



## UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON 25, D.C.

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CIVIL ACCOUNTING AND  
AUDITING DIVISION

The Comptroller General

The Agricultural Research Service (ARS), Department of Agriculture, is substantially altering a building, owned and maintained by the agency, to provide an additional laboratory for research purposes. The agency does not consider that the provisions of section 3733, Revised Statutes, 41 U.S.C. 12, are applicable to these alterations and therefore the cost of the building alterations are not deemed subject to the monetary limitations imposed by the Congress in the agency's appropriation acts. We question the agency's decision to exclude the building alterations from the provisions of section 3733.

During fiscal year 1961, the agency began altering building No. 179, a former bull barn located at the Agricultural Research Center, Beltsville, Md. The cost of the building at the start of the alteration work, according to real property inventory records was \$27,000. The building is being altered to provide a laboratory primarily for research experiments to identify the sources of infection and environmental causes of clinical mastitis in bovine animals. The work includes removing animal box stalls; providing additional electricity, heating, and water utilities; installing a stairway and hay chute; and erecting interior cinder block walls for the environmental chambers (rooms for controlling temperature and humidity) for engineering and physiology rooms, a milk room, an equipment room, and a toilet room. The cost of this work is estimated at about \$61,000. In addition, the cost of purchasing and installing insulation and equipment to produce the desired temperatures and humidities in the climatic chambers is estimated at about \$42,000.

As of March 1, 1963, the agency had recorded expenditures of approximately \$45,000 for the work. This amount does not include costs to be incurred for insulation and equipment. The estimated completion date for the laboratory is June 1963.

The agency is of the opinion that the alterations to the bull barn are for the purpose of providing "special purpose space" and that therefore, the monetary limitations on the cost of building alterations contained in the Department of Agriculture and Farm Credit Administration Appropriation Act, 1961 (74 Stat. 232) do not apply. (See enclosed Exhibit A.)

We were advised by the Department's Office of General Counsel that an agency's appropriation is available for the payment of the cost of necessary structural alterations directly incidental to the installation of special purpose equipment which is needed to carry out the duties and functions imposed on the agency by law. (See enclosed Exhibit B.) Included in the duties and functions of ARS is the conduct of research, investigations and experiments in connection with animal pests and diseases. The Department's Office of General Counsel advised us also that Exhibit B, although it refers to another situation, sets forth the general position of the Department that provisions of section 3733, are not applicable to alterations for special purpose space and therefore the cost of the building alterations are not subject to the monetary limitations imposed by the Congress in the agency's appropriation acts. We were referred to Comptroller General decisions, 3 Comp. Gen. 812; 16 id. 160.

We believe there is a question as to the extent the above cited decisions of the Comptroller General can be used as a basis for making structural alterations without regard to appropriation limitations. In 3 Comp. Gen. 812 it was held that an appropriation available for the purchase of special equipment is available for structural alterations proximately incident to and solely necessary for the special equipment installation and such appropriation was not available for structural changes remotely incident to the installation of special equipment. In 16 Comp. Gen. 160 it was held that an appropriation made available to an agency for duties imposed by law is available for minor structural alterations merely incidental to the installation of special equipment.

The case in point involves alterations plus the installation of equipment, estimated at about \$103,000, which will completely change the purpose of a \$27,000 bull barn. The magnitude of the alteration work is for consideration when determining whether such work falls within the meaning of a public improvement under section 3733. According to 27 Comp. Gen. 634, extensive structural changes constitute a public improvement. In addition, even if certain renovations can be

considered as needed to carry out the duties and functions imposed on the agency by law, the provisions of section 3733, would seem to apply. For example, 38 Comp. Gen 593 states that the conversion of certain buildings for school purposes, the rehabilitation of a cafeteria, and the conversion of a school building for use as a clinic were considered to be public improvements subject to section 3733. The alteration of a bull barn for use as a laboratory would appear to be analogous to the above examples.

