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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

DECEMBER 13, 1984

B-215159

The Honorable Strom Thurmond
Chairman, Subcommittee on Military
Construction
Committee on Armed Services
United States Senate



125836

Dear Mr. Chairman:

Subject: The Army's Construction of Dependent Classrooms
at Ft. Irwin, California (GAO/NSIAD-85-29)

On October 11, 1983, you asked us to review the Army's construction of temporary dependent classrooms at Ft. Irwin, California, using operation and maintenance funding which had been appropriated to the Department of Defense (DOD) Dependent School Program. Specifically, you asked whether proper statutory authority existed for this program since

- it had not been authorized by the Congress and
- operation and maintenance funding had been used for construction.

To respond to your specific questions, we reviewed the relevant legislation and the events leading to the construction of the classrooms. We interviewed DOD and Army officials to obtain their interpretations of the legislation and their authority, and we visited Ft. Irwin. Based on the information discussed below, we conclude that there was statutory authority.

The construction of the ten classrooms in question was completed in September 1983. Each unit is an individual modular building 30 feet by 32 feet erected on reinforced concrete slabs. The units are used as classrooms of the Ft. Irwin elementary school and can be detached from the concrete slabs and relocated elsewhere if the need arises.

AUTHORITY FOR DOD TO FUND THE SCHOOL CONSTRUCTION

Section 709 of the DOD Appropriation Act, 1983, enacted as section 101 (c) of Public Law 97-377 (Continuing Appropriations for Fiscal Year 1983), provided that

(393028)

030796

"Appropriations for the Department of Defense for [FY 1983] shall be available for:

(k) for carrying out section 10 of the Act of September 23, 1950, as amended."

Section 10 of the act of September 23, 1950, as amended, requires the Department of Health and Human Services to construct or otherwise provide school facilities for children residing on federal property where a state or local agency is unable to provide free public education. Section 709(k) essentially transferred the school construction authority from HHS to DOD.

The House Committee on Appropriations, in discussing DOD's operation and maintenance appropriation, explained section 709(k), as follows:

"The Committee agrees to a new subsection (k) in Section 709, as proposed in the budget, which would permit the Department of Defense (previously the responsibility of HHS) to pay costs associated with schools located on military installations in the United States.

* * * * *

"The language in subsection (k) provides the Department of Defense the authority, under Section 10 of the Act of September 23, 1950, as amended, to make arrangements or provide for school construction, leasing, renovating, remodeling, and rehabilitating.

"None of the funds in this bill are available for military construction."¹ [Emphasis added.]

¹H. Rept. 97-943, 97th Cong., 2nd sess., pp. 89 and 90.

Since the temporary classrooms at Fort Irwin were constructed pursuant to section 10 of the act of September 30, 1950, as amended, appropriations available to DOD for 1983 were available to fund such construction.

DOD's conclusion that its operation and maintenance appropriation was available to fund the school construction was based on (1) the Congress' practice of funding costs associated with schools on military bases through operation and maintenance appropriations and (2) the statement in the House Appropriations Committee report that "None of the funds in this bill [section 709(k)] are available for military construction." Under these circumstances, we think the DOD's decision to use operation and maintenance funds was reasonable.

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As you requested, we did not obtain formal agency comments on this report; however, its contents were discussed with agency officials. The DOD officials responsible for this program concurred in our conclusion.

We are sending copies of this report to the Chairmen, House and Senate Committees on Appropriations and on Armed Services; the Chairmen, House Committee on Government Operations and Senate Committee on Governmental Affairs; the Director, Office of Management and Budget; and the Secretaries of Defense and the Army.

Sincerely yours,


for Frank C. Conahan
Director