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CONCESSIONS - CAFETERIAS - SUBSIDIZED BY GOVERNMENT DIGEST: THE GOVERNMENT PRINTING OFFICE (GPO) MAY USE MONEY IN ITS REVOLVING FUND TO SUBSIDIZE ITS CAFETERIA, RUN BY AN EMPLOYEE'S ASSOCIATION, SINCE THE AGENCY HEAD HAS DETERMINED THAT THE EXPENDITURE IS NECESSARY FOR GPO TO SATISFACTORILY FULFILL ITS STATUTORY OBLIGATIONS TO PRINT MATERIALS FOR THE CONGRESS, FEDERAL AGENCIES, AND OTHER ENTITIES.

GOVERNMENT PRINTING OFFICE - FINANCIAL ASSISTANCE TO EMPLOYEE CAFETERIA:

MR. WILLIAM J. BARRETT, ACTING PUBLIC PRINTER, GOVERNMENT PRINTING OFFICE (GPO), REQUESTS OUR DECISION AS TO WHETHER THE GPO MAY DIRECTLY OR INDIRECTLY PROVIDE FUNDS TO THE NONPROFIT CORPORATION THAT OPERATES THE GPO'S EMPLOYEE CAFETERIA. HE SPECIFICALLY ASKS WHETHER GPO MAY PROVIDE FINANCIAL ASSISTANCE TO THE NONPROFIT CORPORATION BY (1) A DIRECT LOAN OF $50,000, (2) A LINE OF CREDIT FROM GPO TO BE DRAWN DOWN AS NEEDED AND NOT TO EXCEED $50,000, OR (3) A GUARANTEE OF A $50,000 LOAN FROM A COMMERCIAL LENDER. SO LONG AS THE GPO DETERMINES THAT EXPENDITURES TO ASSIST THE CAFETERIA ARE NECESSARY EXPENSES, WE WOULD NOT OBJECT TO USE OF GPO'S REVOLVING FUND TO PROVIDE THE FINANCIAL ASSISTANCE SUGGESTED.

BACKGROUND

IN 1921, THE GPO CAFETERIA RECREATION AND WELFARE ASSOCIATION (ASSOCIATION) WAS FORMED BY GPO EMPLOYEES TO OPERATE GPO'S NEWLY CONSTRUCTED CAFETERIA. THE GPO EMPLOYEES PROVIDED THE INITIAL CAPITAL FOR THE ASSOCIATION AND SINCE THEN MOST CAFETERIA OPERATING EXPENSES HAVE BEEN PAID FOR BY THE ASSOCIATION. THE GPO HAS PROVIDED THE NECESSARY SPACE, UTILITIES AND FIXED EQUIPMENT FOR THE CAFETERIA.

THE ACTING PUBLIC PRINTER INFORMS US THAT THE CAFETERIA IS PRESENTLY INCURRING LOSSES OF APPROXIMATELY $4,000 EACH MONTH DUE TO RISING LABOR COSTS AND A DECLINING CUSTOMER BASE. THE ASSOCIATION HAS PRESENT INDEBTEDNESS TOTALING $175,000 AND IS IN DANGER OF CEASING OPERATIONS. AN ATTEMPT TO CUT OPERATIONAL COSTS, THE ASSOCIATION HAS LAID OFF FOUR CAFETERIA EMPLOYEES AND IS ATTEMPTING AN INTERNAL REORGANIZATION TO FOSTER EFFICIENCY AND REDUCE OPERATIONAL COSTS. ADDITIONALLY, TO OVERCOME ITS CASH FLOW PROBLEMS, THE ASSOCIATION, WHICH HAS BEEN A PRIVATE NONPROFIT CORPORATION SINCE 1951, IS SEEKING A LOAN OR A LINE OF CREDIT FROM A LOCAL COMMERCIAL LENDING INSTITUTION.

RECOGNIZING THAT IT MAY HAVE DIFFICULTY IN SECURING CONVENTIONAL FINANCIAL ASSISTANCE, THE ASSOCIATION HAS ASKED GPO TO ASSIST IT IN ITS EFFORT TO OBTAIN FINANCING. GPO IS AMENABLE TO ASSISTING THE ASSOCIATION AND IS CONSIDERING THREE ALTERNATIVE MODES OF FINANCIAL ASSISTANCE. FIRST, GPO COULD GUARANTEE A

COMMERCIAL LOAN OF $50,000 MADE TO THE ASSOCIATION. SECOND, GPO COULD MAKE A DIRECT LOAN OF $50,000 TO THE ASSOCIATION. THIRD, GPO COULD ESTABLISH A $50,000 LINE OF CREDIT OUT OF WHICH THE ASSOCIATION WOULD DRAW FROM FUNDS AS NEEDED. GPO INFORMS US THAT ANY FUNDS PROVIDED DIRECTLY OR INDIRECTLY TO THE ASSOCIATION WOULD COME OUT OF GPO'S REVOLVING FUND WHICH IS AVAILABLE WITHOUT FISCAL YEAR LIMITATION FOR "THE OPERATION AND MAINTENANCE OF THE GOVERNMENT PRINTING OFFICE." SEE 44 U.S.C. SEC. 309(A).

