIAL COUNSEL FEES IN THE APPROPRIATION PROVIDING FUNDS FOR NECESSARY EXPENSES OF THE FCC IS LIMITED TO PAYMENT FOR LEGAL SERVICES. AUTHORITY IS NOT THUS PROVIDED FOR OBTAINING COUNSEL SERVICES IN A BROAD SENSE AMONG THE VARIOUS PROFESSIONS.

CHAIRMAN OF FCC - INQUIRY AS TO THE MEANING AND APPLICABILITY OF "SPECIAL COUNSEL FEES.":

THE CHAIRMAN OF THE FEDERAL COMMUNICATIONS COMMISSION (FCC) SEEKS A PRECISE DEFINITION OF "SPECIAL COUNSEL FEES" AS INCLUDED IN THE AGENCY'S APPROPRIATION ACT PROVIDING FUNDS FOR NECESSARY EXPENSES OF THE FCC, PUBLIC LAW 93-137, OCTOBER 26, 1973, TITLE II, 87 STAT. 491, 494. SPECIFICALLY, THE AGENCY WANTS TO KNOW IF THE TERM "COUNSEL FEES" MAY BE APPLIED TO COUNSEL SERVICES RENDERED BY MEMBERS OF ALL PROFESSIONS IN A BROAD SENSE, AS OPPOSED TO MEMBERS OF ONLY THE LEGAL PROFESSION. FOR THE REASONS SET FORTH BELOW, WE BELIEVE THAT IT MAY NOT.

AS INDICATED IN THE FCC REQUEST, THE SUBJECT TERMS IN THE CONTEXT USED WERE CONSIDERED IN 53 COMP. GEN. 702 (1974). THAT DECISION HELD THAT FCC COULD RETAIN INDEPENDENT LEGAL SERVICES OF A RETIRED GOVERNMENT ATTORNEY SINCE SPECIFIC STATUTORY AUTHORITY HAD BEEN GIVEN THE AGENCY BY THE SUBJECT PROVISION. IN REACHING THAT CONCLUSION THE DECISION IN PERTINENT PART READS:

"BY SECTIONS 602, 603, AND 604 OF THE COMMUNICATIONS ACT OF 1934, PUBLIC LAW 416, 48 STAT. 1064, 1102, AND 1103, THE RADIO ACT OF 1927, PUBLIC LAW 632, 44 STAT. 1162, WAS REPEALED AND THE FCC SUCCEEDED TO THE RESPONSIBILITIES OF THE FEDERAL RADIO COMMISSION (FRC) AND OTHERS. SINCE ITS CREATION IN THAT YEAR, ANNUAL APPROPRIATION ACTS FOR THE COMMISSION HAVE CONSISTENTLY PROVIDED FOR PAYMENT OF SPECIAL COUNSEL FEES. SEE, FOR EXAMPLE, THE INDEPENDENT OFFICES APPROPRIATION ACT, 1936, PUBLIC LAW 2, 49 STAT. 6, 9. WE BELIEVE THAT THE LEGISLATIVE PURPOSE IN INCLUDING SUCH A PROVISION IN THE APPROPRIATION ACTS OF THE FCC AND CERTAIN OTHER AGENCIES IS CLEAR.

"IN A-27566, JUNE 29, 1929, COPY ENCLOSED, THIS OFFICE ADDRESSED THE ISSUE OF THE FRC'S AUTHORITY TO DESIGNATE A FORMER GENERAL COUNSEL OF THE COMMISSION TO ACT AS SPECIAL COUNSEL IN CONNECTION WITH A CASE WHICH HAD BEEN PENDING PRIOR TO HIS RESIGNATION. ON THE BASIS OF THE RADIO ACT OF 1927, SECTION 3, AUTHORIZING THE COMMISSION TO APPOINT SUCH SPECIAL COUNSEL AS IT MIGHT FROM 'TIME TO TIME' FIND NECESSARY, AS WELL AS THE APPROPRIATION CONTAINED IN THE INDEPENDENT OFFICES ACT, 1929, PUBLIC LAW 400, 45 STAT. 573, 579, THIS OFFICE FOUND THAT EXPRESS PROVISION HAD BEEN MADE FOR PAYMENT OF SUCH SPECIAL COUNSEL FEES AS WERE THERE INVOLVED. SEE ALSO 24 COMP. GEN. 216 (1944).

"THEREAFTER, APPROPRIATIONS FOR THE FRC AND ITS SUCCESSOR COMMISSION, THE FCC, EXPRESSLY PROVIDED FOR PAYMENT OF SPECIAL COUNSEL FEES. SEE, FOR EXAMPLE, FRC APPROPRIATION, 1930, PUBLIC RESOLUTION NO. 35, 46 STAT. 63, AND INDEPENDENT OFFICES APPROPRIATION ACT, 1933, PUBLIC LAW 228, 47 STAT. 452, 459, AND 460. IN VIEW OF THIS EXPLICIT HISTORY, WE CONCLUDE THAT THE LANGUAGE OF THE FCC'S CURRENT APPROPRIATION PROVIDING FUNDS FOR PAYMENT OF SPECIAL COUNSEL FEES IS CLEARLY ADDRESSED TO THE SITUATION AT HAND AND FIND THAT IT CONSTITUTES AUTHORITY TO ENTER INTO THE PROPOSED CONTRACT WITH ASHER ENDE ASSOCIATES."

WE FIND NOTHING IN THE APPLICABLE LEGISLATIVE HISTORY PERTAINING TO THE PROVISION FOR SPECIAL COUNSEL FEES THAT WOULD WARRANT ITS APPLICATION TO OBTAINING SERVICES FROM OTHER THAN A MEMBER OF THE LEGAL PROFESSION.

ACCORDINGLY, THE SPECIFIC QUESTION RAISED BY THE AGENCY IS ANSWERED IN THE NEGATIVE.

WE HAVE NOT ATTEMPTED TO DETERMINE WHAT SERVICES OF OTHER PROFESSIONS THAT THE AGENCY MIGHT OTHERWISE OBTAIN WITHIN ITS AUTHORITY TO INCUR NECESSARY EXPENSES.