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B-209978, Jul 18, 1983, Office of General Counsel

Number: B-209978

Date: 1983-07-18

B-209978, JUL 18, 1983, OFFICE OF GENERAL COUNSEL

MR. ROGER B. FELDMAN, COMPTROLLER DEPARTMENT OF STATE:

THIS IS IN RESPONSE TO YOUR REQUEST THAT RELIEF BE GRANTED TO INA JEAN KENSEY, A FORMER UNITED STATES DISBURSING OFFICER IN SAIGON, SOUTH VIETNAM, FOR LIABILITY FOR THE PHYSICAL LOSS OF $2,614,855 IN AMERICAN GREEN DOLLAR CURRENCY WHICH WAS PURPORTEDLY BURNED AT THE TIME OF THE EVACUATION OF UNITED STATES PERSONNEL AT THE END OF APRIL 1975. FOR THE FOLLOWING REASONS, WE GRANT THE REQUESTED RELIEF.

IN 56 COMP.GEN. 791 (1977), WE ADVISED THE SECRETARY OF THE TREASURY ON HOW TO ACCOUNT FOR THE VARIOUS ASSETS WHICH WERE LOST BY THE UNITED STATES IN THE FINAL EVACUATION OF SAIGON. IN ADDRESSING THE QUESTION OF THE UNITED STATES CURRENCY FOR WHICH MS. KENSEY IS RESPONSIBLE, WE RELATED TO THE FACTS AS FOLLOWS, IN PART QUOTING FROM A DEPARTMENT OF THE TREASURY REPORT:

"IN A REPORT DATED SEPTEMBER 15, 1975, TREASURY HAS SUMMARIZED IN CONSIDERABLE DETAIL THE EVENTS OF THE DAY OF THE EVACUATION AND THE DESTRUCTION OF THE UNITED STATES CURRENCY, AS WELL AS THE SUBSEQUENT APPEARANCE OF SOME OF THE BILLS WHICH WERE SUPPOSED TO HAVE BEEN DESTROYED. THE REPORT IS BASED ON A SECRET SERVICE INVESTIGATION, AND ON A CABLE TO THE SECRETARY OF STATE FROM THE AMERICAN EMBASSY IN BANGKOK, CONCERNING THE DESTRUCTION OF CURRENCY. THE REPORT STATES:

'ON APRIL 29, THE U. S. DISBURSING OFFICER HAD IN HER POSSESSION MORE THAN $2.5 MILLION IN U. S. CURRENCY. SINCE IT APPEARED THAT THE EVACUATION OF SAIGON WAS IMMINENT, PREPARATIONS HAD BEEN MADE TO DESTROY CURRENCY, CHECKS, AND OTHER SIMILAR ITEMS TO PREVENT THEM FROM FALLING INTO ENEMY HANDS. DESTRUCTION WAS TO TAKE PLACE IN BURN BARRELS IN WHICH THE MATERIALS TO BE DESTROYED WERE TO BE PLACED IN ALTERNATE LAYERS WITH A SOLUTION OF SODIUM NITRATE. THIS CHEMICAL PRODUCES A VERY INTENSE HEAT AND IS ABLE TO GENERATE ITS OWN OXYGEN AND THEREBY PRODUCE A COMPLETE INCINERATION.'

"THE REPORT CONTINUES WITH A VIVID DESCRIPTION OF THE CONFUSION AND EXCITEMENT OF THE LAST DAY BEFORE EVACUATION FROM SAIGON. APPARENTLY, EMBASSY PERSONNEL RECEIVED EVACUATION ORDERS AT 10:00 A.M. ON APRIL 29 AND IMMEDIATELY PLACED THE CURRENCY IN TWO BURN BARRELS. HOWEVER, DESTRUCT ORDERS WERE NOT ACTUALLY ISSUED UNTIL 4:30 P.M. IN THE INTERVAL, TWO PACKAGES OF $80,000 EACH WERE RETRIEVED FOR THE AMBASSADOR, AND ONE BARREL WAS PREMATURELY IGNITED AND HAD TO BE EXTINGUISHED. TWO NEW BARRELS WERE THEN SUBSTITUTED. LATER, WHEN THE BARRELS WERE BURNING, AN UNSUCCESSFUL ATTEMPT WAS MADE TO THROW IN THE CURRENCY PREVIOUSLY RETRIEVED FOR THE AMBASSADOR BUT NOT USED BY HIM, BUT BECAUSE OF THE HEAT OF THE FLAMES, IT WAS FINALLY FOUND NECESSARY TO SHRED IT. AT ALL TIMES, ACCORDING TO THE REPORT, SEABEE GUARDS WATCHED OVER THE CURRENCY - BOTH THE

