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B-191900, Jul 21, 1978

Number: B-191900

Date: 1978-07-21

B-191900, JUL 21, 1978

S. MAGID:

YOU HAVE ASKED FOR A DETERMINATION OF WHETHER A CERTIFYING OFFICER COULD BE RELIEVED OF LIABILITY UNDER 31 U.S.C. SEC. 82C FOR CERTIFYING AN EXPENDITURE NOT AUTHORIZED BY THE PEACE CORPS ACT. 22 2501 NOTE (1970).

THE QUESTIONABLE EXPENDITURES, IN THE AMOUNT OF $34,307, WERE FOR MATERIALS, AND INDIRECT EXPENSES (SALARY OF A CONSULTANT, TRANSPORTATION OF PARTS, PER DIEM OF PEACE CORPS VOLUNTEERS, AND OFFICE UTILITIES IN SUPPORT OF A PROJECT TO REPAIR ETHIOPIAN SCHOOLS. YOUR LETTER AND ITS ATTACHMENTS APPEAR TO INDICATE THAT THE CERTIFICATE SIGNED BY THE CERTIFYING OFFICER CHARGED THE EXPENDITURES TO PEACE CORPS VOLUNTEER SUPPLIES AND EQUIPMENT. VOLUNTEER SUPPLIES AND EQUIPMENT, AS DEFINED IN THE PEACE CORPS ACT, 22 U.S.C. SEC. 2504(B) (1970), AND INTERNAL PEACE CORPS REGULATIONS, COVERS ONLY THOSE ITEMS WHICH ARE NECESSARY TO ENABLE VOLUNTEERS TO SERVE EFFECTIVELY. THE PEACE CORPS HAS NO GENERAL AUTHORITY TO PROVIDE EQUIPMENT AND SUPPLIES TO HOST COUNTRY GOVERNMENTS, COMMUNITIES, OR INSTITUTIONS. THUS, AS YOU HAVE ADVISED, THESE EXPENDITURES "DID NOT REPRESENT A LEGAL OBLIGATION UNDER THE APPROPRIATION OR TIME INVOLVED." 31 U.S.C. SEC. 82C (SUPP. V, 1975).

AS YOU HAVE STATED, THE STATUTE IMPOSES STRICT LIABILITY ON A CERTIFYING OFFICER IN THIS SITUATION, UNLESS THE STANDARDS FOR RELIEF UNDER 31 U.S.C. SEC. 82C HAVE BEEN MET. THUS, THE QUESTION IS WHETHER RELIEF FROM LIABILITY IS WARRANTED. FROM THE INFORMATION SUPPLIED, WE CANNOT MAKE A DETERMINATION THAT RELIEF SHOULD BE GRANTED UNDER EITHER OF THE ALTERNATIVE TESTS OF THE SEC. 82C RELIEF PROVISION.

THE FIRST TEST REQUIRES "THAT THE CERTIFICATION WAS BASED ON OFFICIAL AWARDS AND THAT SUCH CERTIFYING OFFICER OR EMPLOYEE DID NOT KNOW, AND BY REASONABLE DILIGENCE AND INQUIRY COULD NOT HAVE ASCERTAINED, THE ACTUAL CONTENTS." 31 U.S.C. SEC. 82C (SUPP. V, 1975). THIS TEST CANNOT BE MET WITHOUT KNOWLEDGE OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE CERTIFICATION. FIRST, WE DO NOT KNOW THE CONTENT OF THE VOUCHER AND ITS SUPPORTING FACTS. SECOND, THE RELIEF PROVISIONS ARE APPLIED BY

"CONSIDERING THE PRACTICAL CONDITIONS AND PROCEDURES UNDER WHICH CERTIFICATIONS OF FACT ARE MADE. CONSEQUENTLY, THE DILIGENCE TO BE REQUIRED OF A CERTIFYING OFFICER BEFORE REQUESTS FOR RELIEF UNDER THE ACT WILL BE CONSIDERED FAVORABLY IS A MATTER OF DEGREE DEPENDENT UPON THE PRACTICAL CONDITIONS PREVAILING AT THE TIME OF CERTIFICATION, THE SUFFICIENCY OF THE ADMINISTRATIVE PROCEDURES PROTECTING THE INTEREST OF THE GOVERNMENT, AND THE APPARENCY OF THE ERROR." 55 COMP.GEN. 297, 299- 300 (1975).

AS YOU STATED IN YOUR LETTER, "WE HAVE NO WAY OF KNOWING WHAT IF ANY STEPS WERE TAKEN BY THE CERTIFYING OFFICER TO ASSURE THAT HE WAS ACTING PROPERLY."

