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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

FEB 14 1974

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The Honorable William H. Hudnut, III
House of Representatives

Dear Mr. Hudnut:

This is in response to your October 3, 1973, request that we investigate certain aspects of the Cost of Living Council (CLC) operations that Mr. Trueman T. Rembusch, Chairman, Trade Practice Committee, Theatre Owners of Indiana, described in a letter to you. 765

Mr. Rembusch raised questions about (1) CLC's practices in formulating Phase IV price regulations which exempted film rentals from price controls and retained price controls on theater admissions, (2) Internal Revenue Service's (IRS's) response to complaints about motion picture distributors that may have violated the special price freeze, and (3) the disposition of admission fees collected for a meeting in Chicago where CLC officials discussed proposed Phase IV regulations.

We discussed these matters with CLC and IRS headquarters officials. Also we reviewed records and documents pertaining to Mr. Rembusch's questions. We discussed the financial arrangements for the meeting in Chicago with an official of the Chicago Association of Commerce and Industry.

DETERMINATION TO EXEMPT FILM RENTALS

Producers and distributors' prices for motion picture films are exempt from price controls under Phase IV regulations. However, theater owners' admission prices are controlled unless the owners qualify for the small business exemption specified in the regulations. This exemption generally applies to businesses with 60 or fewer employees and having annual revenues of less than \$50 million.

The Phase IV method of price controls over film producers, distributors, and theater owners originated under Phase II of the Economic Stabilization Program. Phase II regulations, which became effective on November 14, 1971, exempted from price controls royalties and other payments from the sale of copyrights and other related materials.

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On February 4, 1972, the Motion Picture Association of America, Inc., submitted an application asking CLC to interpret the intent of this exemption. It also submitted an alternate application for exemption of fees for the sale, license, assignment, publication, exhibition, or dissemination of motion pictures in the event CLC ruled that it did not intend to exempt copyrights in general. CLC informed the Motion Picture Association on March 3, 1972, that it did not consider motion picture rentals to come within the scope of the copyright exemption. However, CLC informed the Association that it was referring the matter to the Price Commission to determine whether it was possible to develop appropriate pricing rules for motion picture licenses and contracts. CLC said it would contact IRS to implement the intent of the exemption.

On March 7, 1972, the Association asked CLC not to refer the matter to IRS for implementation until the Price Commission examined the pricing problems. The Association also wanted CLC to act on its alternate application.

After consulting with industry representatives, the Price Commission recommended price controls for theater owners but not for producers and distributors. The Commission noted that, because producers and distributors' licensing fees were based on box office receipts, controlling theater prices was the only effective way to provide a measure of control over the producers and distributors' fees. In July 1972 the Commission recommended that CLC subject theater owners to price controls even though they may qualify as small businesses and to exempt producers and distributors from direct controls.

In August 1972, CLC exempted producers and distributors from price controls but did not adopt recontrol of admission prices for theaters that qualified as small businesses.

CONSIDERATION GIVEN TO THEATER OWNERS
IN FORMULATING PHASE IV REGULATIONS

Proposed Phase IV price regulations were issued on July 20, 1972, for public comment. These proposed regulations incorporated the film rental exemption which had been granted in August 1972 to producers and distributors and the exemption for small businesses. The announcement stated that CLC would consider all comments received before July 31, 1973, before taking final action on the regulations. On August 7, 1973, CLC filed final Phase IV price regulations with the Federal Register to go into effect August 13, 1973.

CLC received about 800 written comments on the proposed Phase IV regulations. Below are the two comments which we identified as pertaining to theater owners and associations.

In a July 26, 1973, letter the Theatre Owners of Indiana stated that the proposed Phase IV regulations exempting film rentals from price controls were arbitrary and capricious and should not be made effective. They proposed, instead, that the rentals film distributors charged be subject to price controls.

The National Association of Theatre Owners, in a July 31, 1973, letter requested that CLC extend the price exemption to all theater owners. They also requested that, if CLC did not grant exemption to exhibitors, it should reconsider the producer and distributor exemption and impose Phase IV controls on all sectors of the motion picture industry.

CLC officials told us that it considered the two comments before the final Phase IV regulations were published. No changes were made in the regulations as a result of the theater associations' comments.

