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

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MAR 23 1970

Dear Mr. Habermeyer:

This is in reply to your letter dated February 20, 1970, requesting our opinion on whether "the appropriation of the Railroad Retirement Board" is available to pay a monthly franchise fee to a food service contractor in order to obtain cafeteria service on a manual basis in the Board's headquarters office building, 844 North Rush Street, Chicago, Illinois.

The Board, an independent agency in the executive branch of the Government, administers the Railroad Retirement Act (45 U.S.C. 228a-228z-1) and the Railroad Unemployment Insurance Act (45 U.S.C. 351-367). The appropriation apparently with which your inquiry is primarily concerned is the annual appropriation for the administrative expenses of the Railroad Retirement Act. It provides moneys derived from the railroad retirement account and the railroad retirement supplemental account "For expenses necessary for the Railroad Retirement Board * * *." See Departments of Labor, and Health, Education, and Welfare, and Related Agencies Appropriation Act, 1970, Public Law 91-204, March 5, 1970.

The administrative expenses of the Railroad Unemployment Insurance Act, on the other hand, are provided for by the permanent appropriation of the moneys in the railroad unemployment insurance administrative fund (45 U.S.C. 361). If the annual appropriation to the Board is available for the purpose under consideration, there would appear to be little doubt of the availability of the fund for such share of the expense as may properly be chargeable to the unemployment insurance program.

In explanation of the situation giving rise to the question presented, your letter states:

"A cafeteria has been maintained in the Board's headquarters building since the early 1940's. The present cafeteria, which is over ten years old, was installed at a cost of approximately \$400,000 after the General Services Administration

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had conducted a feasibility study into the need for construction of this type of cafeteria, and that Administration has never altered its position that a cafeteria is necessary in the building. Furthermore, the cafeteria space could not now be assigned to other operations without incurring prohibitive conversion costs, since it is a special purpose space with high ceilings, heavy fixed equipment, fire walls, etc.

"For many years the cafeteria was operated by providers of food services under contracts which involved no costs to the Railroad Retirement Board. In recent years, however, the Board has experienced increasing difficulty in maintaining adequate food service because operating costs have risen beyond a profitable level, and the present contract, which was in effect for only one year, terminates on February 27, 1970, with no possibility of extension. Upon receiving notification that the present food service contract would be terminated, advertisements were sent throughout the country to ninety-three prospective bidders. Many expressed initial interest; however, after analyzing the high labor costs, the rising food costs, the present union contract, and the government wage determination, all decided that they would not submit a bid in accordance with government specifications.

"Faced with the possibility of no cafeteria service on the morning of March 2, 1970, the General Services Administration has endeavored to negotiate with any and all contractors who would provide a manual service. The only interested parties were those who were willing to provide the service on a franchise fee payment basis. The lowest bidder was the Southern Cafeteria Operating Company at Birmingham, Alabama, which offered to provide all necessary cafeteria services on a manual basis for a fee of \$2,000 per month, with any profit in excess of 5% being applied to reduce the amount of the monthly payment. By making changes in the food service lines (e.g., providing a scramble type service to increase sales volume) and by introducing self-bussing it may

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be possible to reduce the cost to the Board by approximately \$600 a month. In addition, it is expected that the General Services Administration will absorb certain maintenance costs amounting to approximately \$500 per month, which would be deducted from the \$2,000 fee."

While the obligation of an agency's appropriated funds in assuming or underwriting a part of the operating costs of a cafeteria for its employees is unusual and cannot as a general proposition be justified, your letter points out that the Railroad Retirement Board, after consideration of the alternatives, has concluded that the maintenance of the cafeteria service is "essential to the efficiency of its operations and a significant factor in assisting the Board in hiring and retaining employees and promoting employee morale." See 45 U.S.C. 228j(b)4. In view of the administrative determination and assuming that the prices to be charged the employees will be comparable to the prices charged employees in other Government cafeterias in the Chicago area, we would not interpose objection to the Board's incurring the contemplated expense and the use of its appropriated funds for that purpose. Cf. 42 Comp. Gen. 149, 151 (1962); 35 Comp. Gen. 113, 117 (1955); 23 Comp. Gen. 867 (1944); B-45273, October 30, 1944. However, since it appears that the Board must continue over an extended period to help finance the operation of the cafeteria, we suggest that the matter be brought to the attention of the appropriate congressional committees.

Sincerely yours,

R.F. KELLER

Comptroller General
of the United States

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The Honorable Howard W. Habermeyer
Chairman, Railroad Retirement Board