

DIGEST

FEB 21 1975 - *App. 10*

Director, FPCD

THRU

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**May the Department of the Air Force Acquire
Interests in Land Solely for Recreational Purposes?**

Your Division is currently conducting an inquiry into the use of appropriated funds to provide recreational facilities for members of the armed services. Mr. Donald Benedict, Project Director, has requested that we provide a legal opinion on the propriety of the Air Force leasing property solely for recreational purposes. Specifically, he cited the example of a lease at an annual rent of \$200 with the State of Alaska for lands used solely for hunting and fishing by members of the Air Force.

It appears from our analysis (see Attachment) that there is no sufficient basis for an objection to the lease on legal grounds. However, this conclusion does not preclude mention of the lease in your report and a recommendation based on policy considerations.

Attachment

cc: Mr. Benedict, FPCD
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ANALYSIS

QUESTION: May the Department of the Air Force acquire interests in land solely for recreational purposes?

ANSWER:

The Secretary of the Air Force has the responsibility and the authority to provide for the welfare of the members of his department. 10 U.S.C. 8012(b)(1970) states:

"(b) The Secretary is responsible for and has the authority necessary to conduct all affairs of the Department of the Air Force including--

(1) functions necessary or appropriate for the training, operations, administration, logistical support and maintenance, welfare, preparedness, and effectiveness of the Air Force including research and development,"
* * * (Emphasis added).

The annual Department of Defense (DOD) appropriations act makes funds available for this purpose. Section 842 of the DOD Appropriations Act, 1975 (88 Stat. 1212, 1231; October 8, 1974) provides:

"Appropriations for the current fiscal year for operation and maintenance of the active forces shall be available for * * * welfare and recreation;

The Act (Section 806, 88 Stat. 1226) also provides that appropriations are available for the acquisition of interests in land:

"Appropriations available to the Department of Defense for the current fiscal year for maintenance or construction shall be available for acquisition of land or interest therein as authorized by section 2672 or 2675 of title 10, United States Code."

The Secretary of the Air Force, then, is authorized to provide for the welfare of the members of his department and has funds available to provide for welfare and recreation and to acquire interests in land. 10 U.S.C. 2672 (1970) authorizes the Secretary to acquire interests in land under two conditions; the statute provides:

"The Secretary of a military department may acquire any interest in land that--

- (1) he or his designee determines is needed in the interest of national defense; and**
- (2) does not cost more than \$25,000 exclusive of administrative costs and the amounts of any deficiency judgments."**

Since the lease in question is clearly within the \$25,000 limitation, the only further consideration is whether or not this interest in land is needed in the interest of national defense. In reviewing such a determination this Office has held previously that a department head is vested with a large degree of discretion as to what particular expenditures are necessary to carry out the responsibilities of his department. B-86148, October 6, 1971. It has also been recognized that sponsorship of recreational and social activities may be considered to be activities with a military purpose. B-154547-O.M., July 7, 1965.

In addition, such a lease does not fall within the purview of 10 U. S. C. 2662 (1970) which requires certain real property transactions to be reported to the Armed Services Committees, since the lease involved here falls below the \$50,000 threshold for reporting prior to acquisition and the \$5,000 minimum required for inclusion in the quarterly report to the Committees by the Secretary of the Air Force.

Accordingly, if the leasehold interest was acquired in a manner consistent with internal DOD and Air Force procedures and regulations, there does not appear to be a legal basis on which an objection to the lease might be posed.

SPECIAL STUDIES AND ANALYSIS

By: C. Tyler Przybylek

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