CURRENCY BEING BURNED AND THE CURRENCY BEING SHREDDED.

"ON MAY 7, A CABLE WAS SENT TO THE SECRETARY OF STATE, REPORTING THE DESTRUCTION OF THE CURRENCY AND LISTING THE CURRENCY BY DENOMINATION AND SERIAL NUMBER. STATE SENT TREASURY A COPY, AND TREASURY, AS A PRECAUTIONARY MEASURE, ADVISED ALL FEDERAL RESERVE BANKS TO BE ALERT TO RECEIPT OF ANY BILLS FROM PACIFIC SOURCES WITH THE LISTED SERIAL NUMBERS AND WHICH SHOWED SIGNS OF CONTACT WITH FIRE.

"SUBSEQUENTLY, TREASURY LEARNED THAT 218 BILLS BEARING SERIAL NUMBERS WHICH HAD SUPPOSEDLY BEEN DESTROYED, AMOUNTING TO $4,360, TURNED UP IN A BANK FACILITY IN ARKANSAS WHICH PRIMARILY SERVED CAMP CHAFFEE, A PROCESSING AND HOUSING POINT FOR VIETNAMESE REFUGEES. THE MONEY WAS APPARENTLY IN NEW CONDITION, SHOWING NO EVIDENCE OF EXPOSURE TO FIRE OR A CHEMICAL AGENT, ALTHOUGH WE HAVE BEEN INFORMALLY ADVISED THAT LABORATORY TESTS TO CONFIRM THIS HAVE BEEN INCONCLUSIVE." ID. AT 793-94.

BASED ON THE APPEARANCE IN THE UNITED STATES OF SOME OF THE CURRENCY SUPPOSEDLY DESTROYED, THE TREASURY DEPARTMENT CONCLUDED THAT IT COULD NOT CERTIFY THAT ANY OF THE CURRENCY WAS ACTUALLY DESTROYED. ALTHOUGH THE STATE DEPARTMENT VOICED OBJECTION TO THIS CONCLUSION, WE DID NOT FIND SUFFICIENT JUSTIFICATION TO OVERTURN TREASURY'S ADMINISTRATIVE DETERMINATION THAT THE FUNDS WERE NOT DESTROYED. THUS, WE CONCLUDED THAT THE FULL AMOUNT SHOULD BE TREATED AS A PHYSICAL LOSS. IN RESPONSE TO OUR HOLDING, YOU HAVE REQUESTED RELIEF UNDER 31 U.S.C. SEC. 3527(A) (FORMERLY SEC. 82A-1) FOR MS. KENSEY.

SECTION 3527(A) OF TITLE 31 AUTHORIZES THIS OFFICE TO RELIEVE AN ACCOUNTABLE OFFICER OF LIABILITY FOR A PHYSICAL LOSS IF WE AGREE WITH THE DETERMINATION BY THE AGENCY THAT THE LOSS OCCURRED WHILE THE ACCOUNTABLE OFFICER WAS ACTING IN THE DISCHARGE OF HIS OR HER OFFICIAL DUTIES, AND THAT THE LOSS WAS NOT THE RESULT OF FAULT OR NEGLIGENCE ON THE PART OF THE OFFICER. YOU HAVE MADE THE REQUIRED DETERMINATIONS THAT THE LOSS OCCURRED WHILE MS. KENSEY WAS ACTING IN HER OFFICIAL DUTIES, AND THAT THE LOSS DID NOT OCCUR BECAUSE OF ANY FAULT OR NEGLIGENCE ON HER PART.

