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P-183894

AUG 27 1979

Robert L. Gilliat, Esquire  
Assistant General Counsel  
Office of General Counsel  
Department of Defense  
Washington, D.C. 20301

Dear Mr. Gilliat:

This responds to your letter of June 5, 1979, to Mr. H. L. Krieger, Director, Federal Personnel Compensation Division, U.S. General Accounting Office, in which you requested some background material relating to GAO's interpretation of the Randolph-Sheppard Act. We understand this request arose from your receipt from Mr. Krieger of a copy of our General Counsel's legal analysis (P-183894-C.M., February 26, 1979) of the exemption of the military exchanges and ships' stores from vending machine income sharing under the Randolph-Sheppard Act.

We are not in possession of copies of Committee Print No. 1 and No. 2 referred to on page 6. Information from those documents was obtained by looking at records of the Senate Subcommittee on the Handicapped, Committee on Human Resources. These documents were presented while the Subcommittee was in executive session. The minutes of those sessions are bound and kept by the Subcommittee. However, they are available for examination in office 4300 of the Dirksen Senate Office Building. Call Marjorie Whitaker on 224-7660.

Your other requests concern the use of legislative history to interpret section 7(d) of the Act. Our conclusions concerning congressional intent are based on an examination of the complete history of the exemption and not from any single "expression of congressional intent." We cite below some statements and actions bearing on our conclusion.

- (1) Statements on the purpose of 1954 amendments to preserve Federal property for the operation of vending stands by blind persons and protect the blind from competition from vending machines. 100 Cong. Rec. 9946 (statement by Representative Rhodes); 100 Cong. Rec. 9895 (statement by Senator Gore); 100 Cong. Rec. 10829 (statement by Senator Furtell).

- (2) 100 Cong. Rec. 9895, 9940 (1954)--amendment to Randolph-Sheppard Act recognizing the competition blind vendors faced from vending machines by granting preferences and assuring such preferences by regulation, including assignment of vending machine income.
- (3) Hearings on S. 394 before a special Subcommittee of the Senate Committee on Government Operations, 87th Cong., 2nd Sess. 9 (1962) (statement by Senator Randolph)--S. 394 was introduced to protect the preference to blind vendors by exclusively assigning vending machine income to them. S. 394 and similar bills were introduced from 1962-1971, although no action was taken.
- (4) GAO report, Vending Operations on Federally Controlled Property, B-176886, September 27, 1973, Chapter 3.
- (5) Hearings on S. 2581 before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare, 93d Cong., 1st Sess. 101 (1973) (hereinafter cited as 1973 hearings)--Proposal by Gen. Berade to limit exchange and ships' stores vending machine income sharing to revenues generated by sales to the public. This limitation was not made a part of the bill.
- (6) Concern over DOD's lack of assistance to the blind vendor program--121 Cong. Rec. 16228 (1975) (statement by Robert Kumphreys, previously Special Counsel for the Senate Committee on Labor and Public Welfare); S. Rep. No. 937, 93d Cong., 1st Sess. 10 (1973); 1973 hearings at 101.
- (7) Minutes of the executive session of the Senate Subcommittee on the Handicapped, January 24, 1974, in which Senator Randolph describes section 7(d) as an acceptable compromise to his original proposal that there be an exclusive assignment of vending machine income. DOD's

interpretation of the exclusion of the military exchanges and ships' stores from vending machine income sharing coupled with the additional exclusion in section 7(d) that the income sharing provisions not apply to machines whose income did not exceed \$3000 would effectively exclude all vending machines on military installations. It seems unlikely that Senator Randolph, who initially proposed in S.394 that vending machine income be assigned exclusively to blind vendors, would consider this result a compromise.

In view of the desire for exclusive assignment of vending machine income to blind vendors, the belief that DOD was hindering the blind vendor program, and the fact that section 7(d) was termed a compromise and not a total exclusion of income sharing for machines on military installations, we arrived at the conclusion stated in the memorandum furnished to you.

If we can be of any additional assistance, please contact Jeffrey Jacobson of my staff on 275-3140.

Sincerely yours,

Henry R. Wray

Henry R. Wray  
Assistant General Counsel