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B-189084, January 3, 1979

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B-189084, JANUARY 3, 1979

OFFICE OF GENERAL COUNSEL

DEPARTMENT OF AGRICULTURE:

THIS IS IN RESPONSE TO YOUR REQUEST FOR RELIEF FOR BARBARA A. GRANT, A CASHIER OF THE FOOD AND NUTRITION SERVICE (FNS), DEPARTMENT OF AGRICULTURE, FOR THE LOSS OF $650 IN GOVERNMENT FUNDS WHILE IN HER CHARGE.

ON DECEMBER 12, 1972, CLAIR E. BEASLEY, CHIEF, FISCAL BRANCH, FINANCE AND PROGRAM ACCOUNTING DIVISION, FNS, REQUESTED THAT THE NECESSARY ACTION BE TAKEN TO ESTABLISH AN IMPREST FUND IN THE AMOUNT OF $2,000. (THIS AMOUNT WAS INCREASED TO $3,000 ON FEBRUARY 15, 1974.) THE FUNDS WERE TO BE DISBURSED TO FNS PERSONNEL REQUIRING TRAVEL ADVANCES. IT WAS REQUESTED THAT MS. GRANT BE DESIGNATED THE PRINCIPAL CLASS "A" CASHIER AND ARLENE T. REED, THE ALTERNATE CLASS "A" CASHIER. BY MEMORANDUM DATED JANUARY 11, 1973, MR. BEASLEY WAS ADVISED THAT ESTABLISHMENT OF THE FUND HAD BEEN APPROVED AND THAT THE APPOINTMENT OF MS. GRANT AND MS. REED AS CASHIERS HAD BEEN MADE.

MS. GRANT WAS SENT A COPY OF THE MANUAL OF PROCEDURES AND INSTRUCTIONS FOR CASHIER OPERATION BY THE CHIEF, SPECIAL PAYMENT BRANCH, FISCAL SERVICE BILL OF ACCOUNTS, TREASURY DEPARTMENT, WITH THE ADVICE THAT "IT WILL BE APPRECIATED IF CAREFUL ATTENTION IS GIVEN TO THE MANUAL AS A WHOLE." MS. GRANT HAS SAID, HOWEVER, THAT SHE DID NOT HAVE TIME TO READ THE MANUAL BECAUSE OF HER WORK LOAD AND THAT SHE WAS NOT GIVEN ADEQUATE GUIDELINES OR "DESK-TOP" PROCEDURES WHEN SHE WAS ASSIGNED RESPONSIBILITY FOR THE FUND.

IN SEEKING RELIEF FOR MS. GRANT, YOU STATED THAT THERE WERE SOME EXTENUATING CIRCUMSTANCES WHICH MIGHT HAVE A BEARING ON THIS SHORTAGE. YOU REFER TO A CHANGE IN THE SYSTEM FOR REPLENISHING IMPREST FUND CASH AND INADEQUATE RECORD KEEPING PROCEDURES WHICH, YOU FELT, ESTABLISH A LACK OF EVIDENCE SHOWING THAT MS. GRANT WAS NEGLIGENT. IT APPEARS FROM THE RECORD, HOWEVER, THAT THIS SYSTEM CHANGE, EVEN IF IT COULD BE CONSIDERED AS HAVING A BEARING ON THE SHORTAGE, OCCURRED AFTER THE DATE (JANUARY 28, 1975) THE FUND WAS FOUND TO BE SHORT AT LEAST $450.

OUR OFFICE IS AUTHORIZED TO GRANT RELIEF TO ACCOUNTABLE OFFICERS FROM LIABILITY FOR LOSSES ARISING UNDER CERTAIN CONDITIONS PRESCRIBED BY 31 U.S.C. 82A-1 AS FOLLOWS:

"THE GENERAL ACCOUNTING OFFICE IS AUTHORIZED, AFTER CONSIDERATION OF THE PERTINENT FINDINGS AND IF IN CONCURRENCE WITH THE DETERMINATION AND RECOMMENDATIONS OF THE HEAD OF THE DEPARTMENT OR INDEPENDENT ESTABLISHMENT

CONCERNED, TO RELIEVE ANY DISBURSING OR OTHER ACCOUNTABLE OFFICER OR AGENT * * * CHARGED WITH RESPONSIBILITY ON ACCOUNT OF GOVERNMENT FUNDS, VOUCHERS, RECORDS, CHECKS, SECURITIES OR PAPERS IN HIS CHARGE * * * IF THE HEAD OF THE DEPARTMENT OR INDEPENDENT ESTABLISHMENT DETERMINES (1) THAT SUCH LOSS OR DEFICIENCY OCCURRED WHILE SUCH OFFICER OR AGENT WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES, OR THAT SUCH LOSS OR DEFICIENCY OCCURRED BY REASON OF THE ACT OR OMISSION OF A SUBORDINATE OF SUCH OFFICER OR AGENT; AND (2) THAT SUCH LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF SUCH OFFICER OR AGENT."

