

DECISION

J. J. ...

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

119043

FILE: B-206625

DATE: July 26, 1982

MATTER OF: The New York Times, The Philadelphia Inquirer; The Trenton Times Newspaper; Payment for Advertisements under 44 U.S.C. § 3702

DIGEST: Payment to three newspapers who advertised for the Army is not precluded by the provisions of 44 U.S.C. § 3702 where blanket authority to approve advertisements has been delegated in writing by the Commanding General of the Army to all his installation commanders and verbal approval in advance of the procurement had been given by the appropriate official. Under these facts and circumstances, the purposes of the statute have been met.

This claim was forwarded to the General Accounting Office by the Department of the Army with three invoices for the cost of recruiting advertisements placed in the New York Times, The Philadelphia Inquirer, and the Trenton Times Newspapers during the period of December 6, 1979, through December 11, 1979. The Department states that the advertisements were duly printed at a fair and reasonable price. However, the accountable officer refused to certify the vouchers for payment, based on the prohibition in 44 U.S.C. § 3702 (1969), unless the Comptroller General approves. The newspapers claim they are owed the following amounts:

The New York Times	\$193.20
The Philadelphia Inquirer	125.12
The Trenton Times Newspapers	48.64

Based on the particular facts in this case, the invoices may be paid.

Section 3702 reads as follows:

"Advertisements, notices, or proposals for an executive department of the Government, or for a bureau or office connected with it, may not be published in a newspaper except under written authority from the head of the department; and a bill for advertising or publication may not be paid unless there is presented with the bill a copy of the written authority."

This Office has consistently recommended in the past that § 3702 be repealed as an anachronism which has outlived its usefulness. The requirements were enacted 100 years ago at a time when Government procurement was much less systematized than it is today. It appears from

legislative history of the 1870 act that the reason for its enactment was to prevent District of Columbia newspapers from republishing and collecting fees for advertisements appearing in distant newspapers. Furthermore, this law was enacted at a time when the Government establishment was small and the department head could review personally the routine operations under his control. Today, however, the procedures are not in keeping with the complexities of Government operations and there appears to be no good reason for continuance of such requirements. See B-114829, October 2, 1978; B-195696, November 11, 1980. To date, the Congress has not seen fit to act on our recommendation. As a result, we have been constrained to deny payment where there was no written evidence that the ads were approved prior to their publication. 35 Comp. Gen. 235 (1955); B-196440, April 3, 1980. However, we see no reason to interpret the requirement in an overly technical manner when the purpose of the Act will be adequately served without such an interpretation.

In the subject case, there was prior "written authority from the head of the Department," as the statute requires, although the authority was not issued specifically for the procurements in question. In a memorandum dated July 8, 1976, the Commanding General of the Army delegated to all his installation commanders the authority to approve the publication of advertisements in newspapers. The Commanding General at Fort Dix then gave verbal approval in advance of publication, and the newspaper printed the advertisements in good faith.

Under these facts and circumstances, we believe that the authorization for procuring these advertisements is sufficient to satisfy the purposes and requirements of this statute. Accordingly, we will not object if the Army pays these invoices if otherwise correct.

for Milton J. Fowler
Comptroller General
of the United States