

**DECISION**

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

**FILE:** B-208306 **DATE:** August 13, 1982

**MATTER OF:** The Florida Times-Union and The  
Jacksonville Journal

**DIGEST:**

Costs of newspaper advertisements to recruit personnel without prior written authority by the department head or an authorized designee may not be paid because such payment is expressly prohibited by 44 U.S.C. § 3702 (1976). However, the claim is being submitted to Congress pursuant to the Meritorious Claims Act of April 10, 1928, because of equitable considerations in this case.

The Florida Times-Union and The Jacksonville Journal claim \$137.80 for advertising services provided to the Army from August 1 to 10, 1981. The advertisements were placed in the newspapers to recruit engineering personnel for the Fort Stewart Army Division.

It is undisputed that no prior written approval for the advertisements was obtained from the department head or his representative. Therefore, the claim for reimbursement cannot be allowed because 44 U.S.C. § 3702 (1976) provides:

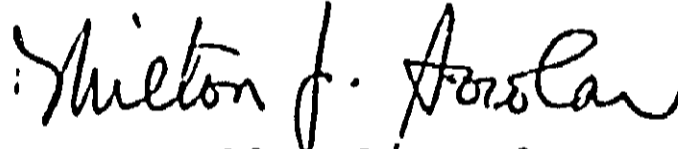
"Advertisements, notices, or proposals for an executive department of the Government, or for a bureau or office connected with it, may not be published in a newspaper except under written authority from the head of the department; and a bill for advertising or publication may not be paid unless there is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

Even though the agency reports that the Government received a benefit at fair and reasonable prices, GAO has held that the statutory language makes clear that subsequent approval or attempted ratification is not

sufficient to remove the statutory bar against payment. The Virginian-Pilot and The Ledger-Star, B-205094, November 24, 1981, 81-2 CPD 426.

However, GAO has concluded that when a newspaper publishes advertisements in good faith and the Government receives a benefit, the equities warrant reporting the claim to the Congress under the Meritorious Claims Act of April 10, 1928, 31 U.S.C. § 236 (1976). Payment for Newspaper Advertisements Without Prior Authorization, B-196440, April 3, 1980.

In this case, there is evidence that the newspapers relied in good faith upon the apparent authority of the contracting officer when the newspapers published the advertisements. There is further evidence that the Army received a benefit from the advertisement at a fair and reasonable price. In addition, GAO is advised that a standard operating procedure is being planned to prevent the recurrence of similar unauthorized actions. Therefore, GAO is 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