GOVERNMENT OFFICIALS CHARGED WITH THE CUSTODY AND HANDLING OF PUBLIC MONEY ARE EXPECTED TO EXERCISE THE HIGHEST DEGREE IN THE PERFORMANCE OF THEIR DUTY. IT HAS LONG BEEN RECOGNIZED THAT WHEN SUCH FUNDS DISAPPEAR WITHOUT EXPLANATION OR APPARENT REASON, THERE ARISES A PRESUMPTION OF NEGLIGENCE ON THE PART OF THE RESPONSIBLE OFFICIAL. SEE 48 COMP.GEN. 566 (1969). IF WE ARE TO GRANT RELIEF UNDER 31 U.S.C. 82A-1, THIS PRESUMPTION MUST BE REBUTTED BY SPECIFIC, COMPLETE AND CONVINCING EVIDENCE. B-187139, OCTOBER 25, 1978.

THE RECORD IS NOT COMPLETELY CLEAR AS TO WHEN A SHORTAGE WAS FIRST DISCOVERED OR WHEN AN AUDIT WAS MADE. THE PRINCIPAL CASHIER, MS. GRANT, IN HER STATEMENT TO THE INVESTIGATING AGENT STATED THAT SHE DISCOVERED A $250 SHORTAGE IN THE IMPREST FUND IN AUGUST 1973. HOWEVER, IN A LETTER DATED MARCH 4, 1976, TO THE CHIEF, FINANCE BRANCH, MS. GRANT STATED SHE FIRST NOTICED A DIFFERENCE IN THE IMPREST FUND IN JULY 1974. SHE ALSO STATED THAT IN AUGUST 1973 SHE MADE A VERBAL REQUEST FOR AN AUDIT AND CONTINUED TO MAKE VERBAL REQUESTS FROM AUGUST 1973 THROUGH JULY 1974. MS. GRANT FURTHER STATED THAT SHE MADE HER FIRST WRITTEN REQUEST FOR AN AUDIT IN JULY 1974 BUT THAT NO AUDIT WAS MADE UNTIL JANUARY 1975. IN A REPORT BY A FOOD AND NUTRITION SERVICE AUDIT COMMITTEE (AUDIT COMMITTEE) DATED DECEMBER 16, 1975, IT IS STATED THAT THE LAST TIME THE PRINCIPAL CASHIER WAS ABLE TO ACCOUNT FOR THE FULL AMOUNT OF THE IMPREST FUND WAS NOVEMBER 19, 1973. THE AUDIT COMMITTEE'S REPORT INDICATES THAT AT THAT TIME (NOVEMBER 19, 1973) A CASH COUNT WAS MADE BY SYSTEM BRANCH PERSONNEL, BUT IT IS THEN STATED IN THE REPORT THAT THE PRINCIPAL CASHIER STATED THAT SHE WAS "UNABLE TO BALANCE THE STATUS OF FUND PORTION OF SF-1129 REPORT" FROM AUGUST 1973 THROUGH NOVEMBER 29, 1974. IT IS NOT CLEAR HOW THE FULL AMOUNT OF THE FUND COULD HAVE BEEN ACCOUNTED FOR ON NOVEMBER 19, 1973, IF A SHORTAGE WAS DISCOVERED OR EXISTED IN AUGUST 1973. FURTHER, WHILE A FULL SCALE AUDIT MAY NOT HAVE BEEN MADE UNTIL JANUARY 1975, SYSTEMS BRANCH PERSONNEL CONDUCTED A CASH COUNT SHORTLY AFTER MS. GRANT REQUEST FOR AN AUDIT AND FOUND NO SHORTAGE.

IT FURTHER APPEARS FROM THE AUDIT COMMITTEE REPORT THAT AN AUDIT CONDUCTED BY SYSTEMS BRANCH PERSONNEL ON JANUARY 1, 1975, SHOWED A TOTAL SHORTAGE OF $450 AND THE AUDIT CONDUCTED BY THE AUDIT COMMITTEE DISCLOSED A CASH SHORTAGE OF $650 ON SEPTEMBER 19, 1975 AND OCTOBER 3, 1975. THE AUDIT COMMITTEE REPORT INDICATES THAT A CAUSE OF THE LOSS (AMONG OTHERS) WAS THE FAILURE OF THE CASHIER'S SUPERVISOR TO AID IN SETTING UP ADEQUATE RECORDS AND CHECKING PERIODICALLY TO ASSURE THAT THE PROCEDURES WERE BEING MAINTAINED. HOWEVER, THE AUDIT COMMITTEE REPORT THEN INDICATES THAT THE PRINCIPAL CASHIER FAILED TO MAINTAIN ADEQUATE RECORDS AND MS. GRANT STATED THAT SHE WAS ADVISED BY SYSTEMS BRANCH ACCOUNTANTS THAT SHE WOULD HAVE TO KEEP CERTAIN RECORDS AND THAT THE ACCOUNTANTS SET UP THE RECORDS FOR HER BUT THAT "SOMEHOW THEIR PROCEDURE GOT OFF THE TRACT." MS. GRANT ALSO STATED THAT SHE GAVE OUT MONEY TO 15 OR 20 PERSONS IN A DAY BUT THAT SHE DID NOT HAVE ENOUGH TIME TO RECORD THE AMOUNTS SHE HAD ADVANCED.

