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B-204326, Jul 26, 1982

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DIGEST: UNDER AN ADVANCE WRITTEN AGREEMENT THAT THERE WILL BE NO COST TO THE GOVERNMENT, THE ARMY MAY ACCEPT SERVICES OFFERED BY THE AMERICAN ASSOCIATION OF RETIRED PERSONS/NATIONAL RETIRED TEACHERS ASSOCIATION. SUCH GRATUITOUS SERVICE IS NOT PROHIBITED BY 31 U.S.C. SEC. 665(B), WHICH FORBIDS THE ACCEPTANCE OF VOLUNTARY SERVICE BY THE UNITED STATES.

ARMY'S AUTHORITY TO ACCEPT SERVICES FROM THE AMERICAN ASSOCIATION OF RETIRED PERSONS/NATIONAL RETIRED TEACHERS ASSOCIATION:

THE DEPARTMENT OF THE ARMY (DOA) REQUESTS A DECISION ON THE PROPRIETY OF ACCEPTING CERTAIN VOLUNTARY SERVICES FROM THE AMERICAN ASSOCIATION OF RETIRED PERSONS/NATIONAL RETIRED TEACHERS ASSOCIATION (AARP/NRTA), IN VIEW OF THE PROHIBITION AGAINST THE ACCEPTANCE OF VOLUNTARY SERVICES CONTAINED IN THE ANTIDEFICIENCY ACT, 31 U.S.C. SEC. 665(B). IN OUR OPINION, THE SERVICES WHICH HAVE BEEN OFFERED BY THE AARP/NRTA WOULD BE "GRATUITOUS" RATHER THAN "VOLUNTARY." AS GRATUITOUS SERVICES, THE PROPOSED ACTIVITIES ARE NOT COVERED BY THE GENERAL PROHIBITION AGAINST ACCEPTANCE OF VOLUNTARY SERVICES CONTAINED IN THE ANTI-DEFICIENCY ACT.

UNDER ARMY REGULATION AR 190-31, THE DOA IS REQUIRED TO ESTABLISH AN ARMY -WIDE CRIME PREVENTION PROGRAM. PARAGRAPH 7E OF AR 190-31 AUTHORIZES THE USE OF "LOCAL AVAILABLE MEANS" TO "ENSURE EFFECTIVE DISSEMINATION OF CRIME PREVENTION INFORMATION." THE AARP/NRTA HAS OFFERED TO PROVIDE RETIRED VOLUNTEERS TO ASSIST IN CRIME PREVENTION ACTIVITIES ON ARMY INSTALLATIONS. THE PRIMARY FUNCTION OF THE RETIREES WOULD BE TO DISSEMINATE CRIME PREVENTION INFORMATION. THEY WOULD, FOR EXAMPLE, PRESENT LECTURE PROGRAMS TO SCHOOL AND SOCIAL GROUPS AND DISTRIBUTE PAMPHLETS TO MILITARY DEPENDENTS. THE AARP/NRTA PROPOSES THAT THESE VOLUNTEERS WOULD SERVE ON A PART-TIME BASIS WITHOUT PAY OR BENEFITS.

THE GENERAL PROHIBITION AGAINST THE ACCEPTANCE OF VOLUNTARY SERVICES BY THE GOVERNMENT IS FOUND AT 31 U.S.C. SEC. 665(B), WHICH STATES:

"NO OFFICER OR EMPLOYEE OF THE UNITED STATES SHALL ACCEPT VOLUNTARY SERVICE FOR THE UNITED STATES OR EMPLOY PERSONAL SERVICE IN EXCESS OF THAT AUTHORIZED BY LAW, EXCEPT IN CASES OF EMERGENCY INVOLVING THE SAFETY OF HUMAN LIFE OR THE PROTECTION OF PROPERTY."

THE BROAD PURPOSE OF THIS SECTION IS TO PREVENT THE GOVERNMENT FROM INCURRING FINANCIAL OBLIGATIONS OVER AND ABOVE THOSE AUTHORIZED BY CONGRESS. THE STATUTE PROHIBITS THE ACCEPTANCE OF SERVICES RENDERED IN THE HOPE THAT CONGRESS WILL SUBSEQUENTLY RECOGNIZE A MORAL OBLIGATION TO PAY FOR THE BENEFITS CONFERRED.

