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DEPARTMENT OF JUSTICE

Vol. 11 No. 18

UNITED STATES ATTORNEYS
BULLETIN

UNITED STATES ATTORNEYS BULLETIN

Vol. 11 September 20, 1963 No. 18

IMPORTANT NOTICE

Department Memo No. 276, dated March 24, 1960, prohibits the release of FBI or other investigative agency reports to personnel other than those of the investigative agency by which they were prepared. As the Memo points out, probation officers are included among those to whom the reports should not be released.

The replies to a recent questionnaire disclosed that two-thirds of the United States Attorneys' offices make FBI reports available to probation officers for use in connection with the preparation of pre-sentence reports. United States Attorneys are reminded that this procedure is prohibited and should be terminated. Requests for examination of investigative reports should be referred to the agency which prepared the report.

MONTHLY TOTALS

	June 30, 1963	July 31, 1963	
Triable Criminal	8,349	8,284	- 65
Civil Cases Inc. Civil Less Tax Lien & Cond.	15,192	15,412	+ 220
Total	23,541	23,696	+ 155
All Criminal	9,903	9,917	+ 14
Civil Cases Inc. Civil Tax & Cond. Less Tax Lien	17,950	18,099	+ 149
Criminal Matters	12,799	13,342	+ 543
Civil Matters	13,939	14,014	+ 75
Total Cases & Matters	54,591	55,372	+ 781

	July 1962	July 1963	Increase or Decrease Number	%
Filed				
Criminal	2,143	2,252	+ 109	+ 5.09
Civil	2,145	2,456	+ 311	+ 14.50
Total	4,288	4,708	+ 420	+ 9.79
Terminated				
Criminal	2,049	2,305	+ 256	+ 12.54
Civil	1,793	2,129	+ 336	+ 18.74
Total	3,842	4,434	+ 592	+ 15.43
Pending				
Criminal	9,417	9,917	+ 500	+ 5.31
Civil	23,253	22,882	- 371	- 1.60
Total	32,670	32,799	+ 129	+ .39

The foregoing figures show that the upward trend in cases filed, which began in 1962 and continued through 1963, is continuing in 1964. There was an increase of 4.5% in new business received in 1962, and an increase of 4.2% in 1963. The July rate of increase is double the rate for the past two years but will level out, it is believed, later on in the year.

The number of terminations for July is extremely encouraging. Not only did civil and criminal terminations greatly exceed the number for the preceding year, but they also fell less than 1% short of keeping pace with case filings. The rate for civil terminations, which usually trail far behind criminal terminations, is especially encouraging.

The fact that terminations were in close ratio to filings kept the rise in the pending caseload down to less than 5%. It is certainly to be hoped that in fiscal 1964 some reduction can be effected in the pending caseload, which has increased every year for the last five years, but has shown the sharpest rise - 12.3% - in the past three years.

For the month of July, 1963 United States Attorneys reported collections of $3,118,350. This is $654,303 or 1.73 per cent less than the $3,772,653* collected in July, 1963.

During July $5,683,316 was saved in 110 suits in which the government as defendant was sued for $7,991,641. 49 of them involving $2,190,866 were closed by compromises amounting to $960,272 and 34 of them involving $4,178,627 were closed by judgments amounting to $1,348,053. The remaining 27 suits involving $1,622,148 were won by the Government. Compared to July, 1962 the amount saved increased by $2,278,326 or 66.91 per cent from the $3,404,990 saved in that month.

The cost of operating United States Attorneys' offices for July, 1963 amounted to $1,642,907 as compared to $1,332,647 for July, 1962.

* Adjusted to reflect deletion of collection made exclusively by IRS in California Southern for July which that district had erroneously reported.

DISTRICTS IN CURRENT STATUS

As of July 31, 1963, the districts meeting standards of currency were:

CASES

Criminal

Ala., N.	Calif., S.	Idaho	Kan.	Miss., N.
Ala., M.	Colo.	Ill., N.	Ky., E.	Mo., E.
Ala., S.	Conn.	Ill., E.	Ky., W.	Mo., W.
Alaska	Del.	Ill., S.	La., W.	Neb.
Ariz.	Dist. of Col.	Ind., N.	Maine	Nev.
Ark., E.	Fla., N.	Ind., S.	Mass.	N. J.
Ark., W.	Fla., S.	Iowa, N.	Mich., E.	N. Mex.
Calif., N.	Ga., S.	Iowa., S.	Minn.	N. Y., N.