WITHOUT REPEATING THE OTHER DETAILS OF THE VARIOUS REPORTS SUBMITTED, IT SEEMS

CLEAR THAT THE IMPREST FUND CASHIER DID NOT TREAT THE MONEY ENTRUSTED TO HER WITH THE REQUIRED DEGREE OF CARE. IN THIS REGARD, THE FOOD AND NUTRITION SERVICES AUDIT COMMITTEE IN ITS REPORT OF DECEMBER 16, 1975, FOUND:

" * * * THE MECHANISM TO CONTROL AND SAFEGUARD THE FUND WAS PRESENT BUT A LACK OF CONCERN ON THE PART OF THE INDIVIDUAL RESPONSIBLE (I.E., MS. GRANT) RESULTED IN THE LOSS OF CONTROL OF THE FUND."

ALSO, THE SYSTEMS AND PROCEDURES BRANCH IN AN AUDIT REPORT DATED FEBRUARY 10, 1975, CONTAINED THE FOLLOWING PERTINENT STATEMENTS:

"NEXT, A REVIEW WAS MADE OF THE RECORDS MAINTAINED BY THE CASHIER ALONG WITH THE SUPPORTING DOCUMENTATION. THE REVIEW DISCLOSED THAT THE RECORDS MAINTAINED ARE NOT CURRENT AND ACCURATE. THEREFORE, IT IS NOT POSSIBLE TO RECONCILE THE TOTAL AMOUNT OF THE IMPREST FUND AT THIS TIME. FURTHER REVIEW INTO THE PRINTOUTS RECEIVED FROM NFC INDICATED THAT THE PRINTOUTS ARE RECEIVED ON A TIMELY BASIS. HOWEVER, THE DATES ON WHICH THE REIMBURSEMENT CHECKS ARE RECEIVED ARE NOT BEING POSTED ON A CONSISTENT BASIS."

IT IS OBVIOUS FROM THE RECORD BEFORE US THAT MS. GRANT FAILED TO EXERCISE THE HIGHEST DEGREE OF CARE IN THE PERFORMANCE OF HER DUTY TO PROTECT THE FUNDS ENTRUSTED TO HER. FURTHER, THE LACK OF GUIDANCE AND INSTRUCTION FROM HER SUPERVISORS WILL NOT RELIEVE MS. GRANT FROM LIABILITY. MS. GRANT WAS RESPONSIBLE FOR THE IMPREST FUND. IT WAS HER DUTY TO ESTABLISH RECORD KEEPING AND OTHER PROCEDURES WHICH WOULD ALLOW HER TO KEEP TRACK OF THE MONIES ENTRUSTED TO HER. SHE FAILED TO DO THIS AND, ACCORDING TO THE COMMITTEE'S REPORT, EVIDENCED AN APPARENT LACK OF CONCERN FOR SAFEGUARDING THESE FUNDS. HEAVY WORK LOADS AND JOB PRESSURES ARE NOT VALID EXCUSES FOR NEGLIGENCE OR CARELESSNESS. 48 COMP.GEN. 566, 568, (1969); B-186127, SEPTEMBER 1, 1976. WHILE YOUR REQUEST FOR RELIEF DESCRIBES A FAILURE TO CONDUCT AUDITS AND A GENERAL LACK OF SUPERVISION ON THE PART OF FNS OFFICIALS OF MS. GRANT'S ACTIVITIES WITH RESPECT TO THE IMPREST FUND, MS. GRANT MAY NOT OVERCOME HER NEGLIGENCE OR CARELESSNESS BY POINTING TO INSUFFICIENT SUPERVISION OR A FAILURE ON THE PART OF HER SUPERIORS TO CONDUCT AUDITS, AT LEAST NOT UNDER THE FACTS OF RECORD IN THIS CASE.

ON THE BASIS OF THE PRESENT RECORD, WE ARE UNABLE TO GRANT RELIEF TO MS. GRANT SINCE INSUFFICIENT EVIDENCE HAS BEEN OFFERED TO REBUT THE PRESUMPTION OF NEGLIGENCE.