



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

Mitchell  
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8771

OFFICE OF GENERAL COUNSEL

B-139747

[Possible Violations of 37 U.S.C. 801(c)]

DEC 27 1978

Brigadier General C. T. Lynn, Jr., USA  
Acting Commander  
U.S. Army Finance and Accounting Center  
Indianapolis, Indiana 46249

Dear General Lynn:

This is in further reference to our letter B-139747, dated June 11, 1978, and your response dated September 19, 1978, concerning the activities of Colonel Kenneth F. Stevens, USA, Retired, 302-24-4894, relating to possible violations of 37 U.S.C. 801(c).

In your letter you noted that Colonel Stevens was employed by Rainy Day Foods for the period March 1975 to September 1976. During the course of this employment Colonel Stevens indicated that he called on the Army and Air Force Exchange System regarding a new product his company had planned to market. However, this product was never marketed.

You also stated that Colonel Stevens indicated that Rainy Day Foods never sold to a Federal agency including nonappropriated fund activities during his employment.

Your letter gives the impression that 37 U.S.C. 801(c) is applicable only in cases where a sale has actually been made. However, that subsection provides in pertinent part as follows:

"(c) Payment may not be made from any appropriation, for a period of three years after his name is placed on that list, to an officer on a retired list \* \* \* who is engaged for himself or others in selling, or contracting or negotiating to sell, supplies or war materials to an agency \* \* \*."

Regulations promulgated in connection with this provision are contained in Department of Defense Directive 5300.7, January 15, 1977, enclosure 2, which defines selling for the purposes of 37 U.S.C. 801(c) as follows:

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B-139747

- "(1) Signing a bid, proposal, or contract;
- "(2) Negotiating a contract;
- "(3) Contacting an officer or employee of any of the foregoing departments or agencies for the purpose of:
  - "(a) Obtaining or negotiating contracts;
  - "(b) Negotiating or discussing changes in specifications, price, cost allowances or other terms of contract, or
  - "(c) Settling disputes concerning performances of a contract; or
- "(4) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person.

While the facts presented in this case may not provide an adequate basis for taking action against the individual involved under 37 U.S.C. 801(c), we are bringing the matter to your attention in order to avoid any misconception concerning the restrictions imposed by that section.

Sincerely yours,

MILTON SOCOLAR

Hilton J. Socolar  
General Counsel