

TEMPIRE

**I**NC. MAGAZINE has released its annual list of “America’s Fastest-Growing Private Companies.” It is perhaps a sign of the times that two of the eight businesses in the “Legal & Accounting” category are providers of J.D. temps. Legal Network, which is ranked #100 overall on the list of 500 and #1 among the “Legal & Accounting” businesses, has seen its revenue grow by 1,496 percent since 1998. The mascot of Contract Counsel, the other Inc. 500 temp lawyer service, is Thomas Edison. Certainly Edison was admirably inventive, but aren’t there any famous lawyers who would qualify as mascots on that ground?

In other Inc. 500 business, we are pleased to note that the producer of our Supreme Court bobblehead dolls, Alexander Global Promotions, came in 301st, having enjoyed 588 percent growth over the past five years. And consider this anecdote from The Diamond Group, a building security company ranked #68:

CEO Jeanette Diamond made the most out of a sexist comment. She once offered her security services to a valuable-coin dealer transporting his collection. His reply: “When I want security, I want big men carrying big guns.” She asked him to put that in writing, submitted it to the Small Business Administration, and was granted 8(a) status, which allows minority businesses to bid on government contracts. Now the Diamond Group provides building security for federal agencies and facilities such as NASA and the IRS service center in Austin. ... Because of its explosive growth, the Diamond Group remained in the 8(a) Business Development Program for only three out of the customary nine years.



Malcolm Alexander, Alexander Global CEO

But the more things change ...

The majority of Diamond’s recruits come from the military. She also hires more men. “Clients expect that. You give them what they want. Besides, they’re more attracted to firearms than women are.”

We suggest that Ms. Diamond beware of female job applicants who ask her to put *that* in writing.

*Inc.*, Special Issue Fall 2003, at 42, 85, 114.



MEET THE WINSTONES

**F**RED AND WILMA used to be spokes-celebrities for R.J. Reynolds, back when the innocents at Big Tobacco didn’t realize that cigarettes were hazardous to your health. The Flintstones probably could sign up again today. More in the Autumn *Green Bag*.

EQUUS IPSA LOQUITUR

**T**HE FOREWORD TO the U.S. General Accounting Office’s *Principles of Federal Appropriations Law*, produced by the agency’s Office of the General Counsel, explains that the objective of the book “is to present a basic reference work covering those areas of law in which the Comptroller General renders decisions and which are not covered in other GAO publications. ... We have tried to be simultaneously basic and detailed – basic so that the book will be useful as a teaching

manual' for the novice or occasional user, lawyer and non-lawyer alike; detailed so that it will be a useful reference for those whose work requires a more in-depth understanding." And now here is the GAO's *Principles* on the "Necessary Expense Doctrine":

The spending agency has reasonable discretion in determining how to carry out the objects of the appropriation. This concept, known as the "necessary expense doctrine," has been around almost as long as the statute [31 U.S.C. § 1301(a)] itself. ...

In the absence of either statutory authority or adequate justification under the necessary expense doctrine, the expenditure, like any other expenditure, is illegal. Thus, the Department of Housing and Urban Development had no authority to finance participation at a trade exhibition in the Soviet Union where HUD's primary purpose was to enhance business opportunities for American companies. 68 Comp. Gen. 226 (1989); B-229732, December 22, 1988. Regardless of whether it may or may not have been a good idea, commercial trade promotion is not one of the purposes for which Congress appropriates money to HUD.

No discussion would be complete without some mention of the "marauding woodpecker" case. It appears that in 1951, "marauding woodpeckers" were causing considerable damage to government-owned transmission lines and the Southwestern Power Administration, Department of the Interior, wanted to buy guns with which to shoot the woodpeckers. Interior first went to the Army, but the Army advised that the types of guns and ammunition desired were not available, so Interior next came to GAO. The Comptroller General held that, if administratively determined to be necessary to protect the transmission lines, Interior could buy the guns and ammunition from the Southwestern Power Administration's construction

appropriation. The views of the woodpeckers were not solicited. B-105977, December 3, 1951. Actually, this was not a totally novel issue. Several years earlier, GAO had approved the use of an Interior Department "maintenance of range improvements" appropriation for the control of coyotes, rodents, and other "predatory animals." A-82570, December 30, 1936. See also A-82570/B-120739, August 21, 1957.

And from a footnote attached to the end of that passage:

Everyone loves a good animal case. Unfortunately, the animals in most GAO decisions are dead or, as in the cases cited in the text, soon to become dead. Readers interested more in amusement than precedent might also check out 7 Comp. Gen. 304 (1927) (removal of a horse "found dead lying on its back in a hole"); 18 Comp. Gen. 109 (1938) (another dead horse); B-86211, July 26, 1949 (death of hogs allegedly caused by being fed garbage purchased from Navy installation; it was pointed out that other hogs had eaten the same government-furnished garbage and managed to survive); B-47255, February 6, 1945 (burial of three dead bulls); B-37205, October 19, 1943 (mule fell off cable swing bridge); A-92649, April 22, 1938 (still another dead horse); B-115434-O.M., June 19, 1953 (agency borrowed a bull from another agency for breeding purposes, then had it slaughtered when it became vicious). These cases are being memorialized here because they will probably never be cited anywhere else. Insects do not escape either. See Comp. Gen. 236 (1954) (grasshopper control in national forests). We're still looking for cases on fish.

Your tax dollars at work.

1 General Accounting Office, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 4-14, 4-15, 4-20 @ n.7 (2d ed. 1991). *GB*