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B-199387, Aug 22, 1980

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DIGEST: OAKLAND ARMY BASE PLANNED A 3 DAY ETHNIC HERITAGE CELEBRATION ENTITLED HUMANITY WEEK - 1980, CONSISTING OF PERFORMANCES BY A MUSICAL BAND AND SINGER AND SEVERAL ETHNIC DANCE TROOPS. FREE ETHNIC FOOD SAMPLES WERE TO BE DISPENSED AND ETHNIC DECORATIONS WERE TO BE INSTALLED. THESE ACTIVITIES ARE CONSIDERED EMPLOYEE ENTERTAINMENT WHICH MAY NOT BE FUNDED BY APPROPRIATIONS ABSENT SPECIFIC LEGAL AUTHORITY IN STATUTE OR REGULATION.

OAKLAND ARMY BASE - ENTERTAINMENT FOR ETHNIC CELEBRATIONS:

THE COMPTROLLER OF THE ARMY HAS REQUESTED AN ADVANCE DECISION AS TO WHETHER THE ARMY MAY SPEND APPROPRIATED FUNDS FOR ENTERTAINMENT AND ETHNIC FOOD SAMPLES TO CELEBRATE HUMANITY WEEK AT THE OAKLAND ARMY BASE. FOR THE REASONS THAT FOLLOW, WE CONCLUDE THAT IT MAY NOT.

THE OAKLAND ARMY BASE, OAKLAND, CALIFORNIA, HAS PROPOSED A PLAN TO OBSERVE HUMANITY WEEK - 1980 WHICH IS A BASE-WIDE 3 DAY ETHNIC HERITAGE CELEBRATION. THE CELEBRATION IS PLANNED TO RUN FROM ABOUT 11 A.M. TO 2 P.M. EACH DAY ON SEPTEMBER 10, 11, AND 12, 1980. ACTIVITIES SCHEDULED INCLUDE SHORT SPEECHES, A VARIETY SHOW PRESENTED BY VOLUNTEERS, A MOVIE OR SLIDE SHOW, AN OFFICE DECORATION CONTEST FOLLOWING AN ETHNIC THEME AND TROPHY PRESENTATION, A LUNCH FEATURING A VARIETY OF ETHNIC FOODS PAID FOR BY PARTICIPANTS, A FASHION SHOW, FREE ETHNIC FOOD SAMPLES, ENTERTAINMENT CONSISTING OF A MUSICAL BAND, A SINGER AND ETHNIC DANCERS AND A PARADE OF COSTUMES.

THE ARMY BASE PROPOSED TO EXPEND APPROPRIATED FUNDS IN THE AMOUNTS INDICATED BELOW FOR CERTAIN OF THE ABOVE MENTIONED ACTIVITIES.

ESTIMATED COSTS:

RENTAL OF MOVIE FILM $50.00

ENTERTAINMENT:

A. MUSICAL BAND $50.00 B. ORIENTAL DANCE TROUPE $60.00 C. EUROPEAN DANCE TROUPE $60.00 D. AFRICAN DANCE TROUPE $60.00 E. HAWAIIAN HULA DANCERS $60.00 F. HISPANIC DANCE TROUPE $60.00 G. BLACK AMERICAN SINGER $60.00

FOOD: INGREDIENTS TO PREPARE $350.00 ETHNIC FOOD SAMPLES BY VOLUNTEER COOKS (10 DISHES $35.00 PER PERSON)

DECORATIONS: TABLE DECORATIONS AND $90.00 DISPLAY BOARDS FOR THE "DAY ON THE

GREEN"; (TO INCLUDE PAPER, ARTISTS SUPPLIES)

MISCELLANEOUS: PLASTIC PLATES $30.00 AND CUTLERY

TOTAL $930.00

IT IS NOTED THAT CERTAIN OF THE ABOVE LISTED PROPOSED EXPENDITURES ARE FOR INGREDIENTS REQUIRED TO PREPARE ETHNIC FOOD SAMPLES AND FOR DISPOSABLE DINING UTENSILS. WE HAVE HELD THAT THE FURNISHING OF MEALS OR REFRESHMENTS TO FEDERAL EMPLOYEES IS IN THE NATURE OF ENTERTAINMENT AND AS SUCH CANNOT BE CONSIDERED A "NECESSARY EXPENSE" AS THAT TERM IS USED IN APPROPRIATIONS AVAILABLE TO THE DEPARTMENT OF THE ARMY. 47 COMP.GEN. 657 (1968). SIMILARLY, DECORATIONS MUST ALSO BE CONSIDERED AS EMPLOYEE ENTERTAINMENT, THE COST OF WHICH ALSO WOULD NOT BE AN ALLOWABLE EXPENDITURE.

WE HAVE SIMILARLY CHARACTERIZED AGENCY SPONSORED PERFORMANCE BY MUSICAL BANDS, DANCE TROOPS AND SINGERS AS EMPLOYEE ENTERTAINMENT DESPITE THE FACT THAT SUCH PRESENTATIONS WERE MADE IN CONNECTION WITH ETHNIC AWARENESS TRAINING UNDER AGENCY EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAMS. IN OUR DECISION MATTER OF BUREAU OF MINES - LIVE ENTERTAINMENT FOR NATIONAL HISPANIC HERITAGE WEEK, 58 COMP.GEN. 202 (1979), WE INDICATED THAT IN THE ABSENCE OF A STATUTE OR REGULATION SPECIFICALLY AUTHORIZING AGENCIES TO PROVIDE ENTERTAINMENT ACTIVITIES AS A PART OF EEO PROGRAMS, APPROPRIATED FUNDS COULD NOT BE LEGALLY EXPENDED FOR SUCH ACTIVITIES. ALSO, IN ANOTHER RECENT DECISION MATTER OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION - RECEPTION FOR HISPANIC LEADERS, B-193661, JANUARY 19, 1979, WE HELD THAT APPROPRIATED FUNDS COULD NOT BE USED TO PAY FOR REFRESHMENTS AT A RECEPTION FOR HISPANIC LEADERS FOLLOWING AN EEOC CONFERENCE.

IN VIEW OF THE FOREGOING, WE ARE OF THE OPINION THAT THE OAKLAND ARMY BASE MAY NOT LEGALLY EXPEND APPROPRIATED FUNDS INCIDENT TO THE PLANNED CELEBRATION FOR FOOD AND DISPOSABLE DINING UTENSILS, MUSICAL AND ARTISTIC PRESENTATIONS AND DECORATION MATERIALS WHICH UNDER OUR DECISIONS MUST BE CHARACTERIZED AS EMPLOYEE ENTERTAINMENT.