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B-36099, Aug 14, 1943

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B-36099, AUG 14, 1943

PRECIS UNAVAILABLE

MR. P. H. HARLEY, AUTHORIZED CERTIFYING OFFICER,

FOREST SERVICE, DEPARTMENT OF AGRICULTURE,

POST OFFICE BUILDING,

ALBUQUERQUE, NEW MEXICO.

DEAR MR. HARLEY:

I HAVE YOUR LETTER OF JULY 29, 1943 (REFERENCE, A, DISBURSEMENT, GENERAL ACCOUNTING OFFICE), REQUESTING DECISION WHETHER YOU ARE AUTHORIZED TO CERTIFY FOR PAYMENT A VOUCHER STATED IN FAVOR OF THE ARIZONA STATE LAND DEPARTMENT IN THE AMOUNT OF $19.40, REPRESENTING THE AMOUNT CLAIMED FOR RENTAL FOR THE PERIOD BEGINNING JULY 1, 1943, AND ENDING JUNE 30, 1944, OF 640 ACRES OF RANGE LAND INCLUDED IN THE SOUTHWESTERN FOREST AND RANGE EXPERIMENT STATION HEADQUARTERS, AND OCCUPIED UNDER LEASES NOS. 27935-U, 27936-U, 27937-U AND 27938-S.

THERE IS ATTACHED TO THE VOUCHER A BILL DATED MAY 1, 1943, CONTAINING AN ITEMIZED STATEMENT OF THE AMOUNT CLAIMED AND A NOTICE TO THE EFFECT THAT THE RENTAL CLAIMED ON SAID BILL WILL BE DUE AND PAYABLE AT THE OFFICE OF THE STATE LAND DEPARTMENT ON JULY 1, 1943, AND THAT IF THE RENTAL IS NOT RECEIVED ON OR BEFORE THE DUE DATE, PENALTY AND INTEREST WILL BE ADDED THERETO. ALSO, THERE IS ATTACHED TO SAID VOUCHER, LETTER DATED JUNE 15, 1943, FROM THE DEPUTY COMMISSIONER OF THE STATE LAND DEPARTMENT TO THE UNITED STATES FOREST SERVICE AT TUCSON AS FOLLOWS:

"YOURS OF JUNE 11TH REGARDING PAYMENT OF RENTALS ON LANDS LEASED FROM THE STATE OF ARIZONA HAS BEEN REFERRED TO ME FOR REPLY.

"IN ANSWER THERETO I WISH TO QUOTE YOU THE PART OF THE STATUTE WHICH APPLIES TO THE PAYMENT OF RENTALS:

"'SECTION 11-304. - THEREAFTER THE COMMISSIONER OR HIS DULY APPOINTED REPRESENTATIVE SHALL INVESTIGATE AND CLASSIFY SAID LAND AND SHALL ASSESS A FAIR AND EQUITABLE RENTAL THEREON; SAID RENTAL SHALL BE PAID IN ADVANCE, ANNUALLY OR FOR SUCH OTHER PERIOD NOT EXCEEDING TWO (2) YEARS AS THE COMMISSIONER MAY FIX.'

"IN VIEW OF THE ABOVE SECTION OF THE STATUTE, IT DOES NOT APPEAR THAT THERE IS

ANY DISCRETION IN THE COMMISSIONER AS TO HOW THE RENTALS SHALL BE COLLECTED. HE IS CHARGED WITH THE ADMINISTRATION OF A TRUST, AND IS DEFINITELY INSTRUCTED TO COLLECT RENTALS IN ADVANCE.

"WE ARE SORRY THAT WE HAVE NO DISCRETION IN THE MATTER, AND WISH TO COOPERATE WITH YOU IN EVERY WAY POSSIBLE, BUT WE CANNOT ENTER INTO A LEASE PAYABLE IN ANY OTHER MANNER."

THE LEASES UNDER WHICH THE LAND IS REPORTED TO BE OCCUPIED DO NOT APPEAR TO BE PRESENTLY FILED IN THIS OFFICE. HOWEVER, IT IS UNDERSTOOD INFORMALLY THAT SAID LEASES PROVIDE FOR THE ADVANCE PAYMENT OF RENTAL.

SECTION 3648, REVISED STATUTES, PROHIBITS THE DISBURSEMENT OF PUBLIC FUNDS IN ADVANCE OF THE RENDERING OF SERVICES OR DELIVERY OF MATERIALS FOR WHICH PAYMENT IS MADE, AND IT HAS BEEN REPEATEDLY HELD THAT THIS STATUTORY INHIBITION IS APPLICABLE TO LEASES EXECUTED BY OR ON BEHALF OF THE UNITED STATES AS LESSEE. 3 COMP.GEN. 542; 18 ID. 839; 19 ID. 758. IN THIS CONNECTION IT IS NOTED THAT THERE IS NO SPECIFIC PROVISION IN THE APPROPRIATION DESIGNATED ON THE VOUCHER "SALARIES AND EXPENSES FOREST SERVICE," SUBTITLE "RANGE INVESTIGATIONS" AS MADE BY THE ACT OF JULY 12, 1943, 57 STAT. , PUBLIC LAW 129, EXEMPTING IT FROM THE PROHIBITION IN SAID SECTION 3648.

