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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-191300

DATE: March 31, 1978

MATTER OF: Air Force Request for Advance Decision

DIGEST:

The advance payment of rent, on annual basis, under proposed lease of land with the State of Idaho is not in contravention of the prohibition against advance payments in 31 U.S.C. § 529 since possibility of loss is remote where a State is the recipient.

The Deputy Director, Plans and Systems, of the Department of the Air Force, by letter dated February 1, 1978, has forwarded to our Office a request for an advance decision as to the propriety of annual advance payment of rent under a proposed real estate lease with the State of Idaho.

It is reported that the Seattle District, Corps of Engineers, Department of the Army, has been negotiating with the State of Idaho since May 5, 1977, for the renewal of Lease No. DACA67-5-73-196. Under the proposed renewal agreement, the State of Idaho is to continue to lease to the Government 520 acres, more or less, located at Mountain Home Small Arms Range, Mountain Home AFB, Idaho, for use as a "clear zone" in compliance with safety regulations. After an initial term of 6 months, the proposed lease is to remain in force from year to year until June 30, 1982, unless the Government gives notice of termination or adequate appropriations become unavailable. Annual payment of rent under the lease is to be made by the Accounting and Finance Officer at Mountain Home AFB.

The State of Idaho has refused to sign the proposed lease without a provision for advance payment of rent,

insisting that, under Idaho Code § 58-305, all leases of State land are conditional upon the payment of rent annually and in advance.

Advance payments generally are prohibited by the provisions of 31 U.S.C. § 529 (1970). While this section has been interpreted as prohibiting advance payments under leasehold interests, 19 Comp. Gen. 758, 760 (1940), it has been recognized that the primary purpose of the prohibition against advance payments is to preclude the possibility of loss to the Government in the event a recipient of advance payments should fail to perform or refuse or fail to refund moneys advanced. Consequently, having due regard for the established responsibility of State governments, and since danger of loss is minimized where a State or agency thereof is the recipient, we have consistently authorized advance payments to States. 39 Comp. Gen. 285 (1950); 25 id. 834 (1946); B-118846, March 29, 1954; B-109485, July 22, 1952; B-65821, May 29, 1947; B-36099, August 14, 1943; and B-35670, July 19, 1943.

We note that, once executed, the lease requires no further active participation or performance by the State. The possibility of the State's failure to perform, therefore, is remote.

Accordingly, we have no objection to the annual advance payment of rent under the proposed lease.


Deputy Comptroller General
of the United States