

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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JUL 23 1976

FILE: B-133001

DATE:

MATTER OF: Payment of VAA Employees Evacuated from Saigon

DIGEST:

1. 31 U.S.C. § 492a and Treasury regulations issued pursuant thereto permit exchange transactions of U.S. and foreign currency or instruments for certain categories of people for accommodation purposes or for official purposes. Employees of Vietnamese-American Association (VAA), a binational organization receiving United States Information Agency grants, received piaster checks from VAA. Employees were evacuated from Vietnam to the United States before checks could be converted to American dollars. GAO agrees that Treasury acted in accordance with regulations in now refusing to convert checks to American dollars.
2. Under grant agreement between United States Information Agency (USIA) and Vietnamese-American Association (VAA), a binational organization operating in Vietnam, United States was to make payments to VAA in four annual installments. VAA employees were evacuated from Vietnam before they could be paid (or in case of 16, before piaster checks issued by VAA could be exchanged for American dollars). USIA may not now pay employees who are in United States directly from its appropriation, except to extent of final unpaid grant installment.

This decision is in response to a request from the Deputy Director of the United States Information Agency (USIA) for an opinion regarding that agency's authority to pay from its appropriation final salary, severance pay, and pay in lieu of notice to former employees of the Vietnamese-American Association (VAA) who were evacuated from Saigon with the United States Mission at the end of April 1975, and now are residing in the United States as refugees.

Specifically, the Deputy Director asked the following:

"* * * whether (a) salary payments originally made to sixteen employees in piasters may be converted to U.S. dollars by the Treasury Department, crediting the Agency's

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appropriation; and (b) whether the Agency has the legal authority to make payments directly from its appropriation to the other thirty-four individuals who received no payments. Should it seem more readily convenient or appropriate to avoid conversion of the piaster checks into dollars, the sixteen individuals who received their payments in piasters could also be paid directly from the Agency's appropriation as in (b) supra."

Circumstances leading to the request are outlined by the Deputy Director in his letter as follows:

"The Vietnamese-American Association (VAA) was a bi-national center chartered under the laws of the Republic of Vietnam. It was founded for the purpose of strengthening ties of friendship and understanding between the peoples of Vietnam and the United States by promoting intellectual and cultural exchange. The VAA was governed by a Board of Directors consisting of Vietnamese and American citizens. The Director of the VAA was a USIA Foreign Service Officer. Over the years, USIS Saigon conducted many joint cultural programs with the VAA and supported these activities with limited cash grants and materials. The USIS library was housed in the VAA building. The VAA's principal source of income was English teaching course tuitions. The staff and teachers were employees of the VAA, not direct-hire employees of the U.S. Government. Copies of the Memorandum of Agreement and of the Grant Agreements executed during FY 1975 by USIS and the VAA are enclosed as Exhibit A.

"Before the evacuation from Saigon, the VAA Board of Directors authorized final salary and severance payments for the staff, and final salary and one month's pay in lieu of notice for teachers. The Director of the VAA, a USIA officer, issued piaster checks to sixteen staff employees, as the VAA held no dollar funds of its own. Unfortunately, there was insufficient time for the U.S. Embassy Disbursing Officer in Saigon to convert these piaster checks to dollars before the employees had to leave Vietnam. It was expected that the piasters could be converted later at the refugee center in Guam or in the United States. The thirty-four teachers at the VAA who departed during the evacuation received no payment at all. * * *

"The Agency and the Department of State, working with the Interagency Task Force for Indo-China, sought to have the piasters converted. However, the Fiscal Assistant Secretary of Treasury rejected the requests to purchase piasters for dollars from refugees located outside Vietnam. * * *

"* * * The Memorandum of Agreement and Grant Agreement Number IA 298-1386 /between USIS and the VAA/ provided for payment of the grant in four installments and also provided for changes in the size of the grant due to changes in the size of the VAA staff and the costs of employees' payrolls. * * * It appears that the fourth quarterly installment payment which was to be paid by USIS in April was never received by the VAA, probably because of the heavy demands placed upon the U.S. Disbursing Officer prior to the evacuation. * * *"

We received the views of the Department of the Treasury in a letter from the Fiscal Assistant Secretary of the Treasury. Attached to the letter is a memorandum dated July 7, 1975, stating the reasons for Treasury's denial of a request by USIA that Treasury convert piaster checks to American dollars for the 16 VAA employees described above. Treasury takes the position that the checks are not obligations of the U.S. Government, and that even if they were, it could not make the conversion.

