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B-180713, Apr 10, 1974

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REQUEST FOR PAYMENT FOR AIR FORCE ADVERTISEMENT TO BE PUBLISHED IN YEARBOOK DENIED SINCE NO PROOF OF ACTUAL PUBLICATION WAS SUBMITTED WITH VOUCHER AND 31 U.S.C. 529 PROHIBITS AGENTS OF THE GOVERNMENT FROM COMPENSATING CONTRACTORS FOR SERVICES WHICH GOVERNMENT HAS NOT YET RECEIVED AND PROVISIONS OF 10 U.S.C. 2307 FOR ADVANCE PAYMENTS HAVE NOT BEEN MET. SEE COMP. GEN. DECISIONS CITED.

TO MALONE HIGH SCHOOL:

PURSUANT TO 31 U.S.C. 74, THE ACCOUNTING AND FINANCE OFFICER, EGLIN AIR FORCE BASE, DEPARTMENT OF THE AIR FORCE, REQUESTS AN ADVANCE DECISION CONCERNING THE PROPRIETY OF PAYING $50 PURSUANT TO A VOUCHER SUBMITTED BY MALONE HIGH SCHOOL (MALONE) LOCATED IN MALONE, FLORIDA.

MALONE'S VOUCHER, PREPARED ON JANUARY 25, 1974, REPRESENTS THE COST OF "ADVERTISEMENT IN YEARBOOK (NIGHTINGALE); ONE FULL PAGE, BLACK AND WHITE" PURSUANT TO DD FORM 1155, ORDER FOR SUPPLIES AND SERVICES, PURCHASE NO. FO 8651-74-M-3720.

ALTHOUGH MALONE'S YEARBOOK CONTAINING THE ABOVE-MENTIONED ADVERTISEMENT WILL NOT BE DISTRIBUTED UNTIL APRIL OR MAY OF 1974, MALONE HAS REQUESTED ADVANCE PAYMENT FOR THE ADVERTISING SERVICES. IN SUPPORT OF ITS REQUEST FOR ADVANCE PAYMENT, MALONE SUBMITTED ITS OWN NOTARIZED LETTER OF OCTOBER 24, 1973, CERTIFYING THAT THE ADVERTISEMENT WOULD BE INCLUDED IN THE YEARBOOK.

THE ACCOUNTING AND FINANCE OFFICER ASKS THE FOLLOWING QUESTIONS CONCERNING PAYMENT ON MALONE'S VOUCHER:

(A) CAN PROPER PAYMENT BE MADE BASED ON THE CERTIFICATE OF PERFORMANCE WHICH IS ATTACHED?

(B) IF NEGATIVE, CAN PAYMENT BE MADE BASED ON A "PROOF" COPY OF THE ADVERTISEMENT?

(C) IF THE ANSWER TO (A) AND (B) IS NEGATIVE, CAN A PAYMENT BE PROPERLY SUPPORTED WITH "PROOF" COPY OF THE ADVERTISEMENT AND CERTIFICATE OF PERFORMANCE?

CONCERNING ADVANCE PAYMENTS, 31 U.S.C. 529 PROVIDES IN PERTINENT PART THAT:

"NO ADVANCE OF PUBLIC MONEY SHALL BE MADE IN ANY CASE UNLESS AUTHORIZED BY THE APPROPRIATION CONCERNED OR OTHER LAW. AND IN ALL CASES OF CONTRACTS FOR THE PERFORMANCE OF ANY SERVICE, OR DELIVERY OF ARTICLES OF ANY DESCRIPTION, FOR THE

USE OF THE UNITED STATES, PAYMENT SHALL NOT EXCEED THE VALUE OF THE SERVICE RENDERED, OR OF THE ARTICLES DELIVERED PREVIOUSLY TO SUCH PAYMENT. ***"

IT HAS BEEN CONSISTENTLY HELD THAT THE PROVISIONS OF 31 U.S.C. 529 STRICTLY PROHIBIT AGENTS OF THE GOVERNMENT FROM COMPENSATING CONTRACTORS FOR ANY SERVICES WHICH THE GOVERNMENT HAS NOT RECEIVED. SEE B-172054, JUNE 11, 1971 AND B-170029, SEPTEMBER 1, 1970. THE REASON BEHIND THIS PROHIBITION IS, OF COURSE, TO AVOID THE POSSIBILITY OF GOVERNMENT LOSS IN THE EVENT THE CONTRACTOR, AFTER RECEIPT OF FULL PAYMENT, SHOULD FAIL TO PERFORM HIS CONTRACT OBLIGATIONS.

WE MIGHT NOTE HERE THAT 10 U.S.C. 2307 DOES PERMIT ADVANCE PAYMENTS UNDER CERTAIN CONDITIONS. THIS STATUTE REQUIRES THAT BEFORE ADVANCE PAYMENT CAN ISSUE, ADEQUATE SECURITY MUST BE GIVEN AND THE AGENCY MUST DETERMINE THAT ADVANCE PAYMENT WOULD BE IN THE PUBLIC INTEREST. IN THE PRESENT CASE, THESE STEPS HAVE NOT BEEN TAKEN.

AIR FORCE MANUAL (AFM) 177-102 IS CONSISTENT WITH THE POLICY REFLECTED IN 31 U.S.C. 529. THE AFM IS QUITE SPECIFIC IN REQUIRING POSITIVE PROOF OF PUBLICATION BEFORE PAYMENT CAN ISSUE FOR ADVERTISING SERVICES. PART 2, CHAPTER 7, SECTION D, PARAGRAPH 20831A OF AFM 177 102 STATES:

"PROOF OF PUBLICATION: EVERY INVOICE FOR OFFICIAL ADVERTISING WILL BE ACCOMPANIED BY AN AFFADAVIT OF PUBLICATION ATTESTED TO BY THE PRINTER OR PUBLISHER, BY THE RADIO OR TELEVISION STATION, OR BY THE ADVERTISING AGENCY CONCERNED."

WE FEEL THAT THESE REQUIREMENTS FOR PROOF OF PUBLICATION ARE CLEAR AND UNMISTAKABLE. BEFORE PAYMENT CAN ISSUE, AN AFFADAVIT OF PUBLICATION ATTESTED TO BY MALONE MUST BE SUBMITTED. THE PURPOSE OF SUCH A REQUIREMENT IS TO INSURE THAT THE ADVERTISEMENT HAS, IN FACT, BEEN PUBLISHED BEFORE PAYMENT CAN BE MADE FOR SERVICES.

BASED ON THE ABOVE, WE DO NOT FEEL THAT MALONE'S NOTARIZED CERTIFICATE OF PERFORMANCE OR A "PROOF" COPY OF THE ADVERTISEMENT, EITHER TOGETHER OR IN THE ALTERNATIVE WOULD BE SUFFICIENT TO PROVE THAT ACTUAL PUBLICATION HAS BEEN COMPLETED. THEREFORE, WE MUST ANSWER QUESTIONS (A), (B), AND (C) IN THE NEGATIVE.

ACCORDINGLY, ADVANCE PAYMENT PURSUANT TO MALONE'S VOUCHER SHOULD NOT ISSUE.