CASES

Criminal (Contd.)

N. Y., E.
N. Y., W.
N. C., E.
N. C.,M.
N. D.
Ohio, N.
Ohio, S.
Okla., N.
Okla., E.
Okla., W.
Ore.
Pa., W.
P. R.
R. I.
S. D.
Tenn., E.
Tenn., M
Tenn., W.
Tex., N.
Tex., S.
Tex., W.
Utah
Va., E.
Va., W.
Wash., E.
Wash., W.
W. Va., S.
Wis., E.
Wyo.
C. Z.
Guam
V. I.

CASES

Civil

Ala., N.
Ariz.
Ark., E.
Ark., W.
Calif., S.
Colo.
Del.
Dist.of Col.
Fla., N.
Fla., S.
Ga., N.
Ga., S.
Hawaii
Ind., S.
Iowa, S.
Kan.
Ky., E.
Ky., W.
Me.
Mass.
Minn.
Miss., N.
Miss., S.
Mo., E.
Mo., W.
Neb.
N. J.
N. Y., E.
N. C., M.
N. C., W.
Ohio, N.
Okla., N.
Okla., E.
Pa., E.
Pa., W.
P. R.
S. C., E.
S. C., W.
S. D.
Tenn., E.
Tenn., M.
Tenn., W.
Tex., N.
Tex., E.
Tex., W.
Utah
Vt.
Va., E.
Va., W.
Wash., E.
Wash., W.
W. Va., N.
W. Va., S.
Wyo.
C. Z.
Guam
V. I.

MATTERS

Criminal

Ala., N.
Ala., S.
Alaska
Ariz.
Ark., E.
Ark., W.
Calif., S.
Colo.
Conn.
Del.
Dist.of Col.
Ga., S.
Idaho
Ill., E
Ill., S.
Ind., N.
Ind., S.
Iowa, S.
Ky., E.
Ky., W.
La., W.
Md.
Minn.
Miss., N.
Miss., S.
Mont.
Nev.
N. H.
N. C., M.
N. C., W.
Okla., N.
Okla., E.
Pa., W.
P. R.
R. I.
S. C., E.
S. C., W.
S. D.
Tenn., M.
Tenn., W.
Tex., N.
Tex., S.
Tex., W.
Utah
Vt.
Va., W.
Wash., E.
Wash., W.
W. Va., N.
W. Va., S.
Wis., W.
Wyo.
C. Z.
Guam

MATTERS

Civil

Ala., N.
Ala., M.
Ala., S.
Alaska
Ariz.
Ark., E.
Ark., W.
Calif., N.
Calif., S.
Colo.
Conn.
Del.
Dist.of Col.
Fla., N.
Ga., N.

MATTERS

Civil (Contd.)

Ga., M.	Maine	N. Mex.	Pa., W.	Utah
Ga., S.	Md.	N. Y., E.	P. R.	Vt.
Hawaii	Mass.	N. Y., S.	R. I.	Va., E.
Idaho	Mich., E.	N. Y., W.	S. C., E.	Va., W.
Ill., N.	Mich., W.	N. C., M.	S. C., W.	Wash., E.
Ill., E.	Minn.	N. C., W.	S. D.	Wash., W.
Ill., S.	Miss., N.	N. D.	Tenn., E.	W. Va., N.
Ind., N.	Miss., S.	Ohio, N.	Tenn., M.	W. Va., S.
Ind., S.	Mo., E.	Okla., N.	Tenn., W.	Wis., E.
Iowa, N.	Mont.	Okla., E.	Tex., N.	Wis., W.
Iowa, S.	Neb.	Okla., W.	Tex., E.	Wyo.
Ky., E.	Nev.	Pa., E.	Tex., S.	C. Z.
Ky., W.	N. H.	Pa., M.	Tex., W.	Guam
La., W.	N. J.			V. I.

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ADMINISTRATIVE DIVISION

Administrative Assistant Attorney General

MEMOS AND ORDERS

The following Memoranda applicable to United States Attorneys Offices has been issued since the list published in Bulletin No. 16 Vol. 11 dated August 23, 1963:

MEMO	DATED	DISTRIBUTION	SUBJECT
351	7-26-63	U.S. Attorneys	Recovery of Forfeitures Assessed by Federal Communications Commission Pursuant to 47 U.S.C. 510.
353	8-13-63	U.S. Attorneys	Fair appraisal in condemnation cases.
337 S-1	8-22-63	U.S. Attorneys	Public Law 87-748, 76 Stat. 744, approved October 5, 1962.