THE ACTING PUBLIC PRINTER POINTS OUT THAT THE EMPLOYEE CAFETERIA IS NECESSARY TO THE EFFICIENCY OF THE GPO'S OPERATION AND IS A SIGNIFICANT FACTOR IN HIRING AND RETAINING EMPLOYEES. HE STRESSES THAT THE CAFETERIA IS ESSENTIAL SINCE IT ENABLES EMPLOYEES TO COMPLY WITH THE 30 MINUTES PERMITTED FOR LUNCH. GPO MUST MAINTAIN STRICT OBSERVANCE OF THIS TIME LIMIT BECAUSE OF THE TIGHT PRODUCTION SCHEDULES. WITHOUT THE IN-HOUSE CAFETERIA, GPO COULD NOT MAINTAIN ITS 8 1/2 HOUR WORK SCHEDULE WHICH WOULD RESULT IN CHANGES IN PRODUCTION SCHEDULES AND HOURS, OF DUTY. MOST CRITICAL IS THAT THE CAFETERIA IS AN ABSOLUTE NECESSITY FOR THE LARGE NUMBER OF EMPLOYEES ON SHIFT 2 (4:00 P.M. - 12:30 A.M.) AND SHIFT 3 (12 MIDNIGHT - 8:30 A.M.), SINCE NO SUITABLE ALTERNATIVE RESTAURANT FACILITIES ARE AVAILABLE DURING THOSE TIMES. MOREOVER, HE EMPHASIZES THAT THE VAST MAJORITY OF WORK ON THE CONGRESSIONAL RECORD AND MANY OTHER CONGRESSIONAL PRIORITY ITEMS IS DONE DURING SHIFTS 2 AND 3. CONSEQUENTLY, CONTINUED OPERATION OF THE CAFETERIA IS CRITICAL SINCE LACK OF A CAFETERIA WOULD IMPACT ADVERSELY ON GPO'S ABILITY TO SERVE THE NEEDS OF CONGRESS. SHORT, THE ACTING PUBLIC PRINTER DEEMS THE CAFETERIA NECESSARY FOR THE GPO TO ACCOMPLISH ITS MISSION.

DISCUSSION

AS RECOGNIZED BY THE ACTING PUBLIC PRINTER, WE TWICE PREVIOUSLY HAVE CONSIDERED WHETHER A FEDERAL AGENCY COULD USE ITS FUNDS TO SUBSIDIZE A CAFETERIA OPERATION. IN THE FIRST CASE, AN OFFICIAL OF THE RAILROAD RETIREMENT BOARD ASKED WHETHER APPROPRIATED FUNDS WERE AVAILABLE TO PAY A MONTHLY FRANCHISE FEE TO A FOOD SERVICE CONTRACTOR IN ORDER TO OBTAIN CAFETERIA SERVICE IN THE BOARD'S HEADQUARTERS OFFICE BUILDING. APPROVED THE USE OF APPROPRIATED FUNDS (THE ANNUAL APPROPRIATION FOR THE ADMINISTRATIVE EXPENSES OF THE RAILROAD RETIREMENT ACT) BY THE RAILROAD BOARD FOR PARTIAL SUBSIDIZATION OF THE CAFETERIA, BASED ON THE BOARD'S ADMINISTRATIVE DETERMINATION THAT THE MAINTENANCE OF THE CAFETERIA WAS ESSENTIAL TO THE EFFICIENCY OF OPERATIONS AND WAS A SIGNIFICANT FACTOR IN HIRING AND RETAINING EMPLOYEES AND IN PROMOTING EMPLOYEE MORALE. B-169141, MARCH 23, 1970. WE CAUTIONED THE BOARD TO INFORM THE APPROPRIATE CONGRESSIONAL COMMITTEES IF THE SUBSIDIES WOULD CONTINUE OVER AN EXTENDED TIME. ID.

