



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

A-95642

MAR 19

The Honorable

MAR 19 1943

The Secretary of the Navy.

My dear Mr. Knox:

Examination by representatives of this office of the accounts and records of H. M. Mason, Comdr. (SC), USN, 127 Naval Air Station, Quonset Point, R.I., bring out a matter to which it is thought advisable to invite your attention, and which is reported substantially as follows:

The cafeteria at the Naval Air Station, Quonset Point, R.I., is operated as a concession by Crotty Brothers, Rhode Island, Inc. (home office, Boston, Mass.), under an agreement dated August 29, 1941, and running for a period of 5 years. The contract provides for payments by Crotty of 4 percent gross receipts, exempting therefrom milk, cigars, cigarettes, and tobaccos. A further provision specifies that the contract is subject to cancellation by either party to it upon notice of 60 days of such intent.

Under date of September 16, 1942, the agreement was modified, by a duly executed supplemental agreement to the extent only that the 4 percent was reduced to 2 percent.

Crotty furnishes duplicate deposit slips (Union Trust Company, East Greenwich, R.I.) covering the total of daily receipts; these are verified by the Cafeteria Committee headed by Malcolm Farmer, Lt. (jg), USNR, as Chairman of the Committee and Treasurer of the Fund.

The commission is referred to as "Rental Commission", it being in lieu of rental of the cafeteria building and the Navy-owned galley equipment (equipment of the type considered as being permanent installations).

The records of the Cafeteria Committee show that the commissions received, based upon 4 percent gross receipts, amounted to \$7,681.82, and at 2 percent, to \$666.49, or a total of \$8,348.31 through October 31, 1942.

All rental commission receipts are deposited by Lt. Farmer, in the Union Trust Company, East Greenwich, R.I.,

to the credit of the "Cafeteria Fund, U.S. Naval Air Station, Quonset Point, R.I." No disbursements may be made of such funds without the prior approval of the commanding officer of the station.

Questioned as to the cause for modifying the original contract, Lt. Farmer stated that Crotty Brothers, Inc., was required to serve food of good quality and in reasonable portions; that the Cafeteria Committee handled complaints of civilians with respect to quality and quantity and undertook to improve conditions; that as a result, Crotty Brothers, Inc., complained that it was making no money and that one of three things would have to be done: (a) Reduce the commission on gross receipts to 2 percent; (b) permit the sale of food of a lower quality; or (c) the 60-day notice clause would be invoked. After many discussions (according to Lt. Farmer) it was decided that a reduction in commission would best serve the interests of the station.

Of the \$8,348.31 already received and deposited as rental commissions, there have been expended \$3,693.79, as follows:

Joint Christmas Party (1941) for the children of the civilian employees of the station		\$ 67.92
Athletic equipment:		
Assembly and repair shop	\$208.00	
Public works department	155.50	
Supply department	118.45	
Baseball teams	<u>426.50</u>	918.45
Wreaths for deceased civilian employees		30.00
Awards for beneficial suggestions by civilian employees looking to greater efficiency in their work, etc.		12.00
War Bond Honor pennants, during drive		75.00
United War Fund drive—donation		300.00
Award of war bond to employee selling the greatest amount of bonds (the employee donated the bond to Navy Relief)		18.75
Furniture for employees' rest rooms		68.95
Difference between meals sold (about once each week) to employees at cost and the regular price charged by Crotty		<u>2,202.72</u>
		<u>\$3,693.79</u>

Lt. Farmer explained that it was absolutely essential that a cafeteria be operated for civilians on the station; that it meant either a concession or that the Navy operate it; that it seemed desirable to grant a concession operated on a commission rather than a straight rental basis in order to retain supervisory direction as to quality and quantity of, and prices charged for, food. He stated further that the aim had been for the Navy to not profit at the expense of the civilians patronizing the cafeteria; hence the disbursements were made in a manner to return the profits to the civilians by expenditures made in the interest of their morale. The "meal-at-cost" plan was inaugurated and about one day each week the concessionaire (Crotty) sets a cost figure on a given type of meal; subsequently, Crotty is reimbursed by the Cafeteria Committee for the difference between the price charged and the regular selling price--the usual difference is 15 cents or 20 cents per meal.

Lt. Farmer was asked as to the proposed disposition of the balance on hand of \$4,654.52 (difference between totals of receipts and disbursements as of December 15, 1942). His reply was to the effect that the commanding officer (and the Cafeteria Committee) had in mind possible replacements of galley equipment, which had done duty 24 hours a day during the first year's operation of the cafeteria.

A careful study of naval regulations failed to disclose any authority for making disposition of funds as has been done, nor could Lt. Farmer cite any authority other than a letter from the Assistant Secretary of the Navy, "SONID-1-KR-4/27-23601-66", dated April 30, 1923, "Subject: Proposed standard organization of lunch-rooms or cafeterias at Navy Yards or Naval Stations". A careful perusal disclosed that such directive had reference only to employee-owned and operated cafeterias, etc., and did not take into consideration concessions or rental of buildings to private firms.

Bids on the concession were solicited, by letter, of several chain restaurant operators. Representatives of four looked the plant over and submitted proposals. The captain of the station examined the proposals and data respecting responsibility, experience, etc., and accepted Crotty's offer. The contract had not been forwarded to the General Accounting Office as it was believed no public funds were concerned.

In accordance with the requirements of section 3743, Revised Statutes, as amended (U.S.C. 41:20), the original contract and all amendments should be promptly forwarded here, together with the

related solicitations and proposals, for consideration of advertising and other requirements.

While the contract provides that costs of heat, fuel, light, and power are to be borne by the concessionaire, it appears that the cafeteria is operated in a Government building on the reservation of the air station, and that its equipment was paid for from appropriated funds of the United States.

The consideration for reducing the percentage of gross receipts to be paid to the United States, from 4 to 2 percent, as set forth in the supplemental agreement of September 16, 1942, appears to be the mutual promises of the parties thereto, the adequacy of which is not apparent in view of the fact that agents and officers of the Government have no authority to waive contractual rights of the United States, or to modify existing contracts if such modification will be prejudicial to the United States. See 5 Comp. Gen. 605.

I am unable to find any statutory basis permitting the retention of revenues received by the Cafeteria Committee, nor the use thereof to supplement other purposes (purchase of equipment) for which Federal appropriations are made.

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 department (the Naval Air Station Cafeteria

Committee) to retain the revenues accruing therefrom, it must necessarily be held that the revenues are required to be covered into the general fund of the Treasury as miscellaneous receipts, under the provisions of section 3617, Revised Statutes (U.S.C. 31:484). See also 7 Comp. Gen. 806.

Sincerely yours,

~~(Signed)~~ R. N. Elliott

Acting Comptroller General
of the United States