

**DECISION**

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

**FILE:** B-217884

**DATE:** February 18, 1986

**MATTER OF:** Federal Aviation Administration - Limits  
on Rent Payments

- DIGEST:**
1. Provision in a lease between the Federal Aviation Administration and the lessor incorporating section 322 of the Economy Act, which limits the amount of rent the Government is authorized to pay and which was suspended on October 1, 1981, is not applicable to rental adjustment period beginning October 1, 1983.
  2. Language of a rental adjustment provision in a lease between the lessor and the Federal Aviation Administration allowed but did not require the FAA to deny a rental adjustment because the request for the adjustment was not timely filed. The FAA's denial of the rent adjustment was proper for the 1-year period following the year in which the adjustment was to be made, but not for the entire period before the next adjustment is to be considered.

A Federal Aviation Administration (FAA) contracting officer asks us the following questions about a lease between the FAA and Mr. James N. Routh, the lessor, for space for an FAA Airway Facilities Sector and General Aviation District Office at Riverside Municipal Airport, Riverside, California: (1) Whether the denial of the lessor's request for a rental adjustment, because of the limitation in section 322 of the Economy Act, was proper; (2) whether the FAA contracting officer was bound to deny the request for a rental adjustment because it was not timely filed; and (3) assuming application of the Economy Act and our decision that a rental adjustment should be made, whether the award date of the lease or the date of the rental adjustment would be the appropriate date to use for establishing the fair market value of the property and fair annual rent.

For the reasons given below, we find that section 322 of the Economy Act no longer applies to the lease. We also find that while the FAA was legally permitted to refuse a rental adjustment for the rental period beginning October 1, 1983 because the request was not timely filed, it was not

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bound to do so. On the other hand, the FAA was only permitted to deny a rent increase for the 1-year period beginning October 1, 1983, not for the entire 5-year adjustment period. As we find section 322 no longer applies to the lease, there is no need to answer the third question.

#### Background

In September 1978, the FAA Western Region entered into a new construction lease providing space for an Airway Facilities Sector Office and a General Aviation District Office at Riverside, California. The lease provided that the United States pay the lessor \$72,049.68 per year.

Paragraph 2 of the lease provides that the rental term was to begin on February 1, 1979 and run through September 30, 1979. Thereafter the lease is renewable at the Government's option from year to year until September 30, 1998 at the annual rental of \$72,049.68 subject to adjustment as set forth in the lease. The Government's option is deemed to be exercised and the lease renewed unless the Government gives 30 days' notice that it will not exercise its option. The lease also permits the Government to terminate by giving at least 1 year's notice in writing to the lessor.

Paragraph 14 of Attachment No. 1 to the lease provides for adjustment of rent upward or downward beginning October 1, 1983, and for each succeeding 5-year period, so long as the lease is in effect, consistent with the changes in the consumer price index described in paragraph 14. Requests for adjustment of the rent must be made in writing at least 60 days prior to expiration of the adjustment term. Failure to make a timely request is good cause for refusal to adjust the rental for the succeeding rental term.

The lease also contains various standard provisions including General Provision 14, which made the limitation in section 322 of the Economy Act applicable to the lease. Section 322, codified at 40 U.S.C. § 278a, prohibited appropriations from being obligated or expended for rent of any building occupied for Government purposes at a rental exceeding the annual rate of 15 percent of the fair market value of the rented premises, computed as of the date of the lease under which the premises are to be occupied by the Government.

The 15 percent limitation, however, was suspended for fiscal year 1982 by Pub. L. No. 97-51, 95 Stat. 958.<sup>1/</sup> The

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<sup>1/</sup> The suspension was part of the law continuing appropriations for fiscal year 1982. The law incorporated the Treasury, Postal Service, and General Government Appropriations Act, 1982, H.R. 4121, 97th Cong., 1st Sess. (1981). That bill contained the suspension.

suspension was repeated for fiscal year 1983, Pub. L. No. 97-377, 96 Stat. 830; and was made permanent in fiscal year 1984, Pub. L. No. 98-151, 97 Stat. 964, 982.<sup>2/</sup> The legislative history of the suspension provides no substantive discussion but states only that it saves the Government money. H.R. Rep. No. 417, 98th Cong., 1st Sess. 64 (1984).

On August 20, 1983, the FAA received a letter from Mr. Routh, apparently postmarked August 18, 1983, requesting an adjustment in rent consistent with paragraph 14 of Attachment No. 1. The request was denied, however, because the request letter was not timely filed and the lease had reached the limits of section 322 of the Economy Act at the time it first was concluded. FAA's position was that the award date of the lease, in this case September 11, 1978, controlled applicability of the lease provision which incorporated section 322, notwithstanding the suspension.

