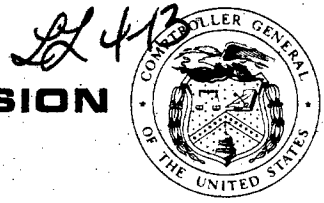


9.5.79



**DECISION**

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

9777

FILE:

DATE: APR 11 1979

MATTER OF: B-194074

DLG-601378

DIGEST:

Advertising Contract of National Commission on  
Air Quality with World Wide Agency, Inc.

DLG-00024

44 U.S.C. § 3702 (1976), which prohibits "an executive department of the Government, or a bureau or office connected with it" from publishing newspaper advertisements without written authorization by the head of the department is not applicable to the National Commission on Air Quality, a legislative agency. See B-194074, March 26, 1979.

This is in response to a request from the Director of the National Commission on Air Quality (the Commission) for a determination of the applicability of certain statutory restrictions on advertising to the Commission.

The Commission was established by section 313 of the Clean Air Act Amendments of 1977, Pub. L. No. 95-95, August 7, 1977, 91 Stat. 685, 785, to study and report to the Congress on issues related to economic, technological, legal and environmental implications of clean air programs.

During August, 1978, after the appointment of the Commission members, the Commission contracted for advertising with World Wide Agency, Inc., in connection with a search for applicants for the positions of Executive Director and Assistant Executive Director of the Commission. The advertising was delivered and a bill for \$4,985.68 was submitted to the Commission in early September.

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Upon presentation of the bill to the Environmental Protection Agency (EPA), which supplied the Commission with administrative services during the first months of its existence, EPA advised the Commission that payment of the bill might be prohibited. In his letter of February 5, 1979, the Acting Director of EPA's Financial Management Division informed the Commission's Executive Director that:

"Section 3828, Revised Statutes, and Section 12 of the Administrative Expenses Act of 1946 require written authorization in advance by the head of a department or agency for procurement of advertising services.

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Decision  
004922

Agencies are prohibited from honoring payment claims until accompanied by such advance authorization. As it is our understanding that advance authorization was not formally documented within the National Commission nor within the Environmental Protection Agency, this agency cannot process the claim for payment."

The law referred to by EPA, which is codified at 44 U.S.C. § 3702 (1976), prohibits publication of "advertisements, notices or proposals for an executive department of the Government, or for a bureau or office connected with it" (emphasis added) without the written authorization of the department head. Bills for advertising services can only be paid if a copy of the authorization is presented with the bill. GAO requires agencies to adopt and maintain procedures for compliance with this requirement and requires all invoices and bills for advertising to be made available to it for audit purposes. 7 GAO Policy and Procedures Manual § 15.2.

However, we recently determined that the Commission is a legislative branch agency, since its reporting and advisory responsibilities are only to the Congress and it has no regulatory or executive powers. Status of National Commission on Air Quality, B-194074, March 26, 1979. Since the statutory restrictions on advertising specifically apply only to an "executive department of the Government," they are not applicable to the Commission. Moreover, the GAO regulation, which is designed to implement these provisions, does not have any applicability to legislative agencies. Therefore, no advance written authorization for the procurement of advertising services from World Wide Agency, Inc. was required and the payment for such services may be made without presentation of such written authorization.

R.F.KELLER

Deputy  
Comptroller General  
of the United States