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B-238937, Mar 22, 1991

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MISCELLANEOUS TOPICS - Federal Administrative - Legislative - Matters - Vending facilities - Profits - Distribution APPROPRIATIONS/FINANCIAL MANAGEMENT - Budget Process - Funding - Vending facilities - Profits

DIGEST

Henry R. Vogt III: 215 South Broad Avenue New Orleans, Louisiana 70119

Dear Mr. Vogt:

By letter dated February 28, 1990, you asked for our opinion on certain aspects of the contractual arrangement between your clients, Mr. and Mrs. Vaughn, and an employee union, the New Orleans District Morale Committee, Corps of Engineers, Department of the Army (Morale Committee). Under this contractual arrangement, Mr. and Mrs. Vaughn managed vending machines which dispensed such items as soft drinks, cigarettes, and candy, and which were located throughout the New Orleans District Reservation. Mr. Vaughn agreed "to pay to the Committee 50 percent of all profits and commissions paid to him for products sold from these machines." You question the legality of these payments, suggesting that the arrangement may have violated laws and regulations "governing the funding of Federal agencies."

Prior to the enactment of amendments to the Randolph-Shephard Act in 1974, we viewed the practice of allowing employee groups, such as the Morale Committee, to utilize federal property free of charge and to retain the funds from vending machines without any accountability as one of questionable legality. See, e.g., 32 Comp.Gen. 124 (1952). In our opinion, income derived from vending machines on federal property was received "for the use of the United States," as that phrase was used in 31 U.S.C. Sec. 484 (codified to 31 U.S.C. Sec. 3302), and hence was required to be deposited in the Treasury as miscellaneous receipts. In 1974, however, the Congress settled the matter by sanctioning the retention by such private groups of half of the vending machine income earned if the private groups shared the other half with the blind. See Texas State Comm'n for the Blind v. United States, 796 F.2d 400, 409 (Fed. Cir. 1986).

Under 20 U.S.C. Sec. 107 (1988), blind persons licensed by state agencies are given priority to operate vending facilities, including vending machines, located on federal property. If there is no blind licensee operating the vending machines, and if the machines are not in direct competition with a blind vending facility, as is the case here, 50 percent of the vending machine income (i.e., the commission paid by the Vaughns to the Morale Committee), as a general proposition, accrues to state agencies for the blind. 20 U.S.C. Sec.

107d-3(b)(1), 107e(8). Accordingly, payments to the Morale Committee are impliedly sanctioned by section 107d- 3(b)(1), title 20, United States Code, so long as 50 percent of any amounts paid to the Committee are then paid by the Committee to the appropriate state agency for the blind.

If you have any further questions about this issue, please feel free to call Andrea Levine of my staff at (202) 275-5644.