

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-184595

DATE: MAR 10 1976

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MATTER OF:

Repair and Maintenance of International Boundary
Fences - Immigration and Naturalization Service

DIGEST:

1. Appropriation of Immigration and Naturalization Service may be used to repair International Boundary fences on private property if expenditures and improvements are necessary for effective accomplishment of purposes of Service's appropriation, are in reasonable amounts, made for the principal benefit of the United States and the interests of the Government are fully protected.
2. Immigration and Naturalization Service's "necessary expenses" appropriation is available to repair boundary fences under jurisdiction of other Federal agencies provided INS determines expenditure is necessary to enforcement of Immigration laws and other agencies do not intend to make repairs as promptly as necessary to deter unlawful immigration. Rule that where appropriation is made for particular object, it confers authority to incur expenses which are necessary, proper, or incident thereto, unless there is another appropriation that makes more specific provision therefor, is inapplicable since there is no specific appropriation for repair of boundary fences.

Reference is made to a letter from the Assistant Attorney General for Administration, Department of Justice, requesting a decision as to whether Immigration and Naturalization Service's (INS) appropriations are available for repairs and maintenance of International Boundary fences under the jurisdiction of other Government agencies or belonging to interests other than the Federal Government.

In his letter the Assistant Attorney General states in pertinent part:

"Section 103(a) of the Immigration and Nationality Act (8 U.S.C. 1103), confers upon the Attorney General the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens. * * *

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"The fences in question are located at El Paso, Texas. The Bureau of Reclamation and the International Boundary and Water Commission, United States and Mexico, are the holding agencies for some of the fences. Other fences are owned by the city of El Paso and by a railroad company; and the Immigration and Naturalization Service is the holding agency for the balance thereof. These fences are constantly being cut by persons seeking illegally to enter the United States. Repairs are made on a continuing basis by this Service to the fences under its jurisdiction. However, no urgency for prompt repair of other fences appears to exist for the holding agencies or owners thereof; but for purposes of determining illegal entries into the United States, prompt repairs are necessary."

The relevant appropriations, "Salaries and Expenses, Immigration and Naturalization Service, 1975" are contained in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1975 (pages 7 and 8 of Pub. L. No. 93-493, approved October 5, 1974, 88 Stat. 1193, 1194), which provides in pertinent part:

"For expenses, not otherwise provided for, necessary for the administration and enforcement of the laws relating to immigration, and alien registration, * * * acquisition of land as sites for enforcement fence and construction incident to such fence * * *."

This provision is also contained in INS' 1976 appropriations, Pub. L. No. 94-121, approved October 21, 1975.

The Assistant Attorney General states that INS has determined that prompt repairs to the International Boundary fences are necessary for the enforcement of immigration laws but that other Federal agencies and non-Federal owners of the fences in question do not regard the making of such repairs as a matter of urgency. For this reason, INS seeks to use its own "Salaries and Expenses" appropriation for the repairs to the fences. INS' rationale is that prompt repairs to all International Boundary fences would serve to deter the entry of illegal aliens, the purpose of the appropriation for the Immigration and

Naturalization Service (INS). Hence, this expenditure by INS would be of primary benefit to the United States by reducing the number of such entries.

The Assistant Attorney General's first question is whether expending INS funds to repair privately owned fences would conflict with the general rule that appropriated funds cannot be used for permanent improvements on private property in the absence of express statutory authority. See, e.g., 19 Comp. Gen. 528 (1940), 42 id. 480 (1963) and 53 id. 351 (1973). This rule is one of policy, not positive law, and requires a review of the facts and circumstances of each particular case.

INS, as noted above, has specific authority in its appropriations to expend its funds to acquire privately owned land as sites for boundary fences and for construction incident thereto. This authority, first appearing in the Department of Justice Appropriation Act, 1961, Pub. L. No. 86-678, August 31, 1960, 74 Stat. 555, was principally enacted to allow the erection of such fences where the owner of the property had not and was not planning to install a fence along the border.

"Acquire" is defined as gaining by any means or getting as one's own. Webster's New International Dictionary, 2d Ed. Unabridged (1950). In our view the statutory authority for "acquisition of land as sites for enforcement fence" is not restricted to the purchase of property in fee simple. To protect the Government's interest in its expenditures, INS must, however, gain substantial control over the land on which it plans either to erect or to repair fences. Such control might be obtained through, for example, an easement or a lease lasting through the useful life of the fence.

We note that the erection of a fence along the boundary of privately owned property might tend to increase the value of that property, whether the Federal Government has purchased the narrow strip on which the fence is located or has obtained a lesser degree of control over that strip. Hence, we believe that the framework of the subject provision in INS's appropriation act provides sufficient authority for INS to make permanent improvements to private property by way of repairing existing fences provided INS fully protects the Government's interest in the fences by acquiring sufficient title and control thereover.

The Assistant Attorney General also asks whether use of funds from the subject appropriation for repair and maintenance of International Boundary fences under the jurisdiction of other Government agencies would be--

"* * * In conflict with the rule that, where an appropriation is made for a particular object, by implication it confers authority to incur expenses which are necessary or proper or incident to the proper execution of the object unless there is another appropriation which makes more specific provision for such expenditures? See 6 Comp. Gen. 621; 29 id. 421."

While the appropriations (for "necessary expenses") of the agencies in control of the fences here involved would be available to repair such fences, such appropriations would not be considered as making "specific provisions" for the repair of such fences within the meaning of the rule of statutory construction cited by the Assistant Attorney General. Further, we are not aware of any other appropriation that makes more specific provision for such expenditures. Thus, the above-cited rule would not preclude INS from expending its appropriation for "necessary expenses" to repair fences under the control or jurisdiction of other Federal agencies, if INS determines that such expenditures are necessary for the enforcement of the immigration laws and that the agencies in control of the fences do not intend to make repairs as promptly as INS feels is necessary to deter unlawful entry.

If consistent with the guidelines set forth above, this Office will not need to review each individual proposed action which may arise in the future.

H. F. Keller

Deputy] Comptroller General
of the United States