

MAINE STATE LEGISLATURE

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November 6, 1963

Keith L. Crockett, Exec. Dir.

Field Services - Education

John W. Benoit, Assistant

Attorney General

Federal Donated Commodity Program; Inadequate Administrative Funds.

Your memorandum of October 2, 1963, is acknowledged.

FACTS:

On December 18, 1958, the Department of Education and the United States Department of Agriculture entered into an Agreement for the distribution and use of donated commodities. The effective date of the Agreement was January 1, 1959; and the Agreement continues in effect until terminated by written notice of either party.

Certain regulations and policies reduced to writing are made a part of the Agreement. Sections 503.1 to 503.12 issued under R.S. 161, sec. 416, 63 Stat. 1058, as amended; 5 U.S.C. 22, 7 U.S.C. 1431.

Presently, the program instituted pursuant to the Agreement provides foods to approximately 140,000 people in Maine under various school, institutional, camp and welfare programs.

Shortly, the Division of Field Services within the Department of Education will not be able to maintain maximum distribution of foods to eligible recipients due to inadequate administrative funds.

QUESTION #1:

Would it be permissible for the State Department of Education to assess recipients of donated commodities such fees as will enable full operation? (Recipients in this sense refers to schools, institutions and summer camps and not the individuals thereof.)

ANSWER:

Yes.

REASON:

The Agreement defines an eligible distributing agency as follows:

§ 503.5 Eligible distributing agencies.

(a) State and Federal agencies. Such State and Federal agencies as are designated by the Governor of the State, by the State legislature, or by proper Federal authority and approved by the Secretary shall be eligible to become distributing agencies."

The 1957 Legislature designated the State Department of Education as the agency authorized to receive and distribute federal donated property. Public Laws, 1957, c. 131:

"The Department of Education is hereby designated the state agency to receive and distribute federal surplus property which may become available for distribution to eligible recipients within this State. The Department is authorized and empowered to acquire, warehouse, allocate and distribute surplus government property to health and educational institutions, civil defense organizations, for educational activities of special interest to the armed services, and to any other organizations, associations or corporations who may be or who may later be designated as eligible to receive such surplus property by the Congress of the United States or any federal official empowered to make such determination. The Commissioner of Education is authorized and empowered to enter into cooperative agreements with any duly authorized federal official to carry out the purposes of this section.

"Upon transfer of surplus property to an eligible recipient, the Commissioner shall charge and receive from said recipient money sufficient to cover the acquisition, warehousing, handling, administrative and delivery cost chargeable to said property. The Department shall employ and assign such supervisory and clerical personnel as may be necessary to carry out the provisions of this section, subject to the provisions of the Personnel Law."

The first sentence of the second paragraph of the Public Law of 1957, chapter 131, permits the Commissioner of Education to charge to and to receive from eligible recipients sufficient moneys to cover the acquisition, the warehousing, the handling, the administration and the delivering of property to such recipients. The cost of the supervisory and of the clerical personnel needed to carry out the provisions of chapter 131 is an administrative expense chargeable to the recipient. The Agreement provides as follows, inter alia:

"(i) Distribution charges. Recipient agencies may be required to pay part or all of the within-State costs of distribution through a system of charges assessed by distributing or subdistributing agencies. Any system of assessments operated by the distributing agency shall have the prior approval of, and be subject to review by the Area Office, Food Distribution Division, AMS. Any such system operated by subdistributing agencies shall have the prior approval of the distributing agency and be subject to review by the distributing agency and the Area Office, Food Distribution Division, AMS. The charges assessed shall be reasonable in relation to the services provided and the funds collected shall be used solely in accordance with the provisions of paragraph (j) of this section

"(1) Use of funds accruing in operation of the program. Funds accruing from the sale of containers, salvage of commodities, distribution charges, insurance, or recoveries from loss or damage claims . . . shall be used only for the payment of expenses of the commodity distribution program, including transportations, storage and handling of commodities, salaries of persons directly connected with the program, and other administrative expenses. The receipt and expenditure of funds so accrued shall be reviewed by distributing agencies periodically, but at least once each fiscal year, to determine that fund balances are not in excess of program needs. If excess funds accumulate by reason of collection of distribution charges, such excess funds shall be used to reduce such charges or shall be returned to contributors. . . . " (Emphasis supplied.)

Part 503.6 of the general Regulations and Policies attached to the agreement.

QUESTION #2:

We have taken the liberty of restating the question: Would it be permissible for the Division of Field Services to secure clerical assistance through an arrangement with one of its contracting agencies (i.e., a trucking firm) whereby the agency would place an employee into the office of the Division of Field Services under Division control?

ANSWER:

Yes.

REASON:

Such service would properly constitute an administrative expense chargeable to recipients.

There should, of course, be no contract of employment existing between the employee and the State of Maine; the contract of employment should be wholly one between the employee and the particular contracting agency, i.e., commercial carrier, etc.

The Agreement contemplates a prior approval of a system of assessments. § 503.6 (i).

QUESTION #3:

Would there be objection to the provision of labor for administrative work by employees of our agent at the physical plant of our agent? (Such labor costs would be pro-rated as noted above or included in an overall increase on present tariffs applicable to handling and storage costs.)

ANSWER:

No answer appears necessary in view of the answer to question #2. Too, the mention of a "provision of labor" is not without ambiguity.

Respectfully Submitted,

John W. Benoit
Assistant Attorney General