SHORTLY AFTER ISSUANCE OF THAT DECISION, THE SECRETARY OF TRANSPORTATION ASKED WHETHER APPROPRIATED FUNDS COULD BE USED TO PARTIALLY SUBSIDIZE THE OPERATION OF THE EMPLOYEE CAFETERIA AT THE TRANSPORTATION SYSTEMS CENTER, CAMBRIDGE, MASSACHUSETTS. BASED ON AN ANALYSIS OF THE SITUATION AT THE TRANSPORTATION SYSTEMS CENTER WHICH REVEALED FACTORS SIMILAR TO THOSE IN B-169141, DISCUSSED ABOVE, WE AGAIN APPROVED THE USE OF APPROPRIATED FUNDS TO SUBSIDIZE AN EMPLOYEE CAFETERIA. B-169141, NOVEMBER 17, 1970. IN THIS CASE, HOWEVER, WE SAW NO NEED FOR THE AGENCY TO NOTIFY CONGRESS SINCE THE NEED FOR A SUBSIDY WAS ESTIMATED TO BE ONLY TEMPORARY, UNTIL STAFF INCREASES TOOK PLACE AT THE TRANSPORTATION SYSTEMS CENTER. ID.

ACCORDINGLY, OUR CASES B-169141, NOVEMBER 17, 1970 AND B-169141, MARCH 23, 1970, INDICATE THAT APPROPRIATED FUNDS MAY BE USED TO SUBSIDIZE A CAFETERIA IF THE AGENCY DETERMINES THAT THE EXPENSE IS A NECESSARY ONE. ALSO, C.F., B-204214,

JANUARY 8, 1982 (IN WHICH WE APPROVED AS A NECESSARY EXPENSE THE PURCHASE OF NAPKINS FOR A CAFETERIA OUT OF THE APPROPRIATION FOR SALARIES AND EXPENSES). SINCE GPO HAS ADEQUATELY DEMONSTRATED THAT SUBSIDIZING THE OPERATION OF THE EMPLOYEE CAFETERIA IS ESSENTIAL TO ITS OPERATIONS, OUR INQUIRY BECOMES WHETHER GPO HAS AN APPROPRIATION OUT OF WHICH A CAFETERIA COULD BE FINANCIALLY ASSISTED.

GPO HAS SUGGESTED THAT ITS REVOLVING FUND IS THE SOURCE FROM WHICH THE FINANCIAL ASSISTANCE COULD BE PROVIDED. THE GPO REVOLVING FUND WAS AUTHORIZED TO BE ESTABLISHED BY THE LEGISLATIVE APPROPRIATION ACT, 1954, APPROVED AUGUST 1, 1953, 67 STAT. 330, CODIFIED AT 44 U.S.C. SEC. 309. THIS LAW AS CODIFIED, PROVIDES THAT "THE REVOLVING FUND * * * IS AVAILABLE WITHOUT FISCAL YEAR LIMITATION, FOR THE OPERATION AND MAINTENANCE OF THE GOVERNMENT PRINTING OFFICE."

SINCE FISCAL YEAR 1969, THE CONGRESS HAS BEEN REQUIRED TO REVIEW AND ENACT GPO'S ANNUAL BUDGET FOR EXPENDITURES FROM THE REVOLVING FUND. SEE 44 U.S.C. SEC. 309(D). ACCORDINGLY, THE LEGISLATIVE BRANCH, APPROPRIATIONS ACT, 1985, PROVIDES

"GOVERNMENT PRINTING OFFICE REVOLVING FUND

"THE GOVERNMENT PRINTING OFFICE IS HEREBY AUTHORIZED TO MAKE SUCH EXPENDITURES, WITHIN THE LIMITS OF FUNDS AVAILABLE AND IN ACCORD WITH THE LAW, *** AS MAY BE NECESSARY IN CARRYING OUT THE PROGRAMS AND PURPOSES SET FORTH IN THE BUDGET FOR THE CURRENT FISCAL YEAR FOR THE "GOVERNMENT PRINTING OFFICE REVOLVING FUND ***."' PUB.L. NO. 98-367, 96 STAT. 472, 487 (1984).

