



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

August 29, 1952

E-106578

The Administrator of General Services

General Services Administration

My dear Mr. Administrator:

Reference is made to your letter of August 11, 1952, requesting, in effect, to be advised whether paragraph 7 of Lease No. GS-10B-636 reserves to the Government an option to renew the lease subject to all the terms and conditions of the lease.

The said lease is dated May 6, 1947, and covers the rental of a building located at 802 North 29th Street, Billings, Montana, for the period July 1, 1947, to June 30, 1952. Paragraph 7 thereof provides as follows:

"The Government shall pay the Lessor for the premises rent at the following rate: \$20,610.00 per annum. The lessor agrees to rent, at the option of the lessee, these premises at a rate not exceeding the present annual rental less 10% during the years July 1, 1952 to June 30, 1957."

It is stated in your letter that the lessor was notified on April 28, 1952, that the Government elected to exercise the option contained in paragraph 7 of the lease to rent the premises at a rate not exceeding the present annual rental less 10 percent during the years July 1, 1952, to June 30, 1957. In letter dated May 6, 1952, the attorneys for the lessor referred to such renewal notice and advised that paragraph 7 of the lease does not provide for a renewal or extension of the lease terms but, at the most, is merely

an offer on the part of the lessor to rent the premises without the services set forth in paragraph 6 of the lease. It is urged on the part of the lessor that such construction of the terms of the lease is supported by the fact that paragraph 5 of the lease form which would have specifically provided for a renewal of the lease upon the terms and conditions therein stated, was deleted prior to the execution of the lease. Such deleted paragraph and paragraph 6, covering the services referred to above read as follows:

"5. This lease may, at the option of the Government, be renewed from year to year at a rental of and otherwise upon the terms and conditions herein specified, provided notice be given in writing to the Lessor at least days before this lease or any renewal thereof would otherwise expire: Provided that no renewal thereof shall extend the period of occupancy of the premises beyond the day of

"6. The Lessor shall furnish to the Government, during the occupancy of said premises, under the terms of this lease, as part of the rental consideration, the following: Buildings and grounds maintenance, elevator maintenance, water, electricity, keys to building, heat of 72° minimum and as the season may require, janitor service, including daily cleaning of floors, waste baskets, wash basins and toilets, daily dusting of the furniture, regular cleaning of windows, pictures, etc. to keep them presentable, hot and cold water and drinking fountains."

Relative to the deleted paragraph 5 it is stated in paragraph 8(b) of the "Instructions To Be Observed In Executing Lease" that—

"In paragraph 5, if a renewal for a specified period other than a year, or for a period optional with the Government is desired, the phrase 'from year to year' shall be deleted and proper substitution made. If the right of renewal is not desired or cannot be secured paragraph 5 may be deleted."

In view of such instruction it is not understood why, if it were the intent of the contracting office to retain a right of renewal of the lease, such paragraph 5 was deleted and the language now in question added to paragraph 7 thereof.

Rent has been defined generally as compensation for the use, enjoyment and occupation of real estate. See Words and Phrases, Vol. 36, p. 903, et seq. In the absence of a statutory or contractual requirement, the landlord is not under obligation to furnish heat, light, power or other services to the tenant. 51 C.U.S., Landlord and Tenant Secs. 297-299.

By the express terms of paragraph 6 of the lease covering the period July 1, 1947, to June 30, 1952, certain services were to be furnished "under the terms of this lease, as part of the rental consideration." However, the option of the Government was not for a renewal of the previous lease as is apparent from the deletion of paragraph 5 which would have so provided. The agreement to rent the premises during the year July 1, 1952 to June 30, 1957, states only the period and the maximum rental.

Since the previous lease was not to be renewed, there appears to be no basis for assuming that the parties intended to extend paragraph 6 of that lease covering additional services which would not otherwise be included as rental of the premises. The letter of August 13, 1951, from the Bureau of Indian Affairs, describes the provision as a "renewal option clause" the purpose of which was to give some protection to the Bureau in holding the property under lease. What the parties did and said in the executed lease is, of course, of more probative value in determining intent of the instrument, including the option clause, than an ex parte statement contained in a letter written some four years thereafter, although it is

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to be noted that the purpose expressed in the letter is achieved whether the option be regarded as for a renewal or for another lease.

Under the circumstances and regarding the instrument as a whole, it does not appear that the option clause of paragraph 7 obligated the lessor to furnish additional services during the period July 1, 1952 to June 30, 1957, at the rental stipulated in the option.

In accordance with your request, the documents forwarded with your letter are returned herewith.

Sincerely yours,

Lindsay C. Warren
Comptroller General
of the United States

Enclosures