



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

A-95642

NOV 18 1943

The Honorable

The Secretary of the Navy.

My dear Mr. Knox:

Examination by representatives of this office of the contracts and records pertaining to the operation of the restaurant at the Portsmouth Navy Yard, Kittery, Me., brings out certain matters to which it is deemed advisable to invite your attention, and which are reported substantially as follows:

The restaurant at the Portsmouth Navy Yard, Kittery, Me., has been operated as a concession by Crotty Brothers, Maine, Inc., under an agreement dated April 28, 1941, entered into by and between the Portsmouth Navy Yard, represented by John D. Wainwright, Rear Admiral, Commandant, and Crotty Brothers, Maine, Inc., represented by Andrew J. Crotty, Jr., President, which grants the exclusive privilege of selling all food stuffs, including candy, tobacco, milk, and beverages, excepting alcoholic beverages, within the Navy Yard plant, except at the Submarine Barracks, Marine Barracks, Naval Prison, Hospital, and Officers' Club. The contract provides for payment by Crotty of 4 per cent of its gross receipts, with the exception of receipts from sales of milk, cigars, cigarettes, and tobacco.

By an exchange of letters, the agreement was modified effective October 1, 1941, to provide for a commission of 2 per cent in lieu of 4 per cent.

Commissions received from Crotty have been paid by checks made payable to the "Navy Yard Morale Fund", and have been deposited by Mr. Dennis Long, chief clerk, in the New Hampshire National Bank, Portsmouth, N. H. Records show that the balance on hand as of August 30, 1943, was \$12,391.85, and that over the period from June 1941 to August 21, 1943, a total amount of \$18,835.43 was disbursed therefrom, for various purposes.

When Admiral Withers, present Commandant, was first contacted regarding the contract, he stated that he had been tipped off from Quonset Point, R.I., that the Comptroller General's investigators were going into the matter of restaurant contracts, and that he intended to obligate the balance on hand in the fund so that it could not be taken over, and to negotiate a new contract which could not be questioned by the Comptroller General.

A new agreement was executed as of August 26, 1943, by and between the Portsmouth Navy Yard Employees' Cooperative Association, and Crotty Brothers, Maine, Inc., and the agreement is shown to have been approved by T. Withers, Rear Admiral, Commandant. The terms and conditions of this agreement, with some changes, are similar to the prior agreement. The clause providing for payments is as follows:

"Crotty further agrees to pay to the Association two per cent of its gross receipts from the business done in the Navy Yard Plant."

The contractor occupies space in buildings in the Navy Yard as follows:

Building No. 13. A building approximately 100 feet by 200 feet houses the main cafeteria. It was learned that charges for electricity and water are metered for this building and paid by Crotty to the disbursing officer. Charges for heat and power (steam) are prorated and appear to be proper. Charges for gas are paid direct (tank gas is used) but all gas piping and connections were furnished at Government expense.

Building No. 174. A portion of this building, approximately 50 feet by 100 feet, has been occupied by Crotty since February 3, 1943, without any charges for electricity, water, heat, and power.

Six "shacks" approximately 7 feet by 18 feet, built outside various buildings in the Yard, are occupied by Crotty at various feeding intervals throughout the day for the distribution of sandwiches, coffee, etc., for the workmen. These shacks have no connections for water, heat, and power, but are wired for two light receptacles for which no electricity charge is made to Crotty. In addition to these buildings, ovens, stoves, refrigerators, racks, counters, tables, and chairs are furnished by the Navy.

In an interview, Capt. R. D. Spalding, Public Works Officer, stated that he had billed Crotty for power, water, heat, and light furnished to Building No. 18 (the main restaurant building), but that to his knowledge no charges have been made for these utilities in other locations occupied by Crotty. He stated that he would start billing the contractor for utilities used in Building No. 174 as of September 1, 1943, but that only electricity was used in the six shacks and that the amount used would be too small to bother with. Capt. Spalding also stated that the Navy has been furnishing all janitor service for Building No. 174; that this appeared to be proper when Crotty first started using this building in early 1943 because the Navy furnished this space as a room in which its employees might keep warm while eating lunch; and that the business kept growing and when service counters were built for Crotty (completed February 3, 1943) he felt that the contractor should furnish his own janitor service, but was told by the Commandant that Crotty was unable to obtain the necessary help to supply this service; but that beginning September 1, 1943, either Crotty would furnish his own service or be charged for the service furnished by the Navy. With reference to past due charges for utilities and janitor service for building No. 174, Capt. Spalding stated that he would prefer to have the General Accounting Office establish these amounts, after which action would be taken to effect collection.

