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B-240914, Aug 14, 1991, Office of General Counsel

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Appropriation Availability - Purpose availability - Appropriation restrictions - Government corporations DIGEST: The expenditure of funds by Federal Prison Industries, Inc., a government corporation, to enter business of envelope manufacturing is within the range of discretion afforded the Corporation by its enabling statute.

J. Gregory Sidak, Esq.:

Covington & Burling

Counsel for Envelope Manufacturers

Association of America

Mr. Sidak:

This responds to your request for our opinion regarding the propriety of the Federal Prison Industries Inc.'s (FPI) decision to expend funds for the purpose of manufacturing envelopes for sale to the federal government. We conclude that FPI's decision is not contrary to its statutory purpose and is within the range of discretion afforded the corporation by its enabling statute.

BACKGROUND

As you know, FPI is charged with providing employment to prison inmates. 18 U.S.C. Sec. 4122. Products manufactured by inmates are sold to federal agencies. In fact, if FPI manufactures a product required by an agency, the agency is required to purchase the product from FPI at prices not to exceed current market prices. 18 U.S.C. Sec. 4124; 48 C.F.R. Sec. 8.602. Section 4122(b)(2) provides that FPI shall concentrate on providing products which permit the employment of the greatest number of inmates.

In this regard, on July 31, 1990, FPI's board of directors authorized the corporation to manufacture envelopes. You contend that FPI's decision to enter the envelope manufacturing industry is contrary to the statutory directive set forth in Sec. 4122(b)(2). You state that envelope manufacturing is a highly automated, capital-intensive industry that will provide employment to comparatively few federal inmates. Consequently, you argue that FPI's appropriation is not available for the purpose of entering into the business and any expenditure in furtherance of that purpose would constitute a violation of law.

Discussion

FPI is funded by means of a revolving fund which constitutes a permanent or continuing appropriation to carry out FPI activities. /1/ Since this revolving fund is an appropriation, it may be spent only for such purposes as are expressly authorized by law or for those purposes which are by implication necessary to the proper execution of an expressly authorized purpose. 31 U.S.C. Sec. 1301(a). B-230304, Mar. 18, 1988. Where a given expenditure is not specifically provided for in an appropriation, the question is whether the expenditure bears a reasonable relationship to fulfilling an authorized purpose or function of the agency. This is a matter of agency discretion, in the first instance. In determining whether the agency abused that discretion, we decide whether the expenditure falls within the agency's legitimate range of discretion, or whether its relationship to an authorized purpose or function is so attenuated as to take it beyond that range. 69 Comp.Gen. 38 (1989), citing B-223608, Dec. 19, 1988.

Pursuant to section 4126, FPI's revolving fund is available for operating capital in performing its statutory duties and in the lease, purchase, other acquisition, repair, alteration, erection, or maintenance of industrial buildings and equipment. Consequently, the fund is available to finance FPI's envelope manufacturing activities so long as FPI is authorized to engage in the manufacture of envelopes. We cannot conclude upon review of the record that envelope manufacturing is so removed from FPI's mission as to prohibit the expenditure of funds for that purpose.

Section 4122(a) provides FPI's board with considerable discretion. See generally, Garza v. Miller 688 F.2d 480, 484-85 (7th Cir. 1982), cert. denied, 459 U.S. 1150 (1983). Moreover, section 4122(b)(2) itself requires FPI to maximize employment opportunities only so far "as is reasonably possible." FPI's board of directors determined that envelope manufacturing would further its purposes of providing employment for the greatest number of inmates as is reasonably possible and diversifying and operating prison industries so as to avoid unfair competition with private industry. The Board acknowledges that envelope manufacturing is less labor intensive than many other areas that it currently operates in, however, it believes that envelope manufacturing is sufficiently labor- intensive to further FPI's objectives. The Board also notes that labor intensity is increased in a prison setting since FPI uses manpower-intensive rather that machine intensive procedures wherever possible.

An economic analysis you submitted to us shows that envelope manufacturing would rank 21st out of 37 industries in which FPI currently participates in terms of number of employees per dollar of value added and 30th out of 37 in number of employees per dollar of shipments. While these statistics may suggest that there are numerous other industries that are more labor-intensive, we do not think that it necessarily follows that FPI's choice of envelope manufacturing as a new industry to enter is in violation of FPI's statutory purpose. Regardless, the statute does not require that FPI enter only the most labor-intensive industries.

We do not opine, nor should we, on whether envelope manufacturing is the optimal choice of industry for FPI. Rather, we conclude only that FPI has not abused its discretion in selecting that industry and, on this basis, that expending appropriated funds to implement that choice would not violate section 1301(a).

We trust that this adequately responds to your question. If we may be of further assistance, please call me or Barbara Timmerman of my staff at (202) 275-5644.

/1/ 18 U.S.C. Sec. 4126. See 60 Comp.Gen. 323 (1981).