



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

B-27717

The Honorable,

AUG 12 1942

The Postmaster General.

My dear Mr. Walker:

By letter of July 20, 1942, Q-CA-CC, the Fourth Assistant Postmaster General transmitted to this office correspondence and evidence relating to certain assignments of the lease entered into on April 1, 1940, between the United States and Partridge Inn Company for the quarters occupied by "The Hill Station", Augusta, Georgia, and requested to be advised "whether the documents are in proper form and what instructions may be issued to the postmaster concerning rental payments."

The lease referred to is for 1,303 square feet of floor space on the first floor of the 5-story building known as Partridge Inn situated on the west side of Hickman Road, between Walton Way and Ansley Place, on lot #3, of block 77, Augusta, Georgia, for the term beginning January 1, 1940, and ending December 31, 1949, at an annual rental of \$1,373, payable at the end of each month.

From the evidence submitted it appears that by lease dated October 17, 1940, the Government's lessor leased the Partridge Inn to W. J. Folsom, effective December 1, 1940, for a period of 10 years, said lease containing a provision prohibiting its assignment except by transfer to a corporation which might be organized by the lessee for operation of the hotel. While no specific reference is made to

the lease for the post office quarters in the lease agreement of October 17, 1940, the said lease to Mr. Folsom contains provisions as follows:

"10. The rental contracts for the stores on the ground floor of said Hotel building, shall be transferred by the Lessor to the Lessee, who in turn shall immediately assign said leases to The RFC Mortgage Company as additional security for the payment of the amounts due under the terms of this lease. Such transfer of said leases, however, shall not prevent the collection of the monthly rent by the Lessee, who shall have the right to receive and collect the same, and to enforce the collection thereof by legal process, until default under the terms of this lease.

"11. The renewal of any of the present leases, or the making of any new lease of the stores and Post Office on the ground floor of the Partridge Inn, may be made by the Lessee, provided that no rentals shall be made for less than the amount now received as rental for said stores and Post Office, and shall not extend beyond the term of this lease, without the written consent of the Lessor. These new leases or renewals when executed by the Lessee shall be immediately transferred to The RFC Mortgage Company as provided in Paragraph 10 of this lease, but the Lessee shall be entitled to receive and collect the same, and shall have the same right to enforce the collection of rentals as contained in Paragraph 10 hereof."

"12. The fixtures in the store occupied by the Post Office in said Partridge Inn are leased, and the Lessee agrees to pay the amount of the same, which is approximately \$14.00 per month, during the term of this lease."

On October 17, 1940, the lease agreement of that date between the Partridge Inn Company and W. J. Folsom, together with all right, title, and interest of the assignor in and to the property covered thereby, was assigned to the RFC Mortgage Company as security for the payment of a note in the original amount of \$50,000, evidencing a loan made by said company to the assignor, Partridge Inn Company. It is expressly provided in the assignment that said assignment was made with the understanding that the holder of said note should be under no obligation to perform any of the covenants or conditions

imposed upon the assignor under the terms of the assigned lease until said holder should enter into possession of the premises covered by the lease agreement of October 17, 1940.

In a certificate executed on June 21, 1941, under the seal of the NHC Mortgage Company, by its agent, it is stated that said company has no interest in the lease or any property of the Partridge Inn Hotel and has had no interest in any of the leases of said property since June 21, 1941.

Under date of April 16, 1941, W. J. Folsom transferred and assigned the lease of October 17, 1940, to the Augusta Hotel Operating Company, a Georgia corporation, (all of the stock of said corporation, except certain qualifying shares, are reported as being held by W. J. Folsom) it being provided in said transfer and assignment that the assignee should assume all of the obligations of the assignor under the lease of October 17, 1940, and succeed to all the assignor's rights, powers, and privileges under said lease, and that the purpose of such transfer and assignment is to substitute the Augusta Hotel Operating Company "as the lessee as fully as the party of the first part [W. J. Folsom] was but for the making of this assignment." In connection with the transfer and assignment of April 16, 1941, W. J. Folsom executed an affidavit on April 16, 1942, for the purpose of authorizing payment to the Augusta Hotel Operating Company of all accrued and future rentals under his lease with the Partridge Inn Company.

At a meeting of the stockholders of the Augusta Hotel Operating Company, held on December 5, 1941, H. J. Williamson, Manager of the

Partridge Inn, was authorized to offer the Post Office Department 1,419 square feet of additional space at an annual rental of \$600, including special services, the supplemental lease to become effective 30 days after notice of acceptance of said offer and continuing until the expiration of the original lease for quarters in the building occupied by "The Hill Station". This offer was accepted by the Post Office Department on January 12, 1942.

