



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON 25

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I-17938

April 25, 1955

Chief, Office of Investigations

There is returned herewith Report No. I-17938, dated December 17, 1952, together with supporting papers, concerning the disposition of charges collected from dealers for the storage of tobacco in the Government-owned Charlotte Quartermaster Depot, Charlotte, North Carolina, during a period beginning in April 1948 and ending in June 1951.

During such period the depot was being operated by Tidewater Charlotte Warehouses, Inc., under storage contracts entered into with Blue-Cured Tobacco Cooperative Stabilization Corporation (an association of tobacco growers). The matter presented for consideration involves the question of whether the Government is entitled to the sum of \$85,085.35 received by the Cooperative from payments made by tobacco dealers for storing and servicing tobacco in the warehouse following the purchase of the tobacco by the dealers. By permit dated November 4, 1947, the Department of the Army granted the Department of Agriculture the use of the warehouse on a rent-free basis except for maintenance and service charges. By oral arrangement the Department of Agriculture, acting through the Commodity Credit Corporation, turned the warehouse over to the Cooperative. The latter organization did not operate the warehouse, but by successive annual storage contracts it granted use of the warehouse to Tidewater Charlotte Warehouse, Inc. The storage contracts provided for the payment by the Cooperative to Tidewater of a flat storage rate per hogshead of tobacco, plus handling charges. The contracts contained no provision for storage of the tobacco following its sale to private dealers or for any division of the income from such storage operations. Since the storage contracts contained no provision for restorage operations and the disposition of resulting proceeds, oral arrangements were entered into between Tidewater and the Cooperative (with the knowledge of CCC) whereby Tidewater would be allowed 40% from storage revenue on dealer tobacco up to 20,000 hogsheads, and 32% over that amount, with the balance to be paid to the Cooperative. Such arrangement, which in effect constituted an amendment of the storage contracts, prevailed from April 1948 until September 1949, when the contracting parties agreed that all receipts from dealer storage should be turned over to the Cooperative. The record indicates that altogether the Cooperative received \$74,301.20 for storage charges from dealer

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tobacco under the informal arrangement with Tidewater, and \$10,784.15 for services performed, or a total of \$85,085.35. It is administratively reported that the Cooperative used the money it received for storage of the dealer tobacco to repay the tobacco loans and that for each of the crop years involved the Cooperative has repaid all advances made by the Commodity Credit Corporation.

Report No. I-17938 recommends that the Cooperative be required to refund the \$85,085.35 received by it for dealer storage and service charges. By letter of April 27, 1953, two copies of the report were transmitted to the Secretary of Agriculture for his comments and report as to any departmental action contemplated in the matter. In reply, there were received letters of August 11, 1953, and April 13, 1954, from the Under Secretary of Agriculture, setting forth in detail the circumstances leading up to the transaction. The letters state various reasons as to why the above recommendation should not be followed.

The Department points to the facts that the storage of the tobacco after its sale was incidental to the overall program, since it would have been "most unwise" if sales had been refused because the buyers were not in a position to move the tobacco immediately; that no limitations were placed on the use of the facility; and that the transactions in question were with the tacit consent of the Department. Also, reference is made to accounting and operating difficulties which would be involved in effecting nominal charges which it would be necessary to assess against individual members of the Cooperative in the event refund should be ordered, together with administrative costs which would be incurred in making such determinations and the financial status of the Cooperative.

The permit of November 4, 1947, under which the Department of the Army granted the Department of Agriculture the use of the facility on a rent-free basis, except for maintenance and service charges, presumably was granted under authority of the act of August 5, 1947, as amended, 10 U.S.C. 1270. Under that act the Secretary of the Army is authorized to lease surplus real property upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. By the express provisions of the statute such leases are not subject to section 321 of the Economy Act of June 30, 1932, 47 Stat. 112, as amended (40 U.S.C. 303(b)), which requires that the leasing of buildings and properties of the United States shall be for a money consideration only. As indicated above the oral arrangements for dealer storage entered into between Tidewater and the Cooperative were made with the knowledge of Commodity Credit Corporation and, presumably, the Corporation could have arranged for payment of the net proceeds from dealer storage to the United States. So far as the record shows, however, the Government was not a third party beneficiary under

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these arrangements and nothing appears in the record indicating that the Government's representatives intended that the Government would receive any financial benefit from such arrangements. In such connection, it has been held that before a party may sue on a contract to which he is not a party, it must appear that the contract was made for his benefit. Campbell v. American Limestone Company, 109 F. Supp. 741, affirmed 201 F. 2d 670. In the circumstances, there would appear to be no legal basis for asserting a claim against the Cooperative for recovery of the amount of \$85,085.35 received from dealer storage and service charges incident thereto.

Accordingly, and in view of the contention of the Department of Agriculture that storage of the tobacco after its sale was incidental to the overall program, it is not felt that any proper legal basis exists for undertaking further collection action against the Cooperative.

Attention is invited to the concluding paragraph of the Under Secretary's letter of April 13, 1954, and to the attached copy of memorandum of May 12, 1954, from the Administrator, Price Support, respectively, recognizing the necessity of corrective action and containing instructions intended to guard against any recurrence of the present situation.

JOSEPH CAMPBELL
Comptroller General
of the United States

Attachments