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DECISION



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

FILE: B-205094

DATE: November 24, 1981

MATTER OF: The Virginian-Pilot and The Ledger-Star

DIGEST:

Cost of newspaper advertisements without prior written authority by the head of the department or his representative may not be paid because such payment is expressly prohibited by 44 U.S.C. § 3702 (1976); however, the claim will be submitted to the Congress pursuant to the Meritorious Claims Act of April 10, 1928, because of the equitable considerations in this case.

The Commander, Naval Facilities Engineering Command, Norfolk, Virginia (Navy), has requested reconsideration of the disallowance by our Claims Group of the claim of The Virginian-Pilot and The Ledger-Star for advertising services provided to the Navy from January 6 to 12, 1981.

For the reasons that follow, we conclude that the disallowance was correct.

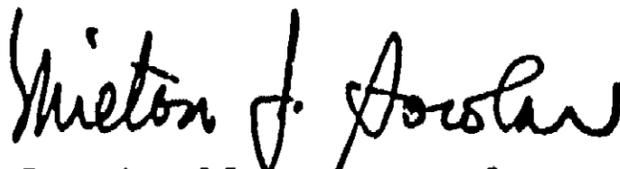
The claim was disallowed because 44 U.S.C. § 3702 (1976) requires that evidence of written authorization in advance of the advertising services be obtained and presented with the bill. In requesting reconsideration, the Navy has submitted two documents which it contends satisfy the statutory requirements. The first document, dated December 31, 1980, is from the Chief of Naval Operations to the Commander, Atlantic Division, Naval Facilities Engineering Command, and indicates that a "Notice of Finding of No Significant Impact" should be published in the local news media and copies mailed to interested parties. The second document is a memorandum, dated July 27, 1981, from the Assistant Secretary of the Navy to the Deputy

Chief of Naval Operations and states that authority was granted in a meeting on December 29, 1980, with the office of the Secretary of the Navy to publish a "Finding of No Significant Impact" in the local (Norfolk, Virginia.) media, in accordance with Navy implementing instructions.

The documents submitted by the Navy do not establish that written authorization to publish was obtained prior to the January 6, 1981, publication. In view of the mandatory language of the statute, we have held that after-the-fact approval or attempted ratification is not sufficient to remove the statutory bar against payment and, in the circumstances, we conclude that the disallowance was correct. Richard A. Du Bey, B-199951(1), April 16, 1981, 60 Comp. Gen. _____ (1981).

However, in somewhat similar circumstances, we have concluded that because the newspaper published the advertisement in good faith and the Government received the benefit thereof, the equities warranted reporting the claim to the Congress under the Meritorious Claims Act of April 10, 1928, 31 U.S.C. § 236 (1976). Newspaper Advertising by unauthorized employee, B-181337, November 25, 1974. Our Office has recommended to the Congress that section 3702 be repealed and a bill, H.R. 1020, is now pending before the Congress. To date, the Congress has not chosen to act favorably upon this recommendation.

In this case, The Virginian-Pilot and The Ledger-Star carried the advertisements as requested and the Navy has received the full benefit of the required advertisements. The Navy states that the amount claimed by the newspaper is fair and reasonable. The record also contains a statement that action is being taken or planned to prevent a recurrence of unauthorized commitments. Under these circumstances, we are submitting this claim to the Congress pursuant to the Meritorious Claims Act of April 10, 1928, recommending that payment of the claim be authorized.

for 
Comptroller General
of the United States



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

B-205094

November 24, 1981

The Honorable George H. W. Bush
President of the Senate

Dear Mr. President:

Pursuant to the act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236 (1976), we have the honor to transmit our report and recommendation to the Congress concerning the claim of The Virginian-Pilot and The Ledger-Star for advertising provided for the Naval Facilities Engineering Command, Norfolk, Virginia.

We request that you present the report to the United States Senate.

An identical report is being sent to the Speaker of the House of Representatives.

Sincerely yours,

for Milton J. Fowler
Comptroller General
of the United States

Enclosure

November 24, 1981

To the Congress of the United States:

The Meritorious Claims Act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236 (1976), provides that:

"When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the Congress by a special report containing the material facts and his recommendation thereon."

In accordance with that act, we make the following report and recommendation on the claim of The Virginian-Pilot and The Ledger-Star for \$1,333.80.

