



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

40039

B-178496

October 9, 1973

Daker-Webster Printing Company
1121 Fifth Street, NW.
Washington, D.C. 20001

Attention: Mr. Hilton R. Miller
Vice President and General Manager

Gentlemen:

Reference is made to your letters of August 10 and September 20, 1973, with enclosures, requesting review of our settlement dated June 12, 1973, which disallowed your claim for \$11,845, alleged to be due for the printing of the First Annual Report of the National Advisory Council on Adult Education, a Presidentially appointed public advisory body under the Office of Education, Department of Health, Education, and Welfare.

The claim was disallowed for the reason that the purchase of printing was made in violation of the requirement (44 U.S.C. 501, 502) that all printing for Government offices be done at the Government Printing Office unless a waiver is granted by the Joint Committee on Printing to the Public Printer (44 U.S.C. 504). The record shows that the Office of Education's Office of Committee Management was informed in February 1972 that the Council planned to use a commercial firm to print its 1972 annual report and that the Council, apparently without competitive bidding, contracted with your firm to perform the printing work. The record further shows that neither the Council nor the Office of Committee Management obtained a waiver prior to placing the contract and that the Joint Committee on Printing has refused to grant the special waiver requested by the Department of Health, Education, and Welfare on October 16, 1972. Recent advice on this matter reveals that the Joint Committee on Printing has not changed its position on the granting of the special waiver.

In your letter requesting review you state that your firm entered into a contract with the Council and subsequently fulfilled its commitment for printing and mailing the Council's annual report, in good faith, without any prior knowledge of any legal implication which would prohibit payment by the Council.

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We do not question your good faith in the matter. However, the contract being prohibited by law imposed no legal obligation on the Government and the United States is neither bound nor estopped by the acts of its officers or agents in entering into, approving, or purporting to authorize the contract even though it appears that the Government may have received the benefit of the printing, since general principles of equity will not be applied to frustrate the purpose of the law or to thwart public policy. See 22 Comp. Gen. 784, 787 (1943); 14 id. 658 (1935); 16 id. 145 (1936). In that connection, in George M. Davis dba Consolidated Supply Company v. United States, 59 Ct. Cl. 197 (1924), the plaintiff sued to obtain payment for certain printing work done for the U.S. Fuel Administration which the agency was required by the provisions of section 87 of the act of January 12, 1895, 28 Stat. 622, to procure from the Government Printing Office. The Court of Claims held that, "While the claim is beyond doubt an equitable one, we find no legal way for the rendition of judgment," giving the reasons for its actions in part, as follows:

"* * * Where a statute in express language circumscribes the authority and power of an officer of the Government and expressly directs the manner of securing supplies of the character here furnished, we are not, in the absence of some precedent to that effect, authorized in holding the United States liable for a contract made in direct opposition to existing law.

"* * * If an officer of the Government is positively forbidden to enter into a contract, and in addition to this is mandatorily directed to act in a certain way under prescribed conditions, he may not disregard the mandate of the law and obligate the United States in so doing. His authority to act is derived from the statute."

In the absence of a special waiver by the Joint Committee on Printing, your claim must be denied; accordingly, our settlement of June 12, 1973, is sustained.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States