Also for consideration is the intent of the Congress in enacting section 703 of the Department of Agriculture Organic Act of 1944 (5 U.S.C. 565a). This section authorizes the Department of Agriculture to erect and alter buildings, provided (1) the applicable appropriation act specifically provides for such work and (2) the costs incurred do not exceed the limitations prescribed therein. The appropriation act for fiscal year 1961 included an amount of \$2,550,000 for construction of research facilities--such facilities having been itemized in the H. Rept. No. 1863, 86th Cong., 2nd sess. 5. The Act specifies also that, unless otherwise provided, the cost of constructing any one building shall not exceed \$15,000, except for five buildings to be constructed or improved at a cost not to exceed \$30,000 each. Under the Act the cost of altering any one building during the fiscal year shall not exceed \$5,000 or 5 per centum of the cost of the building, whichever is greater. Similar limitations were included in the appropriation acts for fiscal years 1962 and 1963.

The agency, for fiscal year 1961, deemed it necessary to obtain specific authorization for the construction of a \$150,000 laboratory (see H. Rept. No. 1863 noted above), but apparently thought it unnecessary to obtain authorization for the alteration of the bull barn for use as a laboratory at an estimated expenditure of about \$103,000.

The alterations to the bull barn were not specifically provided for in the appropriation act; therefore, the cost of alterations in excess of the \$5,000 limitation would appear to be unauthorized. If the limitation on the cost of building alterations did not apply then it would appear the agency would have authority, without regard to monetary limitations, to make extensive alterations to any other building on the basis that "special purpose space" is being provided.

We further noted that the agency in requesting the Congress to raise the limitation on the cost of building alterations for fiscal year 1961, stated:

"The present limitations unduly restrict alterations needed to make best use of existing space for research and other work, or alterations needed to employ new methods in current research work. Alterations needed usually consist of moving partitions and making existing space available for other purposes, major changes in utilities, small additions, installation of constant temperature facilities, safety measures needed for use of radioactive tracer techniques, etc." (Hearings before the Subcommittee of the Senate Committee on Appropriations, H.R. 12117, 86th Cong., 2nd sess. 20.)

It appears from the above that the agency was aware that monetary limitations which are imposed on the cost of building alterations by appropriation acts, apply to alterations of research facilities.

To summarize, we question the agency's contention that the alteration of a bull barn into a laboratory--a research facility--is for special purpose space and not subject to appropriation limitations. Our position is based on (1) the belief that 3 Comp. Gen. 812; 16 id. 160; do not apply when extensive alterations which completely change the purpose of a building are involved; (2) the belief that section 703 of the Department of Agriculture Organic Act of 1944 provides that limitations in the appropriation acts for the erection and alteration of buildings apply to research facilities; and (3) the recognition by the agency before the Congress that appropriation limitations for alterations apply to research facilities.

Your decision is requested as to whether the agency's action in authorizing the alteration of a bull barn for use as a laboratory, without regard to the limitations imposed by the applicable appropriation acts, is legally proper. If the agency is considered to have made the alterations without legal

authority, we would want to include such a finding in a report to the Congress. Also, we request instructions as to any other action which would be required if the alterations are considered unauthorized.

Oye V. Stovall  
Oye V. Stovall  
Deputy Director

Enclosures

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Director, Civil Accounting and Auditing Division

Returned. Section 3733, R.S., 41 U.S.C. 12 provides as follows:

"No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose."

The Department of Agriculture has, since 1944, been granted continuing legislative authority to erect, repair and improve buildings subject to restrictions carried in succeeding appropriation acts. Specifically, section 703 of the Department of Agriculture Organic Act of 1944, approved September 21, 1944, ch. 412, 58 Stat. 742, 5 U.S.C. 565a provides:

"The Department of Agriculture is authorized to erect, alter, and repair such buildings and other public improvements as may be necessary to carry out its authorized work: Provided, That no building or improvement shall be erected or altered under this authority unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein."

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The derivative source of the Department of Agriculture Organic Act of 1944 is H.R. 4278, 78th Cong. The following explanation, taken from the Senate and House of Representative Reports which accompanied H.R. 4278, is of assistance in construing the above-quoted language.

"Section 703. Buildings.--This section provides authority for the erection, alteration, and repair of buildings and public improvements necessary for the work of the Department of Agriculture, except that it is expressly stipulated that any such building or improvement must be further provided for in the applicable appropriation, together with the limitations which the Congress deems necessary on such operations. Section 3733, Revised Statutes (41 U.S.C. sec. 12) requires express authorization for buildings and public improvements, and the effect of section 703 of this bill will be to permit the continued provision for such expenditures in the annual appropriation acts, but within such limitations as these provisions will carry. For many years, the appropriation acts of the Department under the several items where needed have included provisions for the construction, alteration, or repair of buildings or other improvements, usually within certain specific limitations or limitation formulas.