ORDER	DATED	DISTRIBUTION	SUBJECT
302	8-16-63	U.S. Attorneys and Marshals	Amending Departmental Equal Employment Opportunity Regulations to preclude discriminatory practices in recruitment and training of Departmental personnel.
303	8-20-63	U.S. Attorneys and Marshals	Amending regulations relating to Organization of Department of Justice - Title 28--Judicial Admin. Chapter I--Department of Justice.

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ANTITRUST DIVISION

Assistant Attorney General William H. Orrick, Jr.

SHERMAN ACT

Price-fixing, Self-locking Nuts. United States v. Kaynar Mfg. Co., Inc., et al. (S.D. Calif.). On August 29, 1963, a grand jury in Los Angeles, California, returned a one count indictment against Kaynar Mfg. Co., Inc., and Frank A. Klaus, its president, Fullerton, California; Elastic Stop Nut Corporation of America, and W. F. McGuinness, its president, Union, New Jersey; Standard Pressed Steel Co., and H. Thos. Hallowell, Jr., its president, Jenkintown, Pennsylvania; Boots Enterprises, Inc., Newark, N. J.; Townsend Company (merged into Textron Industries, Inc.) Providence, R. I.; and Collins-Powell Company, Beverly Hills, California. The indictment charges a conspiracy to restrain interstate trade and commerce in self-locking nuts, in violation of Section 1 of the Sherman Act. A companion civil complaint was filed on the same date naming Kaynar Mfg. Co., Elastic Stop Nut Corporation, Standard Pressed Steel and Textron Industries, Inc., as defendants.

The indictment and civil complaint charge that beginning sometime prior to January 1, 1956, and continuing at least through October 1962, the defendants and co-conspirators conspired to raise, fix, maintain and stabilize prices for the sale of self-locking nuts. It is alleged that the total volume of sales of self-locking nuts was approximately $19,600,000 for the year 1962, of which the corporate defendants together accounted for about 93%.

Self-locking nuts are fasteners made of high strength steel and are used in joining various parts of military and commercial aircraft, missiles and for other purposes. Self-locking nuts are so constructed as to tightly engage a bolt in such a manner that they will keep their installed position under conditions of great stress and vibration. By definition in the indictment, self-locking nuts are limited to those qualified under standards specified by the Department of the Army, the Navy and the Air Force, and designated NAS, MS and AN with varying numbers or combinations of numbers and letters.

The relief prayed for in the complaint includes, among other things, injunctive relief against all the defendants, and the requirement that "within sixty (60) days following entry of a final judgment herein to (a) withdraw its presently effective price list and prevailing prices and discount terms of self-locking nuts, (b) individually review its prices and discount terms for self-locking nuts on the basis of its individual cost figures and individual judgment as to profits, and (c) adopt new prices and discount terms and issue a new price list and discount sheet for self-locking nuts on the basis of such independent review."

Staff: Draper W. Phillips (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General John W. Douglas

COURT OF APPEALS

FEDERAL TORT CLAIMS ACT

Government Not Liable to Injured Party After Settlement Between Injured Party and Government Employee. Florence E. Bacon and Francis G. Bacon v. United States, (C.A. 8, August 21, 1963). After having been injured in an automobile collision with a car driven by a Government employee in Missouri, the Bacons settled with the employee and received a covenant not to sue. The Bacons then sued the United States under the Federal Tort Claims Act. In defense, the United States asserted, and the district court agreed, that the covenant not to sue the Government employee terminated the liability of the United States. The Court of Appeals affirmed. Applying Missouri law, which is required by the Federal Tort Claims Act, the Court held that, as the liability of the United States was vicarious, it was dependent upon the liability of its employee. And, as the employee was no longer liable, neither was the United States.

Staff: Sherman L. Cohn and Mark R. Joelson (Civil Division)

United States and Railroad Jointly Liable for Injuries Caused by Mail Sack Thrown from Moving Train. Missouri-Kansas-Texas, R.R. v. Ingram (C.A. D.C., August 20, 1963). Plaintiff had purchased a ticket from the railroad and was waiting on the depot platform for her train to be flagged to a stop. The engineer of the approaching train did not see the signal, however, and failed to bring the train to a stop at the depot. While waiting on the platform, plaintiff was struck on the left shoulder by a mail bag thrown from the moving train. The Court found that the accident was the result of the concurrent negligence of the railroad in failing to warn plaintiff of the danger and failing to furnish her with a safe place to stand, and the mail messenger (an agent of the United States) in failing to maintain a proper lookout before throwing the mail sack from the moving train.

