



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

JUN 1 1965

CIVIL ACCOUNTING AND  
AUDITING DIVISION

The Comptroller General

Your opinion is requested as to the legality of certain lease payments made by the Federal Aviation Agency (FAA).

The Independent Offices Appropriation Act of 1963 (76 Stat. 716, 728), approved October 3, 1962, contains the following limitation on the use of appropriated funds:

"No part of any appropriation contained in this Act shall be used for the payment of rental on lease agreements for the accommodation of Federal agencies in buildings and improvements which are to be erected by the lessor for such agencies at an estimated cost of construction in excess of \$200,000 or for the payment of the salary of any person who executes such a lease agreement: Provided, That the foregoing proviso shall not be applicable to projects for which a prospectus for the lease construction of space has been submitted to and approved by the appropriate Committees of the Congress in the same manner as for public buildings construction projects pursuant to the Public Buildings Act of 1959."

The identical limitation appears in the Independent Offices Appropriation Acts of 1964 (77 Stat. 425, 436) and 1965 (78 Stat. 640, 659). In your letter (B-195796) to the FAA Administrator dated February 17, 1965, you indicated that the above limitation applies to all appropriated funds contained in the Independent Offices Appropriation Acts.

The lease agreement in question, executed by the General Services Administration (GSA) with Ed Klein Associates Inc., on September 26, 1962, provided for the construction of a 10-story office building to accommodate the Pacific Region headquarters of FAA. The lease, which provided for annual rental payments of \$215,370 for a 10-year period, was made effective on September 8, 1964, the date of occupancy. Because this lease was executed before the enactment of the 1963 appropriation act, neither GSA nor FAA obtained congressional approval for the lease-construction project. We noted, however, that FAA's Associate Administrator for Administration, during fiscal year 1966 appropriation hearings, informed the House Committee on Appropriations that FAA's request included an amount for the initial full-year rental for the Pacific Region headquarters building.

In November 1962, the lessor's attorneys wrote to GSA expressing concern as to whether funds would be available for the lease payments on this building in view of the limitation contained in the 1963 appropriation act. In rendering an opinion on this matter, GSA's Assistant General Counsel stated that lease-construction agreements executed prior to October 3, 1962, were valid and that the limitation contained in the act would not preclude the making of rental payments under the contract.

We do not question whether appropriated funds may legally be used for rental payments on lease-construction agreements entered into prior to fiscal year 1963. However, it should be noted that the lease in question was entered into during fiscal year 1963, the year to which the appropriation was applicable. Accordingly, a question arises as to whether a limitation contained in an annual appropriation act is retroactive to the beginning of that year.

In view of the concern expressed by the lessor's attorneys and the fact that the lease agreement for the FAA building was executed in fiscal year 1963 but before the date that Congress approved the Appropriation Act of 1963, your advice is requested with respect to the following questions:

1. May appropriated funds legally be used for rental payments on this lease agreement?
2. If not, what are the Government's rights and obligations relative to funds already used and funds to be used in the future?

Arthur Schoenhaut

Arthur Schoenhaut  
Deputy Director

Enclosures:

Copy of GSA Lease No. 5384  
Letter of November 30, 1962,  
from lessor's attorneys  
GSA internal memorandum of  
April 19, 1963

June 24, 1965

Director, Civil Accounting and Auditing Division

Returned. It is a well-established rule that statutes are to be construed as applying prospectively and not retroactively unless a retroactive construction is required by express language or necessary implication. 26 Comp. Gen. 592. And it is also well-established that, generally, neither the Federal Government nor the States may impair or divest vested rights except in a legitimate exercise of the police power; that retrospective laws or administrative action disturbing or destroying existing or vested rights are invalid. 31 Comp. Gen. 619, 623. The legislative history of the appropriation restriction involved shows that the Congress was intent upon curtailing future practice without intending to affect past transactions. House Report No. 2050, dated July 27, 1962, at page 13.

Applying the stated rules, the lease agreement in question is not affected by the appropriation restriction involved, the agreement having been entered into under appropriate authority--40 U.S.C. 490(h)-- prior to enactment of the restriction. Under the circumstances, the language of the appropriation act, as affecting the entire fiscal year in which the transaction was consummated is of no consequence.

Accordingly, the first question presented is answered in the affirmative and answer to the second question is not required.

FRANK H. WEITZEL

Assistant Comptroller General  
of the United States

Attachment