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B-195544, Nov 20, 1979

Number: B-195544

Date: 1979-11-20

B-195544, NOV 20, 1979

OFFICE OF GENERAL COUNSEL

PAUL GONSON, SECURITIES AND EXCHANGE COMMISSION:

THIS IS IN RESPONSE TO TWO LETTERS FROM YOUR OFFICE DATED JULY 19 AND NOVEMBER 8, 1979, CONCERNING THE AUTHORITY OF THE SECURITIES AND EXCHANGE COMMISSION (SEC) TO PAY ATTORNEY FEES AND COSTS INCIDENT TO AN EQUAL EMPLOYMENT OPPORTUNITY PROCEEDING BEFORE THE AGENCY.

YOUR LETTER OF JULY 19, 1979, REQUESTED OUR DECISION ON THE AUTHORITY OF THE SEC TO PAY THESE FEES AND COSTS. SUBSEQUENTLY, THE COMPLAINANT IN A PENDING DISCRIMINATION PROCEEDING FILED SUIT IN FEDERAL DISTRICT COURT REQUESTING THAT THE COURT ORDER THE SEC TO PAY REASONABLE ATTORNEY FEES AND COSTS. GILCHRIST V. WILLIAMS, CIVIL ACTION NO. 79-2521 (U.S.D.C.D.C. SEP. 24, 1979). IN YOUR LETTER DATED NOVEMBER 8, 1979, YOU INDICATE YOUR INTENTION TO REQUEST A STAY IN THE COURT PROCEEDINGS WHILE AWAITING OUR DECISION ON THIS MATTER.

THE POSITION OF THIS OFFICE HAS BEEN THAT FEDERAL AGENCIES HAVE NO AUTHORITY TO PAY ATTORNEY FEES INCIDENT TO THE SETTLEMENT OF DISCRIMINATION COMPLAINTS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED (42 U.S.C. SEC. 2000E-16(B)), IN THE ABSENCE OF SPECIFIC LEGISLATION, FURTHER CLARIFICATION OF CONFLICTING COURT DECISIONS, OR APPROPRIATE REGULATIONS. BY LETTER DATED MAY 16, 1978 (COPY ENCLOSED), WE ADVISED THE ATTORNEY GENERAL WE WOULD NOT OBJECT TO THE PROPOSED REGULATIONS OF THE CIVIL SERVICE COMMISSION PERMITTING FEDERAL AGENCIES TO AWARD ATTORNEY FEES IN DISCRIMINATION PROCEEDINGS.

THE AUTHORITY OF THE CIVIL SERVICE COMMISSION TO PROMULGATE REGULATIONS IN THIS AREA HAS BEEN TRANSFERRED TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC), AND WE HAVE BEEN INFORMALLY ADVISED THAT DRAFT REGULATIONS ARE STILL BEING CONSIDERED BY EEOC. IN THE ABSENCE OF SUCH REGULATIONS WE ARE STILL OF THE OPINION THAT THERE IS NO AUTHORITY FOR AGENCIES TO AWARD ATTORNEY FEES INCIDENT TO AN ADMINISTRATIVE EQUAL EMPLOYMENT OPPORTUNITY PROCEEDING. THEREFORE, WE FEEL NO USEFUL PURPOSE WOULD BE SERVED IN SEEKING A STAY IN THE COURT PROCEEDING AND WE WILL FOLLOW OUR USUAL PRACTICE OF NOT ISSUING FORMAL DECISIONS OF THE COMPTROLLER GENERAL ON MATTERS PENDING BEFORE THE COURTS.