Staff: United States Attorney John M. Imel and Assistant United States Attorney L. K. Smith (N.D. Okla.).

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CIVIL RIGHTS DIVISION

Assistant Attorney General Burke Marshall

Obstruction to court orders; Injunctive Relief Granted Upon Application of United States. United States v. George C. Wallace (M.D. Ala.) The Attorney General filed a civil action on behalf of the United States in the Middle District of Alabama on September 9, 1963, alleging that the Governor of Alabama was preventing the implementation of orders entered by the federal district courts in Alabama requiring racial desegregation of public schools in Birmingham, Tuskegee and Mobile. The schools in each of these cities had been scheduled to open during the week of September 2 with a small number of Negroes in attendance in formerly all-white schools. After some preliminary maneuvers which had succeeded in keeping the affected schools closed to both white and Negro pupils up to that time, the Governor on the early morning of September 9 issued three executive orders forbidding the Negroes from attending the affected schools but permitting attendance by white children. On the afternoon of the same day the Government filed its complaint together with a motion for preliminary injunction and an application for a temporary restraining order. A restraining order was signed by the District Judge for the Middle District of Alabama and was also subscribed to by the three District Judges for the Northern District of Alabama and by the District Judge for the Southern District. Thus, all judges of the districts in which the Governor was obstructing the carrying out of the school desegregation decrees subscribed to the restraining order. On the following morning the members of the Alabama Highway Patrol, who had been enforcing the terms of the Governor's executive orders by excluding the Negro students, were withdrawn and the schools commenced operation in compliance with the orders of the federal courts.

Staff: United States Attorney Ben Hardeman (M.D. Ala.)
John Doar (Civil Rights Division)

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CRIMINAL DIVISION

Assistant Attorney General Herbert J. Miller, Jr.

HYDRAULIC BRAKE FLUID ACT, PL 87-627

This Bulletin is to supplement the instructions concerning the Hydraulic Brake Fluid Act, PL 87-627, which were sent to United States Attorneys as a separate Memorandum dated June 18, 1963.

An understanding has been reached with the Department of Commerce concerning investigative and inspection responsibility over offenses within the Act. It has been agreed that investigative jurisdiction under the Act is in the F.B.I., although no routine inspections will be undertaken by the Bureau. The Department of Commerce, through the National Bureau of Standards, is working out routine inspection procedures together with other Government agencies. Until routine inspection procedures are established, enforcement will be undertaken by the F.B.I. on the basis of individual complaints.

In addition, the Department of Commerce will be responsible for the technical and scientific testing of allegedly defective brake fluid.

If an individual complaint is received, and as part of the investigation a scientific or technical test of allegedly defective brake fluid is required, the F.B.I. will request the Department of Commerce to undertake such tests. Thereafter, if further investigation is needed, the F.B.I. will conduct it.

The Department of Commerce will keep the Department of Justice informed of developments regarding inspection procedures. These will be described in future bulletins as required.

MOTION TO VACATE

Waiver of Rights to Counsel and to Indictment by Grand Jury; Intelligent and Understandable Entry of Plea of Guilty. Twining v. United States (C.A. 5, August 5, 1963). Defendant was apprehended shortly after robbing a bank in November, 1956. He immediately confessed his guilt and continued to do so, as well as to waive his right to counsel, throughout the proceedings against him. He was convicted in December, 1956, on a two-count information charging him with violation of the Bank Robbery Act, 18 U.S.C. 2113 (a) and (d). He was given two consecutive sentences; but after the Supreme Court, in Prince v. United States 352 U.S. 222, held that the statute embraced only one offense, the trial court vacated the lesser of the two sentences. In December, 1961, he filed a motion under 28 U.S.C. 2255 to vacate sentence, alleging that he had been denied due process in that he had not intelligently and competently waived the assistance of counsel, waived the right to be indicted by a grand jury, or made his plea of guilty. The Fifth Circuit held, on the basis of the evidence and appellant's previous statements, conduct, and criminal experience, that he had been fully aware of the

seriousness of the charges against him and had effectively waived his rights. The Government and the Court relied heavily on Johnson v. Zerbst, 304 U.S. 458, and Ray v. United States, 192 F. 2d 658. The Court was careful to ascertain that appellant had been aware of the nature of the charges against him. It held that by the standard articulated in Johnson v. Zerbst, at p. 464, appellant had comprehended "the range of allowable punishments" sufficiently to have waived his rights. The opinion thus suggests that defendants are entitled to some awareness of the maximum sentences to which they might be subjected.