The following excerpts from the Treasury memorandum add background information concerning the Saigon evacuation of April 1975, and discuss Treasury's refusal to convert the 16 piaster checks to American dollars, notwithstanding that similar conversions were made prior to the evacuation:

"In essence, the /Deputy Chief of Mission Saigon/ states that they needed large amounts of piasters for final payments of leases, contracts, and other piaster liabilities; and, since all banking institutions in Saigon closed on or about April 23, 1975, a decision was made by the Mission to purchase piasters from Mission personnel (Americans, locals and third-country nationals) prior to their evacuation. * * *

"* * * If we accept the Mission's statement that the piasters were needed by the Embassy, the purchase transactions could be considered for 'official purposes' and such transactions would be permissible under the

applicable statute, 31 U.S.C. 492, as well as Treasury regulations * * *

"* * * The rationale for ratifying the purchase of piasters by the Embassy prior to evacuation, based on the need for such piasters by the Embassy, cannot, of course, provide a valid basis for purchasing piasters at this time. I find no other reasonable basis for purchasing the piasters.

* * * * *

"Countering our informal advice to the Department of State that we see no way in which we can purchase piasters held by refugees outside of Vietnam, they have proposed that they accept the piasters from former employees of the Mission as a reversal of a pay transaction, return the piasters to the disbursing officer with a corresponding credit to a State Department appropriation, and then pay the salary in dollars. We see no rationale for Treasury accepting piasters at this time with the corresponding dollar credit to the State Department appropriation."

For the reasons set out below we agree with Treasury that it is precluded from converting the 16 piaster checks to American dollars and giving a corresponding dollar credit to the State Department appropriation. Moreover, with regard to the other 34 employees of the VAA, USIA may pay salaries from its appropriation only in the total amount of the final, unpaid, grant installment.

With respect to conversion of the piaster checks received by 16 of the VAA employees, section 1 of the Act of December 23, 1944, Pub. L. No. 83-61, 58 Stat. 921, as amended, 31 U.S.C. §§ 492a-492c (1970), authorizes disbursing officers to conduct exchange transactions involving United States and foreign currency or checks either for official purposes or for the accommodation of certain named classes of people, subject to regulations promulgated pursuant to the Act.

Section 3 of Pub. L. No. 83-61, as amended, 31 U.S.C. § 492c (1970), authorizes the Secretary of the Treasury to issue rules and regulations, governing disbursing officers under his jurisdiction deemed necessary or proper to carry out the purposes of sections 492a-492c of title 31.

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Treasury Department Circular No. 830, as amended, was issued pursuant to section 3 of the Act to provide foreign exchange transaction guidance to disbursing officers.

With respect to exchanges for official purposes, the Circular allows foreign currency checks to be exchanged for dollars only when the checks represent official funds for which the disbursing officer is accountable, and then only " * * * for disbursing purposes." Cir. 830, par. 3(c). The proposed exchange in this case would not appear to meet these conditions and, since it involves foreign currency checks, is distinguishable from the purchase of foreign currency from Vietnamese nationals by the United States Mission, which Treasury has accepted as an "official purpose" transaction under 31 U.S.C. § 492a and Cir. 830.

As for accommodation exchanges, the Circular allows the purchase from individuals of instruments payable in foreign currencies only when the individuals are members of United States Armed Forces or civilian employees of the United States who are United States citizens. Id., par. 5A. These conditions were not met either. Accordingly, we believe that Treasury acted properly in refusing to make the exchange in this case.

We turn next to the question of whether USIA can pay directly from its appropriation final salary, severance pay, and payments in lieu of notice to former VAA employees. Because the fourth grant installment for fiscal year 1975 was apparently never received by the VAA, USIA contends that it has an unfulfilled obligation under the grant to the VAA, and by extension to the VAA employees.

The scheduled final installment of the grant was in the amount of 1,641,542 piasters, or approximately \$2174 (at an exchange rate of \$1 = 755 piasters). The total which USIA now proposes to pay to the former VAA employees is \$22,240.02. USIA may not use the non-payment of the final grant installment to support the payment now of a far larger sum.

We would agree that there is an unfulfilled obligation, which may be paid, to the extent of the final grant installment. That amount may be apportioned administratively among the 34 employees of the VAA who did not receive their final salary payments. (Since the VAA apparently did not rely on the last grant installment for funds to issue checks to the other 16 employees, we are aware of no basis to apportion the grant funds among those individuals.

However, we cannot agree that payments in excess of the final grant installment may now be made. The employees in question were not employees of the United States. The grant was apparently not

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amended to ratify the approval by the VAA Board of Directors of additional payments for the employees in question. The piaster checks issued by the VAA to 16 of the employees are in no sense obligations of the United States. Under the circumstances, we are aware of no basis for the USIA to pay what would be, in effect, a gratuity to the VAA employees in the United States.

R.F.KELLER

[Deputy] Comptroller General
of the United States