GPO'S BUDGET FOR FISCAL YEAR 1985 INDICATES THAT ALL OF ITS PRINTING, BINDING, AND BLANK BOOK WORK FOR CONGRESS AND GOVERNMENT AGENCIES IS FINANCED FROM THE REVOLVING FUND. SEE LEGISLATIVE BRANCH APPROPRIATIONS FOR 1985: HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, 98TH CONG., 2D SESS. 676 (1984). THEREFORE, THE REVOLVING FUND FOR OPERATION AND MAINTENANCE OF THE GPO IS ANALOGOUS TO AN AGENCY'S ANNUAL APPROPRIATION FOR SALARIES AND EXPENSES, UNDER WHICH ALL NECESSARY EXPENSES OF AN AGENCY CAN BE PAID. ACCORDINGLY, GPO MAY USE THE REVOLVING FUND TO FINANCIALLY ASSIST THE CAFETERIA, SINCE AS WE HAVE INDICATED THE ACTING PUBLIC PRINTER HAS ESTABLISHED THE NECESSITY OF THE CAFETERIA TO THE OPERATION OF GPO.

HAVING REACHED THE CONCLUSION THAT THE GPO MAY USE THE REVOLVING FUND TO AID THE CAFETERIA, WE MUST NOW DETERMINE WHAT FORM THIS ASSISTANCE MAY TAKE. GPO HAS SUGGESTED THAT IT COULD GUARANTEE A LOAN FROM A CONVENTIONAL LENDER TO THE ASSOCIATION, MAKE A DIRECT LOAN TO THE ASSOCIATION, OR PROVIDE A LINE OF CREDIT AS NEEDED UP TO A MAXIMUM OF $50,000. IN OUR OPINION, ANY OF THE PROPOSED METHODS MAY BE USED.

THE GPO SUBMISSION STATES THAT IN LIGHT OF OUR PRECEDENTS THAT CAFETERIA OPERATIONS MAY BE SUBSIDIZED, "THERE SEEMS TO BE NO LOGICAL REASON WHY MAKING LOANS OR GUARANTEEING LOANS WOULD NOT ALSO BE PERMISSIBLE." ORDINARILY AUTHORITY TO MAKE OR GUARANTEE LOANS IS PROVIDED BY STATUTE. HOWEVER, IN VIEW OF OUR DETERMINATION THAT GPO MAY PROVIDE FINANCIAL ASSISTANCE TO THE CAFETERIA, WE DO NOT CONSIDER THE LACK OF STATUTORY AUTHORITY FOR GPO TO MAKE OR GUARANTEE LOANS TO BE OF CONSEQUENCE IN THIS LIMITED SITUATION. AS GPO POINTS OUT, IT WOULD NOT MAKE SENSE TO AUTHORIZE GPO TO GIVE FINANCIAL ASSISTANCE AND THEN PRECLUDE GPO FROM BEING REIMBURSED FOR THE AMOUNT TENDERED.

NEVERTHELESS, WE WOULD STRONGLY SUGGEST THAT GPO NOT USE THE LOAN GUARANTEE MECHANISM. IF IT WERE TO GUARANTEE A LOAN, GPO WOULD HAVE A CONTINGENT LIABILITY

FOR WHICH A RESERVE SHOULD BE SET ASIDE WITHIN THE REVOLVING FUND. THUS, SINCE SETTING ASIDE A RESERVE WITHIN THE REVOLVING FUND WOULD BE EFFECTIVELY THE SAME AS MAKING A LOAN OUT OF THE FUND, THE SIMPLER COURSE OF ACTION, WHICH AVOIDS CONTRACTING WITH THIRD-PARTIES, IS FOR GPO TO MAKE A DIRECT LOAN.

ANY COST TO GPO OF ASSISTING THE CAFETERIA WOULD, AS A NECESSARY EXPENSE, BE A COST OF DOING BUSINESS. IT THEREFORE SHOULD BE INCLUDED IN "OVERHEAD AND RELATED EXPENSES" WHICH MAKE UP PART OF THE CHARGES GPO BILLS ITS CUSTOMERS. SEE 44 U.S.C. SEC. 309(B)(1). FURTHERMORE, SINCE THE REVOLVING FUND IS TO BE "CREDITED WITH ALL RECEIPTS" EXCEPT FOR CERTAIN RECEIPTS FROM THE SALES OF GOVERNMENT PUBLICATIONS WHICH MUST BE DEPOSITED IN THE TREASURY AS MISCELLANEOUS RECEIPTS, ANY LOAN REPAYMENTS MAY BE DEPOSITED IN THE REVOLVING FUND. SEE 44 U.S.C. SECS. 309(B)(2), (3); 1509, 1702, AND 1708.

ACCORDINGLY, GPO MAY PROVIDE FINANCIAL ASSISTANCE IN ORDER TO ENABLE THE CAFETERIA TO BE KEPT OPEN. IF THIS WILL INVOLVE ONGOING ASSISTANCE, WE SUGGEST THAT GPO BRING THE MATTER TO THE ATTENTION OF THE JOINT COMMITTEE ON PRINTING.