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Dear Mr. Aspinall:

Your letter of October 2, 1970, requested that we furnish you with information concerning statements that were made by Mrs. Melvin L. Jensen in a letter to you dated September 28, 1970. Mrs. Jensen stated that her son and other young men had not been paid by Mr. Leslie Lind of Palisade, Colorado, for work they had performed under contracts awarded to Mr. Lind by the Forest Service, Department of Agriculture.

To obtain information regarding your request, we reviewed pertinent Forest Service records and interviewed Forest Service officials at the Grand Mesa-Uncompahgre National Forest and at the Forest Service headquarters. We interviewed also Department of Labor officials in Denver, Colorado, Mr. Lind, and Mrs. Jensen and other mothers of young men employed by Mr. Lind.

The statements made by Mrs. Jensen concerned work performed under five contracts between the Forest Service and Mr. Lind, owner of the Lind Tree Service. The contracts provided that Mr. Lind's firm plant tree seedlings in the Grand Mesa-Uncompahgre National Forest. Work under the contracts, for which Mr. Lind received \$17,361, was started early in June 1970 and was completed late in June and early in July 1970.

Mrs. Jensen and the other mothers we interviewed estimated that Mr. Lind owed about \$8,000 in wages to their sons and other young men employed to plant seedlings. Mr. Lind told us that he owed a total of about \$1,000 to 19 employees.

Because Mrs. Jensen had previously contacted the Denver area office of the Department of Labor's Wage and Hour and Public Contracts Division concerning this matter, we interviewed the Denver area director for the Division. He advised us that the Division's investigation had identified at least \$2,000 of unpaid wages but could not identify the total amount of unpaid wages because of Mr. Lind's inadequate wage and salary records. In view of the Department of Labor's investigation, we did not review Mr. Lind's records.

Mr. Lind informed us that he did not have the money to pay the unpaid wages and that he was initiating bankruptcy action.

We noted that the Department of Labor advised you by letter dated October 12, 1970, that it was requesting its Regional Solicitor in Kansas City to consider the possibility of taking legal action against Mr. Lind

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pursuant to sections 4 and 5 of the Service Contract Act (41 U.S.C. 351). The Department of Labor's attorney in the Denver area office told us that the effect of such action would be to place the Lind Tree Service on the debarred, ineligible, and suspended bidder's list for all Government contracts and that he would recommend to the Regional Solicitor that such action be taken.

Forest Service officials at the Grand Mesa-Uncompahgre National Forest advised us that the Forest Service cannot withhold payments to a contractor because of nonpayment of wages unless directed to do so by the Department of Labor's Wage and Hour and Public Contracts Division. They stated that it was a Forest Service practice to advise individuals to register complaints concerning nonpayment of wages with the Department of Labor.

A Forest Service headquarters official having responsibility in the area of procurement told us, however, that the Forest Service had the authority to withhold payments to a contractor for nonpayment of wages without being directed to do so by the Department of Labor. The headquarters official stated that the provision of the Forest Service contracting guidelines, quoted below, applies to contracts of the type entered into with Mr. Lind and should be incorporated into each contract:

"The Contracting Officer may withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract such sums as are necessary to pay unpaid employees."

This provision is intended to implement the Service Contract Act of 1965 and the regulations issued by the Secretary of Labor thereunder (29 CFR Part 4). To the extent that this provision was included in, or made applicable to, the contracts in question, it is our opinion that the provision authorized the contracting officer to withhold contract payments to cover the wages which were due the employees. This provision had been included as an addendum to the copies of the contracts made available to us.

We were told by the mothers of three of the young men employed by Mr. Lind that they had telephoned the Grand Mesa-Uncompahgre National Forest Supervisor's office on July 2, 3, and 9, 1970, and had complained

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that their sons had not been paid by Mr. Lind. They informed us that their telephone bills listing those calls had been furnished to you.

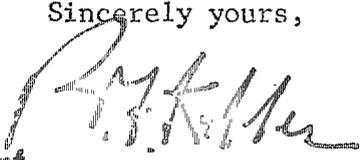
A member of your staff advised us that you had received two telephone bills and that those bills showed that calls had been made to the Grand Mesa-Uncompahgre National Forest Supervisor's office on July 2, 9, 20, and 23, 1970.

Officials of the Grand Mesa-Uncompahgre National Forest Supervisor's office told us that, as far as they could determine, they had not received any complaints concerning nonpayment of wages prior to paying Mr. Lind for work performed under the five contracts. The five contracts were approved for payment on June 24, July 2, 8 (two contracts), and 22, 1970.

The information presented above indicates to us that the Grand Mesa-Uncompahgre National Forest Supervisor's office did not respond effectively to the complaints concerning nonpayment of wages by Mr. Lind. We believe that this situation may have resulted from confusion on the part of the Forest Service officials at the Grand Mesa-Uncompahgre National Forest regarding the contracting officer's authority to withhold payments to a contractor when such complaints of nonpayment of wages are received.

Although this situation may be isolated, we believe that it indicates a need for the Forest Service to provide assurance that all of its offices understand the responsibility of the contracting officer under 29 CFR 4.6 to make a decision on the matter of withholding payments to a contractor when a complaint concerning nonpayment of wages is received. As agreed with your office, we are sending a copy of this report to the Chief of the Forest Service and are requesting him to inform us of any action the Forest Service may take.

Sincerely yours,


Assistant

Comptroller General
of the United States

The Honorable Wayne N. Aspinall
House of Representatives