Staff: United States Attorney Louis C. LaCour; Assistant United States Attorney Louis R. Lucas (E.D. La.).

FEDERAL YOUTH CORRECTIONS ACT

Defendant Over Age of Twenty-two Properly Given Indeterminate Sentence Under Youth Corrections Act. Standley v. United States, 318 F. 2d 700 (C.A. 9, 1963). Defendant entered a plea of guilty to violation of 18 U.S.C. 2312 and was given an indeterminate sentence under 18 U.S.C. 5010 (b), the Youth Corrections Act. Following denial of a motion to vacate sentence he appealed, arguing in part that he was not under the age of twenty-two years at the time of conviction (18 U.S.C. 5006(b)). Defendant was in fact twenty-two years, ten months old on the date of conviction (plea of guilty). The Court of Appeals affirmed and found no merit to the argument, citing 18 U.S.C. 4209 which authorizes imposition of sentence under the Youth Corrections Act in the case of a defendant over twenty-two but under twenty-six at time of conviction if in light of the defendant's previous record, background and related factors the court finds "reasonable grounds to believe that the defendant will benefit from the treatment. . ."

Staff: United States Attorney Sidney L. Lezak; Assistant United States Attorney George E. Juba (D. Ore.).

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IMMIGRATION AND NATURALIZATION SERVICE

Commissioner Raymond F. Farrell

DEPORTATION

Doctrine of Collateral Estoppel Erroneously Applied in Deportation Hearing. Sam Title v. INS (C.A. 9, August 20, 1963.) This action involved a petition under Section 106(a) of the Immigration and Nationality Act, 8 U.S.C. 1105a, to review an administrative order for petitioner's deportation.

Petitioner, a native of Rumania, entered the United States in 1923 and was naturalized in 1941. His naturalization was revoked in 1955 by a federal court upon a determination that he had concealed from the naturalization court his membership in the Communist Party of the United States and that such Party was an organization which advocated the violent overthrow of the United States Government. His appeal from the denaturalization decree was dismissed for lack of prosecution and he was unsuccessful in subsequent efforts to have the decree voided. Title v. U.S., 263 F. 2d 28, certiorari denied 359 U.S. 989.

In 1960 deportation proceedings were commenced against petitioner on the ground that after entry he had been a member of the Communist Party. At the deportation hearing the Government introduced the record of the denaturalization proceedings to establish petitioner's membership in the Communist Party. On the basis of his conclusion that the doctrine of collateral estoppel applied, the Special Inquiry Officer did not allow petitioner to present evidence at the deportation hearing and this ruling was upheld on appeal to the Board of Immigration Appeals.

The Ninth Circuit, after recognizing that the purpose of the doctrines of res judicata and collateral estoppel is to preclude the relitigation of issues previously determined between the same parties and that their application in many cases will have the practical effect of preventing the party against whom the issue was determined from again presenting evidence on that issue, held that the refusal of the Special Inquiry Officer to allow petitioner to present evidence denied him the right of a deportation hearing under Section 242 of the Immigration and Nationality Act, 8 U.S.C. 1252. The Court then concluded that since the doctrine of collateral estoppel should not have been applied there was not reasonable, substantial or probative evidence to support the deportation order and set it aside.

Staff: United States Attorney Francis C. Whelan, Assistant United States Attorneys Donald A. Fareed and James R. Dooley (S.D. Calif.)

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TAX DIVISION

Assistant Attorney General Louis F. Oberdorfer

CRIMINAL TAX MATTERS

NOTICE

Recall of Mandate and Dismissal of Appeal of Pre-indictment Injunction Matter. Austin v. United States, et al. (April 16, 1962). A decision adverse to the United States was rendered in this case by the Court of Appeals in 1961 (297 F. 2d 356). (Reported in United States Attorneys Bulletin Vol. 10, No. 6, p. 37). After the decision of the Supreme Court in DiBello v. United States, 369 U.S. 121, the Court of Appeals on April 16, 1962, sua sponte recalled its mandate, set aside its judgment, and dismissed the appeal in Austin v. United States. The order of the Court of Appeals has not been published in the federal reporter system, and the adverse decision in Austin is occasionally cited in support of pre-indictment injunction proceedings by taxpayers. Reliance on the decision is misplaced, and the true status of the decision should be pointed out to vitiate this precedent. Copies of the order of the Court of Appeals may be obtained from the Tax Division on request.