OF COURSE, THE PRIMARY PURPOSE OF SAID SECTION IN THE REVISED STATUTES IS OBVIOUS. THE DANGER INHERENT IN AN ADVANCE PAYMENT OF MONEYS PRIOR TO THE RENDERING OF SERVICE OR DELIVERY OF MATERIALS UNDER A CONTRACT IS THAT THERE IS ALWAYS A POSSIBILITY OF FAILURE OF PERFORMANCE ON THE PART OF THE CONTRACTOR OR HIS REFUSAL OR INABILITY TO REFUND THE MONEYS ADVANCED. HOWEVER, THE LESSER, IN THIS INSTANCE IS A STATE AND IN CONNECTION WITH A SOMEWHAT SIMILAR SITUATION INVOLVING PROPOSED ADVANCE PAYMENTS TO VARIOUS STATES FOR THE AMOUNT OF THE ESTIMATED COST OF PREVENTING AND CONTROLLING FIRES IN CRITICAL AREAS, IT WAS STATED IN DECISION OF JULY 19, 1943, B- 35670, TO THE SECRETARY OF AGRICULTURE, AS FOLLOWS:

"*** HOWEVER, HAVING REGARD FOR THE ESTABLISHED RESPONSIBILITY OF A STATE, THAT DANGER WOULD SEEM TO BE LESS REAL WHERE A STATE IS THE CONTRACTOR UNDERTAKING TO RENDER SERVICES UNDER AN AGREEMENT WITH THE UNITED STATES, PARTICULARLY WHERE, AS HERE, THE ENDS TO BE ACHIEVED BY THE PERFORMANCE OF THE SERVICE - THE PREVENTION AND SUPPRESSION OF FOREST FIRES WITHIN ITS CONFINES - WILL BENEFIT THE STATE AS WELL AS THE FEDERAL GOVERNMENT. THEREFORE, AND IN VIEW OF THE EMERGENT NATURE OF THE WORK TO BE PERFORMED AND THE UNDOUBTED RELATIONSHIP OF THAT WORK TO THE WAR EFFORT (COMPARE 22 COMP.GEN. 386), I HAVE TO ADVISE THAT THE PROPOSED ARRANGEMENT FOR ADVANCES MAY BE REGARDED AS WITHIN YOUR ADMINISTRATIVE DISCRETION IN THE USE OF THE APPROPRIATION INVOLVED, WHICH IS SPECIFICALLY MADE AVAILABLE FOR COOPERATION WITH THE VARIOUS STATES. ***"

IN THE PRESENT CASE THE CONSIDERATIONS FOR APPROVING THE ADVANCE PAYMENTS UNDER THE LEASE ARE EQUALLY PERSUASIVE AND THE DANGER OF THE UNITED STATES SUFFERING A LOSS BY REASON OF SUCH PAYMENTS IS EQUALLY REMOTE IF THERE BE CONSIDERED NOT ONLY THE SMALL AMOUNT OF THE TOTAL ANNUAL RENTAL RATE OF $19.40, BUT ALSO THE FACT THAT IT IS TO THE ADVANTAGE OF THE STATE TO KEEP THE GOVERNMENT IN OCCUPANCY OF THE LAND. THE HEARINGS ON THE APPROPRIATION PROPOSED TO BE CHARGED WITH THE RENTAL UNDER THE LEASES HERE INVOLVED DISCLOSE THAT THE ACTIVITIES FOR WHICH THE LANDS ARE LEASED INVOLVE THE INVESTIGATION OF LIVESTOCK BREEDING, FEEDING AND GRAZING ON THE RANGE IN THE FORESTS OF THE VARIOUS STATES WITH A VIEW TO IMPROVING PRODUCTION OF LIVESTOCK, AND THAT SUCH ACTIVITIES ARE CARRIED

ON IN COOPERATION WITH THE VARIOUS STATE EXPERIMENT STATIONS.

THEREFORE, CONSIDERING THE REQUIREMENTS OF THE STATE LAW AS REPORTED IN LETTER OF JUNE 15, 1943, QUOTED ABOVE, AND THE OTHER FACTORS INVOLVED, YOU ARE ADVISED THAT, IF THE LEASES IN FACT PROVIDE FOR PAYMENTS IN ADVANCE, THE VOUCHER, IF CORRECT IN OTHER RESPECTS, MAY BE CERTIFIED FOR PAYMENT.

SAID VOUCHER AND RELATED PAPERS ARE RETURNED HEREWITH.