WE AGREE WITH THIS DETERMINATION. A GOVERNMENT EMPLOYEE CHARGED WITH THE CUSTODY OR HANDLING OF PUBLIC FUNDS IS EXPECTED TO EXERCISE THE HIGHEST DEGREE OF CARE, 48 COMP.GEN. 566, 567 (1969), THAT WHICH A REASONABLY PRUDENT PERSON WOULD EXERCISE WITH HIS OWN PROPERTY. WE BELIEVE THAT MS. KENSEY DID EXERCISE SUCH CARE.

THE EVIDENCE SHOWS THAT MS. KENSEY ATTEMPTED TO DESTROY THE FUNDS ACCORDING TO THE AGENCY PROCEDURES. IN ADDITION TO THE FACTS WHICH WE QUOTED ABOVE, WE HAVE A STATEMENT FROM MS. KENSEY, IN WHICH SHE SAYS:

"IN CONNECTION WITH THE DESTRUCTION OF U. S. CURRENCY, MR. YOUNG NOTED THE SERIAL NUMBERS AND INSERTED THE BLOCKS AND PACKS OF CURRENCY IN THE NITRATED BARRELS. THESE BARRELS WERE GUARDED BY MR. BOOHER AND MR. WEBBER AFTER MR. YOUNG HAD INSERTED THE CURRENCY IN THE BARRELS AND CURRENCY WAS NOT REMOVED UNTIL I WAS INFORMED BY MR. BOUDREAU THAT THE AMBASSADOR NEEDED $100,000. TWO BLOCKS WERE REMOVED BY ME IN THE PRESENCE OF MR. WEBBER AND MR. BOOHER AND TOTALED $160,000 SINCE I COULD NOT PHYSICALLY BREAK WITH MY HAND THE ALUMINUM BANDS ON THE BLOCK OF $80,000. MR. JAZYNKA THE ADMINISTRATIVE OFFICER VERIFIED THE SERIAL NUMBERS ON THE $160,000 I REMOVED FROM THE BARRELS. I AM NOW AWARE OF THE FACT THAT SOME OF THE CURRENCY IS APPEARING IN THE USA WHICH I REPORTED AS BURNED

FROM THE SERIALIZED LISTING MADE BY MR. YOUNG. I ONLY CONCLUDE ONE OF THE FOLLOWING:

"A. SERIAL NUMBERS WERE NOTED AND REPORTED INCORRECTLY;

OR

"B. SINCE THE SECRET SERVICE STATED " *** IT WOULD TAKE 12 HOURS FOR THAT AMOUNT OF CURRENCY TO BURN," THE BARRELS MUST HAVE BEEN OVERTURNED AND MONIES WITHDRAWN BY UNKNOWN INDIVIDUALS."

IN OUR OPINION MS. KENSEY ACTED WITH SUFFICIENT CARE UNDER THESE EXTRAORDINARY CIRCUMSTANCES. IT APPEARS THAT ALL OF THE REQUIRED PROCEDURES FOR THE DESTRUCTION OF CURRENCY WERE FOLLOWED. MS. KENSEY WAS UNABLE TO WITNESS THE TOTAL DESTRUCTION OF THE CURRENCY BECAUSE SHE WAS FORCED TO EVACUATE THE EMBASSY DUE TO THE PROXIMITY OF THE NORTH VIETNAMESE FORCES. WE CERTAINLY CANNOT CONCLUDE THAT MS. KENSEY WAS REQUIRED TO FURTHER ENDANGER HER LIFE IN ORDER TO FULFILL HER DUTY OF CARE WITH RESPECT TO THE CURRENCY. THUS, FOR THE REASONS CITED ABOVE, WE GRANT RELIEF TO MS. KENSEY IN THE AMOUNT OF $2,614,855.