THE SECOND RELIEF TEST HAS THREE ELEMENTS:

(1) "THE OBLIGATION WAS INCURRED IN GOOD FAITH"]

(2) "THE PAYMENT WAS NOT CONTRARY TO ANY STATUTORY PROVISION SPECIFICALLY PROHIBITING PAYMENTS OF THE CHARACTER INVOLVED"; AND

(3) "THE UNITED STATES HAS RECEIVED VALUE FOR SUCH PAYMENT." 31 U.S.C. SEC. 82C (SUPP. V, 1975).

IT IS CLEAR THAT THE SECOND CRITERION HAS BEEN MET IN THIS SITUATION. HAVE INTERPRETED THIS PROVISION AS REFERRING TO STATUTES WHICH SPECIFICALLY PROHIBIT PAYMENTS FOR SPECIFIC ITEMS OR SERVICES UNLESS CERTAIN SPECIFIED CONDITIONS ARE MET. NO SUCH STATUTE IS INVOLVED HERE.

IF THE OTHER TWO CRITERIA OF THE SECOND RELIEF TEST WERE MET, WE MIGHT DETERMINE THAT THE VALUE-RECEIVED TEST DID NOT PRESENT AN OBSTACLE IN RELIEF. IN THE USUAL CASE, OF COURSE, THE ITEM IN QUESTION IS A TANGIBLE ITEM WHICH HAS DOLLARS AND CENTS VALUE. HOWEVER, WE HAVE HELD THAT AN INTANGIBLE MAY CONSTITUTE VALUE RECEIVED WHERE PAYMENT OF FUNDS RELIEVED A DESIRED RESULT. B-127160, APRIL 3, 1961.

HOWEVER, FROM THE INFORMATION SUPPLIED IT CANNOT BE DETERMINED WHETHER THE GOOD FAITH TEST HAS BEEN MET. IN 55 COMP.GEN. 297, 300 (1975), WE STATED:

"ASSUMING VALUE RECEIVED FOR A PAYMENT AND THE ABSENCE OF STATUTORY PROHIBITION, THE TEST OF GOOD FAITH REGARDING LEGAL QUESTIONS CONCERNING CERTIFIED VOUCHERS IS WHETHER OR NOT THE CERTIFYING OFFICER WAS "IN DOUBT' REGARDING THE PAYMENT, AND, IF SO, WHETHER HE EXERCISED HIS RIGHT TO REQUEST AND RECEIVE AN ADVANCE DECISION FROM THE COMPTROLLER GENERAL

WHEREAS KNOWING THE FACTS AND CIRCUMSTANCES SURROUNDING THE CERTIFICATION, IT IS NOT POSSIBLE TO KNOW WHETHER THE CERTIFYING OFFICER ACTED IN GOOD FAITH. THE MEMORANDA ATTACHED TO YOUR LETTER FROM WILLIAM J. BOOTH AND MR. HUNTER ARE MERELY AFTER-THE-FACT STATEMENTS THAT THE PEACE CORPS ACT WAS NOT INTENTIONALLY VIOLATED BY SUPERVISORS OF PEACE CORPS OPERATIONS IN ETHIOPIA. EVEN SO, IT APPEARS THAT IF BOOTH HAD BEEN THE CERTIFYING OFFICER, HE MIGHT WELL HAVE BEEN "IN DOUBT" REGARDING THE LEGALITY (RATHER THAN THE WISDOM) OF THE PAYMENT SINCE HE STATES THAT "IT IS OFTEN-TIMES VERY DIFFICULT TO ESTABLISH WHAT IS A LEGAL AND ILLEGAL EXPENDITURE FOR VOLUNTEER JOB RELATED SUPPORT."

A SHOWING OF GOOD FAITH REQUIRES SOMETHING MORE THAN THE MERE ABSENCE OF EVIL INTENT OF SELF-ENRICHMENT. FOR EXAMPLE, ALTHOUGH WE HAVE HELD THAT RELIANCE ON THE ADVICE OF AN ADMINISTRATIVE OFFICER CONCERNING A DOUBTFUL PAYMENT WILL NOT BE GROUNDS FOR RELIEF UNDER THE FIRST RELIEF PROVISION OF SEC. 82C, 31 COMP.GEN. 653, 654 (1952), A REQUEST FOR A LEGAL DECISION FROM AGENCY ATTORNEYS MAY HELP DEMONSTRATE GOOD FAITH UNDER THE SECOND TEST. B-127160, APRIL 3, 1961.

IN SUM, FROM THE INFORMATION SUPPLIED, WE CANNOT CONCLUDE THAT THE CERTIFYING OFFICER SHOULD BE RELIEVED OF LIABILITY FOR THIS UNAUTHORIZED PAYMENT.