The claim arises from advertisements printed in the newspaper. An employee of the Naval Facilities Engineering Command, Norfolk, Virginia, placed the order for the advertisements without prior written approval by the proper authorities for the placing of the advertisements.

The Navy Regional Finance Center forwarded the claim file to our Claims Group for settlement. The file indicates that the advertisements would have been authorized had established procurement procedures been followed, the amount claimed is considered fair and reasonable and the Government has benefited from the advertisements. Our Office disallowed the claim because the advertisements were printed without prior written authorization in violation of 44 U.S.C. § 3702 (1976), which states:

"Advertisements, notices, or proposals for an executive department of the Government, or for a bureau or office connected with it, may not be published in a newspaper except under written authority from the head of the department; and a bill for advertising or publication may not be paid unless there is presented with the bill a copy of the written authority."

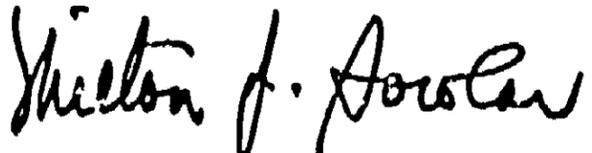
We held in 35 Comp. Gen. 235 (1955) that the above-cited provision does not preclude advertising in newspapers per se, but only payment for the advertisements unless the proper procedures are followed. Subsequent ratification after the services have been rendered does not comply with the terms of the statute.

Ordinarily, we do not report to the Congress under the act of April 10, 1928, claims which cannot be paid by reason of a prohibitory statute. However, although 44 U.S.C. § 3702 prohibits payment for advertising unless written authority is issued in advance of advertising, it does not prohibit advertising in newspapers. Therefore, since the newspaper appears to have acted in good faith and the Government benefited from the advertising, we have determined that the equities warrant reporting the claim under the Meritorious Claims Act with a recommendation that payment be authorized.

If the Congress agrees with our recommendation, it is suggested that enactment of a statute in substantially the following form will accomplish the desired result:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Comptroller General of the United States be, and he hereby is, authorized and directed to settle and adjust the claim of The Virginian-Pilot and The Ledger-Star for \$1,333.80 for advertisements for the Naval Facilities Engineering Command, Norfolk,

Virginia. The amount shall be payable from the applicable appropriations of the Department of the Navy."

for 
Comptroller General
of the United States



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

B-205094

November 24, 1981

The Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives

Dear Mr. Speaker:

Pursuant to the act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236 (1976), we have the honor to transmit our report and recommendation to the Congress concerning the claim of The Virginian-Pilot and The Ledger-Star for advertising provided for the Naval Facilities Engineering Command, Norfolk, Virginia.

We request that you present the report to the House of Representatives.

An identical report is being sent to the President of the Senate.

Sincerely yours,

fa Milton J. Fowler
Comptroller General
of the United States

Enclosure



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

B-205094

November 24, 1981

The Virginian-Pilot and The Ledger-Star
150 Brambleton Avenue
Norfolk, Virginia 23501

Attention: Mr. H. K. Eichelberger
Credit Manager

Gentlemen:

Enclosed is a copy of our decision of today affirming the action of our Claims Group which disallowed your claim for advertising services. Although our Office must disallow your claim, we feel that the equities in the matter warrant reporting your claim to the Congress of the United States under the Meritorious Claims Act of April 10, 1928, 31 U.S.C. § 236 (1976). Enclosed is a copy of our report of today to the Congress, recommending that payment of the claim be authorized.

No further action on your claim can be taken by our Office unless and until the Congress enacts legislation pursuant to our recommendation.

Sincerely yours,

for Milton F. Rowland
Comptroller General
of the United States

Enclosures -- 2

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

November 24, 1981

TO : Director, AFMD - Claims Group

FROM : Harry R. Van Cleve - Acting General Counsel
Harry R. Van Cleve

SUBJECT: Claim of The Virginian-Pilot and The Ledger-Star
B-205094-O.M.

Returned is file Z-2830580, along with a copy of our decision of today, B-205094, advising that while we have no authority to pay the claim, we are submitting it to the Congress pursuant to the Meritorious Claims Act. We are also attaching a copy of our letter of today to The Virginian-Pilot and The Ledger-Star.

Attachments - 2