According to a CLC official, CLC's Senior Policy Group would have decided the types of regulation changes the associations requested. This policy group only considered comments which surfaced new and/or significant issues. A CLC official said the theater associations' comments were not referred to the Senior Policy Group because the issue of price controls in the motion picture industry had already been determined in 1972.

REMEDIES UNDER THE ECONOMIC STABILIZATION ACT

The Economic Stabilization Act of 1970 and the implementing regulations provide for petitioning for relief from price controls, where necessary, to prevent or correct a serious hardship or gross inequity. A business may petition CLC to exempt an entire industry or groups of industries from the controls. CLC and IRS may grant exceptions from a particular rule or regulation to individual firms. If a request for exemption or exception is denied, the requester may ask CLC or IRS to reconsider the denial. The act also provides that any person suffering legal wrong because of any act or practice arising out of the Economic Stabilization Act of 1970, or any order or regulation issued under the act, may bring an action in a district court of the United States for appropriate relief, including an action for declaratory judgment, writ of injunction, and/or damages.

We noted that Syndicate Theatres, Inc., filed a complaint in the United States District Court for the Southern District of Indiana in August 1972 challenging CLC's exemption of producers and distributors. The Government filed an answer to the complaint. The complaint was dismissed because the plaintiff did not move the matter to trial.

A CLC official said the July 31, 1973, letter was not considered a formal request for exemption.

INVESTIGATION OF COMPLAINTS ABOUT DISTRIBUTORS

According to IRS headquarters officials, they received two complaints from Mr. Rembusch in July 1973 about distributors allegedly violating the 60-day special price freeze which began on June 13, 1973.

After investigating one complaint, IRS advised him on November 13, 1973, that no violation had occurred.

IRS began investigating the other complaint on August 15, 1973, and in January 1974 was still gathering information. It has not arrived at a conclusion.

In the later complaint, Mr. Rembusch questioned CLC's interpretation of the regulation which states that a firm violates the special price freeze only when it charges a price exceeding its freeze price in an actual transaction with a buyer during the freeze period. Mr. Rembusch said CLC and IRS told him that it is not necessary for a transaction to be finalized for a violation of the special price freeze to occur.

CLC notified you and Mr. Rembusch on November 2, 1973, that it intended to review this situation again to insure that it was satisfactorily resolved. On December 3, 1973, Mr. Rembusch met with a representative of CLC's Office of General Counsel to discuss CLC's interpretation of the term "charge" as used in the freeze regulations. CLC informed Mr. Rembusch that a mere offer to sell did not constitute a charge. CLC officials confirmed this information to Mr. Rembusch by letter dated January 1, 1974.

COLLECTION OF ADMISSION FEE FOR CHICAGO MEETING

The Chicago Association of Commerce and Industry sponsored a meeting on August 3, 1973, for the purpose of having CLC discuss proposed Phase IV regulations and to obtain comments from the public. The Association charged and collected a \$2 per person admission fee which, according to an Association representative, was intended to cover the costs of mailing about 20,000 invitations to members, renting an auditorium, and other related items.

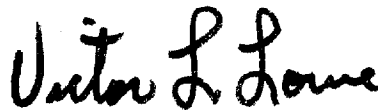
Officials of CLC and the Association told us that CLC had nothing to do with setting or collecting an admission fee or paying the costs for the meeting. Our examination of CLC financial records showed no evidence that CLC had received or disbursed funds for the meeting other than normal salary and travel expenses for CLC officials. An Association representative told us that the collections from the \$2 admission charge were about \$200 less than the meeting's expenses and they plan to request CLC to reimburse the Association for this amount.

CLC procedures did not adequately control the arrangement of consultation meetings which may require admission fees. On December 7, 1973, we discussed with CLC officials the need to strengthen their procedures. On December 13, 1973, CLC revised its procedures designating a person in the Administrative Services Division to review the arrangements made for all conferences, including any provision for registration fees. CLC informed us that the new procedures would prevent charging admission fees to CLC guests.

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The results of this investigation have been discussed with CLC officials. We trust the above information responds to your needs.

Sincerely yours,



Victor L. Lowe
Director