Bankruptcy; Payment of Federal Employment Taxes on Allowed Wage Claims Is Responsibility of Trustee in Bankruptcy; Taxes Classified as Administration Expenses and Accorded First Priority. In re Connecticut Motor Lines, Inc. (E.D. Pa., April 29, 1963 and August 13, 1963.) (CCH 63-2 USTC ¶9624 - partial report). The final order of distribution signed by the Referee in Bankruptcy in this case made no provision for payment by the Trustee in Bankruptcy of federal employment taxes (withholding and FICA) in respect of the wage claims ordered paid out of the estate to the employee-claimants of the bankrupt corporation. Proofs of claim for federal employment taxes which accrued on wages paid before bankruptcy had been filed in the proceedings and were allowed in full in the final order of distribution, but the Trustee declined to pay taxes on the bankruptcy distributions to wage claimants on the grounds that the distributions were not "wages" and the Trustee was not an "employer" within the purview of the applicable provisions of the Internal Revenue Code, although the Internal Revenue Service had advised him of his liability for such taxes.

The Referee sustained the Trustee's position and pointedly criticized the holding of United States v. Fogarty, 164 F. 2d 26 (C.A. 8), and the several cases in other circuits following that case, upon which the Government based its arguments. Although recognizing that the Fogarty rule clearly supported the Government's position in the present case, the Referee relied upon the fact that no court in the Third Circuit had ever ruled upon the question.

Upon petition for review by the Government, the District Court found that the Fogarty rule was sound and reasonable in view of the language of

the Internal Revenue Code, and held that the Trustee was liable for federal employment taxes upon the wage distributions as claimed by the Government. The Court reserved decision, however, on the question of whether the Government was obliged to file a formal proof of claim for such taxes or whether they constituted an expense of administration payable by the Trustee, and remanded the case to the Referee for further findings.

After a supplemental certificate of review was submitted by the Referee, the Court entered its supplemental opinion on August 13, 1963 (unreported as yet), holding that the taxes in question were a necessary expense of administration under Section 62(a) of the Bankruptcy Act (11 U.S.C. 102), and that no proof of claim need be filed by the Government for such taxes under Section 57(n) of the Act (11 U.S.C. 93). The case was remanded by the Court under its order directing the Trustee to withhold and to pay to the Government the taxes in respect of wage-claims distributions.

This decision is significant as still another application of the Fogarty rule (see also: United States v. Curtis, 178 F. 2d 268 (C.A. 6), certiorari denied, 338 U.S. 965; Lines v. State of California, Department of Employ., 241 F. 2d 201 (C.A. 9), rehearing denied, 246 F. 2d 70, certiorari denied, 355 U.S. 857; and In re Daigle, 111 F. Supp. 109 (Me.)), and as the first clear holding that employment taxes on such wage distributions constitute expenses of administration which consequently are entitled to a first priority payment under the classifications of priority contained in Section 64 of the Bankruptcy Act (11 U.S.C. 104).

Staff: United States Attorney Drew J. T. O'Keefe; Assistant United States Attorney Sidney Salkin (E.D. Pa.); and John M. Youngquist (Tax Division).

Interpleader Action Naming United States as Party-Defendant by Reason of Fact It May Claim Some Interest in Fund Interpleaded With Court. Board of County Commissioners of Johnson County, Kansas v. United States (D. Kan., August 27, 1963.) This action was commenced by the Board of County Commissioners of Johnson County, Kansas, as the governing body of Indian Creek Sewer Sub-District No. 2, to determine to whom they should pay the sum of $20,667.61 due and owing on a contract for the construction of a sewer line. The Surety Company was named as a defendant because it claimed an interest in the fund by reason of its completion of the contract after the contractor (the taxpayer in this case) had defaulted. The United States was named as a party since it might claim an interest in the fund by virtue of its tax liens against taxpayer-contractor.

The United States filed a motion to dismiss itself as a party-defendant on the ground that it had not waived sovereign immunity. The Court determined that this was not a suit to which the United States had

consented and therefore the doctrine of sovereign immunity would apply, and in particular held that 28 U.S.C. 2410 did not apply as this was not an action to quiet title absent an assertion by plaintiff that he had any interest or title in the property in question.

Staff: United States Attorney Newell A. George; Assistant United States Attorney Thomas E. Joyce (D. Kan.); and Stephen G. Fuerth (Tax Division).

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