



Comptroller General
of the United States

Washington, D.C. 20548

Matter of: Government Liability for Unauthorized Purchase
of T-Shirts for Employees Contributing Certain
Amounts to the Combined Federal Campaign

File: B-240001.2

Date: January 9, 1992

DIGEST

Creative Advertising by Russ Vollmer, Inc. is not entitled to payment for T-shirts provided to certain Internal Revenue Service (IRS) employees contributing to the 1989 Combined Federal Campaign since IRS' procurement of T-shirts was not authorized under applicable statutes and regulations.

DECISION

The fiscal management officer for the Southeast Region of the Internal Revenue Service (IRS) has forwarded to us the \$662.50 claim of Creative Advertising by Russ Vollmer, Inc. (Creative Advertising) for T-shirts provided to the Memphis Service Center of IRS in connection with the 1989 Combined Federal Campaign (CFC). For the reasons stated below, we conclude that Creative Advertising is not entitled to payment for the T-shirts.

BACKGROUND

In connection with the 1989 CFC, the Memphis Service Center of IRS purchased 150 T-shirts stamped with the CFC logo from Creative Advertising. The T-shirts were distributed to Memphis Service Center employees contributing five or more dollars per pay period to the CFC.

The senior certifying officer for the Southeast Region refused to certify the voucher for payment and requested an advance decision from our Office in the matter. In B-240001, Feb. 8, 1991, we found that the Government Employees Incentive Awards Act (GEIA Act), 5 U.S.C. §§ 4501-4514 (1988) provided no authority for the purchase of the T-shirts for CFC donors. Further, we found that the expenditure of appropriated funds for the T-shirts was not necessary and proper since the T-shirts were not essential to the accomplishment of any authorized purpose. Accordingly, we advised the officer not to certify the voucher for payment.

On April 22, 1991, the contracting officer for the Memphis Service Center informed Creative Advertising of our decision. By letter to IRS dated April 30, 1991, Creative

Advertising requested relief from IRS' failure to pay for the T-shirts. The fiscal management officer for the Southeast Region forwarded Creative Advertising's letter to our Office, along with a request that we review B-240001 and grant administrative relief.

DISCUSSION

Where an agent of the government procures goods or services without a valid written contract, this Office may authorize payment for such goods or services under equitable principles. See 31 U.S.C. § 3702 (1988); 64 Comp. Gen. 727, 728 (1985); B-237148, Mar. 15, 1991. For example, in B-226503, Sept. 24, 1987, we considered the claim of the Town of Seneca Falls, New York for payment for sewer services provided to the Department of Education (Education) in the absence of a valid written contract. We held that Education could pay Seneca Falls under the equitable doctrine of quantum meruit since the sewer services would have constituted a permissible procurement had Education followed proper contracting procedures, the government received and accepted the services, and Seneca Falls acted in good faith. Id. at 5. We have also considered contractors' claims under the equitable doctrine of promissory estoppel. See, e.g., B-212529, May 31, 1984.

However, the courts and this Office have long held that the government can be bound only by agents acting within the scope of authority delegated to them. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); 53 Comp. Gen. 620, 621 (1974). Therefore, where an agent of the government procures goods or services in contravention of a statutory prohibition or in the absence of statutory authority, the government cannot be legally obligated to make payments to those who have provided the goods or services. See Hooe v. United States, 218 U.S. 322, 334 (1910); B-237148 at 2. Further, equitable doctrines such as quantum meruit and promissory estoppel provide no basis on which the government may pay for unauthorized goods or services. See Office of Personnel Management v. Richmond, 110 S. Ct. 2465 (1990); The Floyd Acceptances, 7 Wall. 666, 680 (1868). The use of equitable doctrines to justify unauthorized payments would render the appropriations clause of the constitution a nullity.¹ As the Supreme Court explained in Richmond,

¹The appropriations clause of the United States Constitution provides that "[n]o money shall be drawn from the Treasury, but in consequence of appropriations made by law." U.S. Const. art. I, § 9, cl. 7.

"[i]f agents of the Executive were able, by their unauthorized oral or written statements to citizens, to obligate the Treasury for the payment of funds, the control over public funds that the [c]lause reposes in Congress in effect could be transferred to the Executive,"

110 S. Ct. at 2473.²

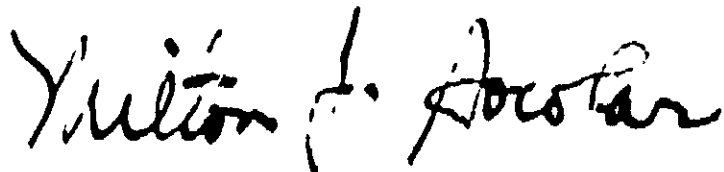
IRS' procurement of T-shirts from Creative Advertising was not a procedurally deficient procurement of authorized goods for which IRS could make payment under equitable principles. Rather, the procurement was wholly unauthorized. IRS' appropriation for fiscal year 1989 was available for necessary expenses of IRS "not otherwise provided for." Title I of the Treasury, Postal Service, and General Government Appropriations Act for Fiscal Year 1990, Pub. L. No. 101-136, 103 Stat. 783, 787 (1989). However, as we held in B-240001, the T-shirts qualified neither as awards under the GEIA Act nor as items necessary for IRS' accomplishment of an authorized purpose. Since IRS had no authority to purchase the T-shirts with the appropriation available, equitable principles provide IRS no basis on which to pay Creative Advertising's claim.

We recognize that Creative Advertising had provided IRS with a number of promotional items in the past, including items related to CFC, and relied upon the representations of IRS officials in this case. In addition, we appreciate the difficulty that Creative Advertising would have faced in ascertaining whether IRS' procurement of T-shirts was permissible. However, these considerations do not provide this Office with the basis for authorizing IRS to use appropriated funds to pay for wholly unauthorized purchases.

²Consistent with the cited decisions, we have considered limitations on agencies' procurement authority when addressing claims under the equitable doctrine of quantum meruit. See, e.g., B-230382, Dec. 22, 1989 (denying a claim under quantum meruit for food and refreshments not authorized under applicable statutes, regulations, and decisions of this Office).

CONCLUSION

IRS may not pay Creative Advertising's claim of \$662.50 for T-shirts provided to the Memphis Service Center in connection with the 1989 CFC since the procurement of T-shirts was not authorized under applicable statutes and regulations.



Acting Comptroller General
of the United States