UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON 25

DIVISION OF AUDITS

JUL 7 1955

The Comptroller General

Our audit of the National Bureau of Standards has disclosed certain expenditures for improvements to leased premises which do not appear to have been authorized by law. This matter is herewith submitted for your consideration and advice.

The National Bureau of Standards, in furtherance of its authorized radio propagation and standards research activities, establishes and maintains numerous radio field stations throughout the United States and overseas. The technical nature of this research activity requires the establishment of these field stations in specific locations, which often necessitates leasing of premises from private parties.

One such field station was established at Cheyenne Mountain, Colorado Springs, Colorado. The Bureau entered into an agreement with Broadmoor Hotel, Inc., on July 1, 1950, for lease of a tract of land identified as "base" and "summit" on Cheyenne Mountain at an annual rental of $3,000. The lease (copy attached as Exhibit A) contains the provisions that the Government reserves the right to remove any additions and structures placed on the land by the Government, and that the Government, if required by the lessor, shall restore the premises to the same condition as existed at the time of the agreement.

The Bureau has expended a significant amount of money for improvements to this land. A description of these expenditures is contained in our letter of December 30, 1954 (Exhibit B), requesting an explanation of the apparent violations. The Bureau's reply is dated February 28, 1955 (Exhibit C).

The Bureau's reply does not appear to be completely satisfactory. Without attempting to evaluate the intent of the Bureau in choosing permanent-type construction, we wish to point out that the major portion of the construction activity was performed from 1950 to 1952, under a lease containing an option for renewal only to June 30, 1953. A later lease dated May 1, 1953, contained an option for renewal to June 30, 1958. The Bureau states that the decision to erect buildings with a degree of "permanence" was dictated by the protection needed for the anticipated period of the program.

The argument that Public Law 390 (63 Stat. 907) and the 1950 Appropriation Act (64 Stat. 371) provide authority for improvement to private property does not appear valid. The cited statutes do not appear to contain any specific authorization for construction of permanent buildings on rented

premises. It is a well established general rule that appropriated funds may not be used for the permanent improvement of privately owned property by an agency of the United States, unless expressly authorized by statutory provision. In 6 Comp. Dec. 296, the Comptroller of the Treasury stated:

> "In the absence of any clear provision for the purpose, it is not to be presumed that Congress intends that moneys appropriated for public buildings shall be expended in the construction of any structure on land which is not owned by the United States, and which would inure to the benefit of private persons, or subject the Government to embarrassment in its use * * *."

Your advice is requested as to the audit action to be taken by this Division if it be found that the Bureau does not have the authority to make expenditures for construction of permanent-type buildings on leased property. Decision is also requested as to the applicability, to the expenditures described, of the 25 percent limitation contained in section 322 of the Economy Act of June 30, 1932, 47 Stat. 412, as amended.

Robert L. Long
Director of Audits

Attachments 3

August 26, 1955

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Director of Audits

Returned. The well-established rule is that appropriated funds ordinarily may not be used for improvements to private property unless specifically authorized by law. 15 Comp. Gen. 761; 20 id. 105; id. 927. There is nothing in section 2 of the act of July 21, 1950, 64 Stat. 371, 15 U. S. C. 286, or in the act of October 26, 1949, 63 Stat. 907, which expressly authorizes the erection of permanent-type improvements on leased property. Moreover, there is nothing in the legislative history of those provisions to indicate that the Congress intended to authorize the erection of buildings on privately owned lands, and the authority to construct minor buildings without specific authorization must be construed as relating to buildings on Government-owned lands. Nor do the appropriations for the National Bureau of Standards for the fiscal years 1950 and 1952 (63 Stat. 467 and 65 Stat. 593) contain a provision authorizing such construction on leased property. Hence, it appears that the expenditures were unauthorized.

Accordingly, and if otherwise proper, exceptions to the expenditures should be taken. See, in this connection, 31 U. S. C. 82i. If the taking of exceptions would not now be proper under such provision of the Code, the Bureau should be advised that the authority to erect buildings at a cost not to exceed $25,000 is not regarded as extending to the erection of such buildings on privately owned lands and that exceptions will be taken to any similar expenditures for such purpose.

The 25 percent limitation on "alterations, improvements, and repairs of the rented premises" of the Economy Act does not appear to permit the erection of new buildings on rented unimproved land and hence does not appear to be for application to the instant factual situation.

FRANK H. WEITZEL

Assistant Comptroller General
of the United States

Attachments