Mr. Routh renewed his request by letter of July 11, 1984. The FAA again denied the rent adjustment, by letter of July 23, 1984, on the ground that the 15 percent limitation was to be applied to the building's fair market value as of the date the lease commenced. However, this action was in conflict with a later memorandum, dated August 2, 1984, of the FAA's Office of Chief Counsel. That memorandum concluded that the Economy Act did not prohibit a rental adjustment so long as the increase in rent did not exceed 15 percent of the fair market value of the leased premises at the time an adjustment is made. It also found that paragraph 14 did not preclude the contracting officer from adjusting the rental in cases where 60 days' notice was not given.

#### Legal Discussion

There is nothing in the legislative history of the provision suspending section 322 of the Economy Act that shows whether it was intended to apply to leases entered into prior to its enactment. Nevertheless, in this instance, we think it is crucial that the period of rental adjustment in question was to begin on October 1, 1983, several years after the Economy Act limitation was suspended.

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<sup>2/</sup> For fiscal years 1983 and 1984, the laws continuing appropriations incorporated the Treasury, Postal Service, and General Government Appropriation Acts for the specific appropriations. S.2916, 97th Cong., 2d Sess. (1982); H.R. 4139, 98th Cong., 1st Sess. (1983).

Moreover, consistent with the plain language of the limitation and the statute suspending the limitation, we think the better view is that section 322 was a limitation on appropriations that could be spent on rent rather than a limitation on rent per se. Thus, the language of section 322 begins "[n]o appropriation shall be obligated or expended for the rent of any building \* \* \*"; and the statute suspending the limitation begins "[f]unds made available \* \* \* for the payment of rent \* \* \*". As there no longer was a limitation on the amount of appropriated funds available for leases when the adjustment was to be made in October, 1983, we see no reason why the adjustment called for could not have been made.

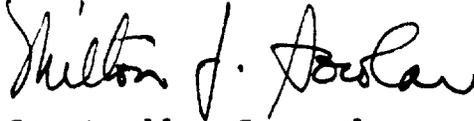
The holding of the General Services Board of Contract Appeals, 84-1 BCA ¶ 17,059 (1984) that suspension of section 322 does not apply to leases entered into before October 1, 1981, is distinguishable from this case. That decision involved rental for an adjustment period in a lease that was to commence in September 1980, a year before the Economy Act limitation was suspended. Since section 322 still was in effect when the rental adjustment was to be made, clearly the limitation applied. Conversely, in this instance the limitation had been suspended several years before the first requested adjustment was to be made. Further, the Board of Contract Appeals decision stressed that the Economy Act limitation had only been suspended, not repealed. As stated above, however, the suspension was subsequently extended for an additional fiscal year and ultimately it was made permanent. Pub. L. No. 98-151, supra, which made the suspension permanent, became effective on November 14, 1983, some 9 months before Mr. Routh's request for a rental adjustment as of October 1, 1984.

Concerning the lessor's failure to make a timely request for the rental adjustment, we think the language of paragraph 14 of Attachment No. 1 clearly shows that this failure did not bar the Government from making an adjustment but merely constituted good cause for not doing so. Although the FAA's refusal to make an adjustment for the rental period beginning October 1, 1983 was therefore proper, we see nothing in the lease or in the law which would preclude the FAA from reconsidering the matter of an adjustment in the rent particularly now that it knows that an adjustment would not be otherwise barred by the section 322 ceiling.

Moreover, we think the phrase in the lease describing the period for which an adjustment may be denied because it was not requested on time--"the succeeding rental term"--means the 1-year period following the Government's

exercise of its option to renew the lease rather than for the entire period before the next 5-year adjustment interval begins. We see nothing in the lease or otherwise in the law indicating that the succeeding rental term is equivalent to the full 5-year adjustment period. The effect of such an interpretation would be to preclude the lessor from obtaining the adjustment provided for in the lease because of a minor procedural failure. We note that the request was received some 40 days before the adjustment was to take place.

Consistent with our conclusions, there is no need to determine whether the value of the property at the time the lease was concluded, or the current market value, is the appropriate date to use for computing the amount of the adjustment. The adjustment is not limited by the 15 percent limitation formerly provided by section 322 of the Economy Act.

*for*   
Comptroller General  
of the United States