WHILE SECTION 665(B) HAS BEEN INTERPRETED TO PROHIBIT ANY VOLUNTARY SERVICE, EXCEPT IN THE EMERGENCIES SPECIFIED, THE TERMS "VOLUNTARY" AND "GRATUITOUS" HAVE BEEN DISTINGUISHED.

VOLUNTARY SERVICES HAVE BEEN DEFINED AS THOSE WHICH ARE NOT RENDERED PURSUANT TO A PRIOR CONTRACT, OR UNDER AN ADVANCE AGREEMENT THAT THEY WILL BE GRATUITOUS. THEREFORE, VOLUNTARY SERVICES ARE LIKELY TO FORM THE BASIS OF FUTURE CLAIMS AGAINST THE GOVERNMENT. IN 7 COMP.GEN. 810 (1928), THE COMPTROLLER GENERAL DISCUSSED THE DISTINCTION, STATING:

"THE VOLUNTARY SERVICE REFERRED TO IN 31 U.S.C. SEC. 665(B) IS NOT NECESSARILY SYNONYMOUS WITH GRATUITOUS SERVICE, BUT CONTEMPLATES SERVICE FURNISHED ON THE INITIATIVE OF THE PARTY RENDERING THE SAME WITHOUT REQUEST FROM, OR AGREEMENT WITH, THE UNITED STATES THEREFOR. SERVICES FURNISHED PURSUANT TO A FORMAL CONTRACT ARE NOT VOLUNTARY WITHIN THE MEANING OF SAID SECTION. ***"

IN B-13378, NOVEMBER 20, 1940, WE HELD THAT THE SECRETARY OF COMMERCE COULD ACCEPT GRATUITOUS SERVICES FROM A PRIVATE AGENCY (CREATED BY VARIOUS PROFESSIONAL SOCIAL SCIENCE ASSOCIATIONS) WHICH OFFERED TO ASSIST IN THE PREPARATION OF OFFICIAL MONOGRAPHS ANALYZING CENSUS DATA. IN THAT CASE THE SERVICES WERE TO BE RENDERED UNDER A COOPERATIVE AGREEMENT WHICH SPECIFIED THAT THEY WOULD BE FREE OF COST TO THE GOVERNMENT. ACCORD B-125406, NOVEMBER 4, 1955.

IN THIS CASE THE AARP/NRTA HAS INDICATED ITS WILLINGNESS TO ASSIST IN THE CRIME PREVENTION PROGRAMS ON ARMY INSTALLATIONS FREE OF COST TO THE DOA. PROVIDED THAT EACH VOLUNTEER FORMALLY AGREES IN ADVANCE TO SERVE GRATUITOUSLY, AND THAT THE AGREEMENTS ARE PROPERLY DOCUMENTED, THE SERVICES WOULD NOT BE PROHIBITED BY 31 U.S.C. SEC. 665(B).

IT IS OUR UNDERSTANDING THAT THE AARP/NRTA WILL DEVELOP AND CONDUCT ITS OWN INDEPENDENT CRIME PREVENTION PROGRAM, PRIMARILY FOR THE EDUCATIONAL BENEFIT OF DEPENDENTS LIVING ON ARMY INSTALLATIONS. THE ARMY WILL NOT DIRECT OR CONTROL THE VOLUNTEERS' ACTIVITIES IN AN EMPLOYER-EMPLOYEE SENSE. RATHER, THE ARMY WILL SIMPLY PROVIDE THE AARP/NRTA ACCESS TO ARMY INSTALLATIONS, AND ASSISTANCE IN CONTACTING VARIOUS SCHOOL AND SOCIAL GROUPS ON BASE.

IN CONCLUSION, UNDER THE CONDITIONS DESCRIBED ABOVE, THIS OFFICE WILL HAVE NO OBJECTION TO THE ARMY'S ACCEPTANCE OF THE FREE SERVICES OFFERED BY THE AMERICAN ASSOCIATION OF RETIRED PERSONS/NATIONAL RETIRED TEACHERS ASSOCIATION.