

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

DEC 1970

B-148044

The Honorable Lawton Chiles
United States Senate

Dear Senator Chiles:

This responds to your request for our interpretation of section 301 of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Pub. L. No. 91-646, 42 U.S.C. § 4651 et seq.). Your letter to us states in part:

"* * * The reason for my interest is a case in which a Florida county engaged in a real property transaction (with Federal financial assistance) and was confronted with a private individual willing to sell for less than the property's appraised value.

"Section 301(3) appears to prohibit the county from completing this purchase for the amount offered.

* * * * *

"The clear intent of the Act is to insure that the Government reimburses the owner on a fair and reasonable basis and to 'promote public confidence in Federal land acquisition practices.' But Section 301(3) does not provide for cases such as the one described above in which the private owner offers willingly to sell the property for a lesser amount. In this instance, the Government is bound by the law's provisions from achieving a financial savings.

"Please advise me whether there is any way this statute might be interpreted which would permit real property acquisition, as described within the context of this Act, for an amount less than the Federal agency's approved fair market value appraisal."

Section 301 of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Pub. L. No. 91-646, 42 U.S.C. § 4651) provides in pertinent part as follows:

B-148044

"In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies, shall to the greatest extent practicable, be guided by the following policies:

* * * * *

- (3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property * * *. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation * * *."

The above provision deals with those instances in which a Federal agency is directly acquiring real property from private owners.

Section 305 of the Uniform Relocation Assistance and Land Acquisition Act of 1970 (Pub. L. No. 91-646, 42 U.S.C. § 4655) provides as follows:

"Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after January 2, 1971, unless he receives satisfactory assurances from such State agency that--

- (1) in acquiring real property it will be guided, to the greatest extent practicable

B-148044

under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

- (2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304."

The above provisions are applicable in the instant case where a Florida county with Federal financial assistance is engaged in the acquisition of real property.

The Senate Report stated the following:

"Section 301(a) set forth a congressional mandate of 12 provisions which Federal agencies must follow in the taking of real property for Federal purposes:

- (1) Transactions shall be conducted in such a manner as to assure to the extent possible that persons whose property is acquired shall not be worse off economically than they were before the property was acquired.
- (2) Every reasonable effort shall be made to acquire real property by negotiated purchase.
- (3) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property. Furthermore, a copy of the appraisal report shall be furnished the landowner.
- (4) Before the initiation of negotiations for property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation, such amount not to be less than the appraised value of the property as approved by such agency head, and he shall make a prompt offer to acquire the property for the full

B-148044

amount so established. This provision is intended to assure that the Government will reimburse a property owner in an amount which is fair and reasonable, and that its offer to the owner shall not be less than appraised value. It is not intended to preclude effective negotiation or to establish a cap price policy." S. Rep. No. 91-438, 91st Cong., 1st Sess. 17-19 (1969).

Moreover, the House reported the following with respect to the intent of the Act in question:

"This section establishes a uniform policy for the acquisition of real property in order to encourage and expedite acquisition by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices. Nine policy provisions are established to guide Federal agencies, to the greatest extent practicable, in acquiring real property, as follows:

- (1) The head of a Federal agency shall make every reasonable effort to acquire real property expeditiously by negotiation.
- (2) Real property shall be appraised before the initiation of negotiations, and the owner shall be given an opportunity to accompany the appraiser during his inspection of the property.
- (3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt effort to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. The head of the Federal agency concerned shall provide the owner of real

B-148044

property to be acquired with a written statement of, and summary of the basis for, the amount be established as just compensation * * *.

"Items (1), (2) and (3) seek to assure that government agencies will deal fairly with the owners of real property needed for Federal programs. * * *

"Any policy which does not entitle the property owner to an offer of the full amount of the agency's approved value estimate, where the owner must sell, is unfair. It is fundamental that all citizens should be dealt with fairly by their government. * * * Section 305 provides that State agencies administering programs receiving Federal financial assistance must make the payments described in sections 303 and 304 and be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302 as a condition of such Federal assistance.

"The uniform policy on real property acquisition practices, set out in section 301 is intended to guide Federal agencies, to the greatest extent practicable, in acquiring real property. Section 305(1) makes the policy applicable in the same manner to State agencies.

"The State also will be guided by it to the greatest extent practicable under State law by the provisions of section 302." H.R. Rep. No. 91-1656, 91st Cong., 2d Sess. 21-25 (1970).

From the above, it is clear that what the Congress intended was that private owners of real property be given notice of the fair market value of their property. The Act requires that the Federal Government deal fairly with any prospective seller and provide him with an offer in the amount of the fair market value as determined by the agency's approved appraisal. The requirements of section 301 of the Act are made applicable (to the greatest extent practicable under State law) by section 305 to State and local Governments purchasing land for federally assisted programs or projects.

The purpose of these requirements is to protect individual property owners from the superior negotiating position that the Federal Government or State and local Governments (for federally financed projects) enjoy.

B-148044

Once the property owner receives the Government's offer for the amount which the agency has determined to be just compensation for the property, which amount may be no less than the agency's approved appraisal of the fair market value of the property, the property owner may accept that amount or negotiate for a different amount. In most cases we would assume that a property owner would not be interested in accepting less than the full amount of the Government's offer and any negotiation would be for the purpose of obtaining a higher payment. However, in those situations where the owner knowingly and willingly wants to accept a lesser payment for the property, we see nothing in the Act requiring him to take the full amount proffered by the agency, nor are we aware of anything requiring, in those circumstances, that the agency actually pay the full amount. It would be incumbent, of course, upon the head of the Federal agency involved, both as to Federal projects and federally assisted projects over which he has jurisdiction, to assure that pressure is not placed on property owners to accept less than the amounts to which they are entitled.

Accordingly, if the county in question makes an offer to the owner of property of no less than the county's approved appraisal of the fair market value of such property, there is nothing in the Uniform Relocation Assistance and Land Policies Act of 1970 which would prevent that owner (after receipt of such offer) from willingly selling the property to the county for less than the amount the county offered for the property (i.e., for less than the county's approved appraisal of the fair market value) and the county from buying the property for such lesser amount.

Sincerely yours,

OSSELBERG
R. F. KELLER
 Deputy
 Comptroller General
 of the United States