



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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B-149833-O.M.

COMP. GEN.
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June 24, 1963

Director, Civil Accounting and Auditing Division

Pursuant to your memorandum of May 23, 1963, we have reviewed our position with respect to Federal participation toward utility relocation costs in California in light of the views expressed by the General Counsel of the Bureau of Public Roads.

The Bureau takes the view, essentially, that since there is not a precise statutory formula for deriving "any increase in the value of the new facility" for credit against the costs incurred in relocating, there need not be uniformity among the various States in the application of criteria for determining the cost of utility relocations. The Bureau's General Counsel states that in these circumstances, the Administrator was free to select any reasonable means for determining value, including those established by the laws of each State. By way of analogy he refers to the fact that in the case of right-of-way acquisition, the Bureau participates in costs on the basis of varying State laws controlling the ascertainment of just compensation.

We cannot agree with the Bureau's position in the matter; the analogy drawn with respect to right-of-way acquisition costs is inappropriate. In the right-of-way situation, there is no question but that payments made by a State for the purchase or condemnation of property according to its laws constitute costs to that State for highway right-of-way purposes. The controlling statutes do not in any way limit Federal participation in such costs. In the utility relocation situation, however, the statute places a specific limitation on what may be considered as cost for reimbursement purposes. We agree that there is room for some discretion in establishing detailed criteria for implementing the statutory directive. But such discretion is to be exercised by the Administrator and the established criteria applied uniformly throughout all the States. As stated in our earlier memorandum there are two limitations in section 123 of title 23, United States Code, with respect to reimbursements for utility relocation costs: Reimbursements cannot be made for payments in violation of contract or State law, and reimbursement cannot be made for payments covering an increase in value of the new facility. We do not believe that reimbursement may be made in any specific case for payments covering an increase in value of the new facility as determined by application of the Administrator's criteria on the assumption that other reimbursements will be for less than the State's entitlement under those criteria thereby balancing out the overreimbursements. In the first place, there could not,

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in any event, be an offsetting underreimbursement because of the limitation against reimbursement of more than those payments allowed under State law. Any reimbursement according to State law could not be construed for offset purposes as being less than that to which the State is entitled. In the second place, there would never be any assurance, in the absence of periodic accountings, that the statutory limitation in question, even as construed by the Bureau, has been complied with. And to make such periodic accountings would probably entail more record-keeping and administrative problems than would be required to effect proper reimbursement according to the statutory limitations on a relocation by relocation basis in the first instance.

Accordingly, we find no basis for modifying our initial conclusion in the matter. The Federal Highway Administrator should be advised that we will take exception to any reimbursements, past and future, for utility relocations which we find are in excess of the amounts allowed by section 123 as construed herein and in B-149833-O.M., November 9, 1962.

FRANK H. WEITZEL

Assistant Comptroller General
of the United States