

Kramer
Pl-1

DECISION



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

7899

FILE: B-192739

DATE: September 29, 1978

MATTER OF: Anheuser-Busch, Inc.

DIGEST:

Where Government received benefit of services requested by employee who lacked authority to contract, payment may be made on quantum meruit basis in view of administrative determination that amount of settlement is reasonable and authorized contracting officer's ratification.

This decision is in response to a request from Mr. Richard D. Munding, Chief, Division of Contracting and General Services (contracting officer), Fish and Wildlife Service, Region 1, United States Department of the Interior, for a ruling by our Office concerning the propriety of payment of a settlement entered into between the Fish and Wildlife Service (Service) and Anheuser-Busch Inc. (Anheuser). The settlement is for expenses incurred in caring for and feeding Amazon parrots.

On October 29, 1974, representatives of the Service seized 205 Amazon parrots which had been imported into the United States from Mexico in violation of the provisions of the Lacey Act, 18 U.S.C. § 43(a)(2) (1976). Since the Service did not have facilities for the care of the parrots, they were placed for temporary care with Anheuser at its Busch Gardens in Van Nuys, California, by Mr. Gene Wilson, Senior Resident Agent, Division of Law Enforcement, Fish and Wildlife Service, Long Beach, California. No agreement was entered into at that time between the Service and Anheuser relating to the cost or payment for the care. However, Mr. Wilson did ask Busch Gardens to determine a cost for the care.

The parrots remained in the care of Anheuser until April 18, 1978, at which time 91 parrots were still alive. The decrease in the number of parrots stemmed from theft, death or escape.

On November 25, 1975, Mr. Douglas Myers, Zoo Manager of Busch Gardens, informed Mr. Wilson that the cost of care would amount to \$18.50 per month per bird. By letter dated April 13, 1978, Busch asserted a claim against the Government for care of the parrots in the amount of \$109,550. On April 14, 1978, Mr. Munding and Ms. Jean P. Lowman, Regional Solicitor, Portland, United States Department of the Interior, met with representatives of Anheuser and entered into an agreement on behalf of the Service, subject to the Comptroller General's approval, to pay Anheuser the sum of \$100,000 for the care of the parrots from October 29, 1974, through April 17, 1978.

It is well established that where services are rendered on the request or order of an officer authorized to contract for the United States, there is recognized an obligation on the United States to pay the value of such services actually furnished upon a contract implied in fact for quantum meruit. Louisiana-Pacific Corporation, B-191029, March 30, 1978, 78-1 CPD 253. In 55 Comp. Gen. 768, 777 (1976), we stated:

*** A contract implied in fact is one founded upon a meeting of minds, which although not embodied in an express contract, is inferred, as a fact from the conduct of the parties showing, in light of surrounding circumstances, their tacit understanding. ***

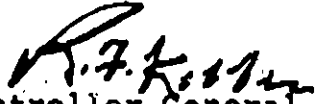
In essence, the true criterion is that a contract "implied in fact" rests upon consent implied from facts and circumstances showing a mutual intention to contract. See, Hickman v. United States, 135 F. Supp. 919 (W.D.

La. 1955). In the present situation the fact that the birds were placed in the care of Busch Gardens with a request that it determine the cost for their upkeep suggests a mutual intention to contract.

Our Office has permitted payment on a quantum meruit basis if the Government received a benefit therefrom and if the acquisition of the services was implicitly or explicitly ratified by the cognizant contracting officials. B-177607, March 7, 1973. The right to payment is predicated on the theory that it would be inequitable for the Government to retain the benefit of the services of another without recompense. 46 Comp. Gen. 348 (1966). Recovery is limited to the fair value of the benefit conferred. B-167790, April 12, 1973.

There is no doubt that Anheuser conferred a benefit upon the United States. However, we have been advised that Mr. Wilson lacked authority to contract. Nevertheless, ratification of the contract was accomplished by the authorized contracting officer negotiating a settlement with Anheuser and recommending that the settlement be approved. See ElectroSyn Corporation, B-180630, May 2, 1974, 74-1 CPD 222. Moreover, Mr. Munding and Ms. Lowman have determined that the amount of the settlement is reasonable. Cf. Defense Mapping Agency, B-183915, June 25, 1975, 75-2 CPD 15.

Accordingly, payment of the settlement in the amount of \$100,000 may be made to Anheuser as administratively recommended.


Acting Comptroller General
of the United States