In letter of January 16, 1942, the president of the Partridge Inn Company, the original lessor under the Government's lease, informed the Postmaster General that under the lease of October 17, 1940, to W. J. Folsom, the ordinary leases for quarters in the Partridge Inn, that is to say, leases other than the Government lease were transferred to W. J. Folsom so that the new tenant might have the opportunity of collecting the rentals as they accrued; that it was his recollection that as the lease for the quarters occupied by "The Hill Station" which was turned over to Mr. Folsom contained some provision prohibiting transfer of said lease, the rental checks received from the Government which belonged to the lessee of Partridge Inn were indorsed by him in the name of Partridge Inn Company and turned over to W. J. Folsom or to the person designated by him; that if rental checks continue to be drawn in favor of the Partridge Inn Company, they will be indorsed and turned over to W. J. Folsom or to the person designated by him to receive such checks; and that rental checks may be drawn payable to Partridge Inn Company or to W. J. Folsom or such person as may be designated by him. As evidence that rental checks were turned over to Mr. Folsom following the lease and assignment of

October 17, 1940, there has been submitted the rental check for the period from July 1 to September 30, 1941, drawn in favor of the Partridge Inn Company and indorsed by the president and treasurer of the payee to W. J. Folsom or order and the postmaster at Augusta reports that said check represents the last rental payment under the lease.

An examination of the original lease of April 1, 1940, shows that it was recorded in the Clerk's Office, Superior Court, Richmond County, Georgia, on April 22, 1940. In this connection, by letter of July 2, 1942, from the Fourth Assistant Postmaster General, replying to a request for copies of the recorded lease of October 17, 1940, referred to above, and the transfer, assignment, and conveyance of April 16, 1941, also referred to above, certified over the personal signature and official seal of the recorder of Richmond County, Georgia, where the leased premises are located, there now have been submitted copies of each agreement with certificates attached thereto from the secretaries of the Partridge Inn Company and the Augusta Hotel Operating Company to the effect that said lease and said transfer, assignment, and conveyance of October 17, 1940, and April 16, 1941, respectively, are not recorded and that the original agreements are in the custody of the respective parties in interest.

There is no provision in the Standard Form No. 2, Government Lease, as revised for use of the Post Office Department, prohibiting the assignment of the lease. Moreover, the act of May 27, 1908, 35 Stat. 411, provides that the provisions of section 3477, Revised Statutes, shall not apply to payments for the rent of post office quarters made by postmasters to duly authorized agents of lessors, and

it has been held that the assignment of a lease does not contravene the provisions of section 3737, Revised Statutes. Freedman's Saving and Trust Company v. Shepherd, 127 U. S. 494, 505. Also, it was held in 11 Comp. Gen. 278 that this office would not object to payments of rent to the assignee of the lessor of consular quarters in a foreign country; and the principles of that decision have been held applicable to post office leases.

In paragraph 9 of the "INSTRUCTIONS TO BE OBSERVED IN EXECUTING LEASES", on the Standard Form No. 2, Government Lease as modified for use by the Post Office Department, it is stated:

"If the property leased is located in a State requiring the recording of leases in order to protect the tenant's rights, care should be taken to comply with all such statutory requirements."

In a decision of September 28, 1927, A-19681, it was stated:

"* * * In the absence of a statutory requirement the recording of a lease is not essential. In this connection see 35 Corpus Juris, 1156-1158, and cases therein cited.

"The purpose of recording the contracts or leases for premises rented as quarters for post offices and post office stations is to protect the Government's rights in the leased premises by giving notice to prospective lessees or purchasers of the existing tenancy. Therefore, when there are any changes in the tenure of such tenancy, by written supplemental agreements, either to extend existing leases for a period after their termination or to acquire additional space during the period of the original contracts, such supplemental agreements should be recorded in the records of the county and state wherein the leased premises are situated, in all cases where the original leases have been so recorded."

It appears that under the law of the State of Georgia, leases for more than one year are required to be filed for recording in the county where the leased estate is located, and that such recording is necessary for charging persons other than the parties thereto with notice that the lease exists except that mere possession is notice of

the occupant's rights other than exceptional rights not ordinarily implied from possession.

While as noted above the original lease of April 1, 1940, was recorded, it does not appear that the law of the State of Georgia requires the recording of leases in order to protect the tenant's rights. Accordingly, the matter of recording the agreements of October 17, 1940, and April 16, 1941, referred to above, is primarily an administrative matter for the consideration of the Post Office Department; and, since the evidence submitted appears sufficient to establish that the Augusta Hotel Operating Company is the party entitled to the rent for the property in question, including the space occupied by the Government, if it be administratively determined that the recording of the agreements referred to is not necessary to protect the rights of the Government in the leased premises, the postmaster at Augusta, Georgia, may be instructed that the unpaid accrued rent and the rent hereafter to become due under the original lease of April 14, 1940, as amended by the proposal and acceptance agreement of January 12, 1942, may be paid to the Augusta Hotel Operating Company, if the payments are correct in other respects.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General
of the United States