Means for the determination of the value of utilities furnished Building No. 174 were not presently available. However, inquiry disclosed that for the period from February 4, 1943, to July 31, 1943, inclusive, the full time services of at least two janitors were used for the portion of the building occupied by Crotty, which services at the median rate of pay for janitors, \$6.40 per day (\$12.80 for two), would approximate \$2,278.40.

For the period of June 1, 1942, to July 31, 1943, inclusive, Crotty has received commissions of \$17,171.52 from vending machines of the Maine Candy Service Co., Portsmouth, N. H.,. These vending machines are owned and serviced by the Maine Candy Service Co. with no operating expense whatsoever to Crotty and the commission is on a 20 per cent basis.

For the period of April 1, 1942, to July 31, 1943, inclusive, Crotty received commissions of \$18,920.68 from the Beverage Dispensers of Boston, Inc., 113 Lincoln Street, Boston, Mass., for sales of beverages dispensed in cups from vending machines. This commission is on a 25 per cent basis or \$.0125 per drink. These vending machines are owned and serviced by the Beverage Dispensers of Boston, Inc., with no operating expense to Crotty. Of the eighteen machines now in the Yard under Crotty only one machine is located in the restaurant.

On the combined profits of candy vending machines, and drink vending machines, amounting to \$36,092.20, Crotty has paid a 2 per cent commission on gross sales amounting to \$3230.80, leaving a balance of \$32,861.40 profit to Crotty.

For the period of March 20, 1942, to July 31, 1943, inclusive, Crotty has received commissions of \$8990.65 from the Maine Cigarette Service Co., Portsmouth, N.H., for sales of cigarettes from vending machines. This commission is on a \$.015 basis per package of cigarettes. These vending machines are owned and serviced by the Maine Cigarette Service Co. with no operating expense to Crotty, but all of this profit has been retained by Crotty per paragraph 1, of agreement dated April 28, 1941.

This profit of \$8,990.65 plus the profit of \$32,861.40 as shown, supra, totals \$41,852.05 profit to Crotty for the period of March 20, 1942, to August 21, 1943.

In an interview Mr. Long stated that he knew of no authority for creating a "Navy Yard Morale Fund"; that he knew of no authority for the disposition of such a fund; that competitive bids were not solicited in granting the concession to Crotty; and that a copy of the contract was not transmitted to the General Accounting Office. Mr. Long further stated that the authority for negotiating the agreement of August 26, 1943, was letter dated July 15, 1943, from Ralph A. Bard, Assistant Secretary of the Navy (SOSED-IE-WEB/br).

It is requested that the value of the utilities and janitor service furnished the contractor over the period for which charges were not made be ascertained and collection made.

In accordance with the requirements of section 3743, Revised Statutes, the original contract as modified and supplemented should be forwarded to this office, together with justification for entering into the contract without advertising.

Regardless of the form of the agreement and the contracting parties, it is obvious that the restaurant is operated in Government

buildings and that its equipment, in large part, was paid for from appropriated funds of the United States.

As was stated in a previous letter to you (A-95642, March 19, 1943), covering a similar matter, it is appreciated that the cafeteria serves a very useful purpose, and there is certainly no disposition on the part of this office to object to it. However, in the absence of statutory authority permitting the retention of revenues accruing therefrom, and since the right to place vending machines in Government-owned buildings constitutes a valuable privilege which should be let to the highest bidder, all receipts from such leasing are public funds and, together with all revenues from the cafeteria, are required to be deposited and covered into the Treasury as miscellaneous receipts under the provisions of section 3617, Revised Statutes (U.S.C. 31434) and 7 Comp. Gen. 306.

Advice as to the action taken will be appreciated.

Sincerely yours,

Comptroller General  
of the United States