"This section contains a limitation proviso similar to that appearing in several other sections of this bill. The purpose of this proviso is to require that not only must express provision be made in the appropriation item pursuant to the authority, but also that such express provision will not be operative unless it also prescribes the limitations which Congress determines should be placed thereon." (See H.Rept. No. 1198, 78th Cong. 2d sess. 18, 19 and S. Rept. No. 803, 78th Cong. 2d sess. 23, 24.)

In compliance with the requirements of section 703 of the Department of Agriculture Organic Act of 1944, the appropriation for Salaries and Expenses for the Agricultural Research Service contained in the Department of Agriculture and Farm Credit Administration Appropriation Act, 1961, approved June 29, 1960, Pub. L. 86-532, 74 Stat. 232 includes the following language:

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"\* \* \* Provided further, That appropriations hereunder shall be available pursuant to title 5, United States Code, section 565a, for the construction, alteration, and repair of buildings and improvements, but unless otherwise provided, \* \* \* the cost of altering any one building during the fiscal year shall not exceed \$5,000 or 5 per centum of the cost of the building, whichever is greater."

Thus, all acts governing the expenditure of funds by the Department for the project undertaken have been enacted--and must be applied--with an awareness of the restrictions contained in section 3733, R.S.

The Agricultural Research Service takes the position that these alterations, to provide an additional laboratory for research purposes, are for special purpose space and as such do not come within the restrictions of section 3733, R.S. The decisions reported at 3 Comp. Gen. 812 and 16 id. 160 are cited in support of this contention. We do not feel that the extensive work done to the bull barn at Beltsville, Maryland, is comparable to the installation of X-ray equipment--with attendant structural changes--that was involved in 3 Comp. Gen. 812. Moreover, even if the renovation to the bull barn could be considered comparable to that considered in 3 Comp. Gen. 812 and as such be considered a special purpose space, section 3733, R.S. would still have to be applied because such renovations and improvements constitute public improvements. See 38 Comp. Gen. 588 at page 593. So far as 16 Comp. Gen. 160 is concerned, suffice it to say that we do not believe construction work totaling \$61,000 on a \$27,000 property can be viewed as "minor structural alterations" of such property as that term is used in 16 Comp. Gen. 160.

As pointed out in your submission, the Agricultural Research Service of the Department of Agriculture was aware that the monetary limitations on building alterations in its appropriation applied to the alteration of certain research facilities. This is made manifest by the fact that an attempt was made to have the limitation imposed by the House of Representatives raised by a Subcommittee of the Senate Committee on Appropriations during the Senate hearings on H.R. 12117, 86th Cong. 2d sess. 20. However, the attempt made by the Agricultural Research Service was to increase the limitation imposed on alteration costs from \$3,750 to \$7,500 for any one building or from 4 to 6 percent of construction costs of the building.

Thus, it is apparent that the justification language submitted to the Senate Committee on Appropriations did not pertain to alterations of existing buildings of the magnitude here involved. This, coupled with the fact that

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for fiscal year 1961 the agency sought funds to construct new laboratories, indicates that the feeling at the agency was that specific authority was not needed to convert the bull barn into a laboratory. Obviously the fact that the agency sought to have increased a limitation applicable to less extensive alterations of research facilities, is inconsistent with the proposition that the agency felt no need to obtain specific authority to do the work done to the bull barn. However, we do not feel that the justification submitted to the Senate Appropriations Committee should be used in support of the proposition that the agency was aware of the necessity to obtain specific authority for the alterations done to the bull barn.

*Trying to digest*

In view of the foregoing, the agency's action in altering this structure for the purpose of constructing a laboratory without specific authority was unlawful. Such alterations and construction are viewed as a public improvement within the meaning of section 3733, R. S. Inasmuch as the estimated completion date for the laboratory was June 1963, it is assumed that the alteration and construction have been completed and the new laboratory is an accomplished fact. Therefore, aside from reporting the matter to the Congress as proposed in your memorandum, no other action is considered necessary at this time.

Joseph Campbell

Comptroller General  
of the United States