



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Economic Development Administration--Claim  
for Expenditures by Town of Franklin,  
Connecticut

Matter of:

File: B-220527

Date: August 11, 1987

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### DIGEST

The First Selectman of the Town of Franklin, Connecticut (Town), accepted a fiscal year 1983 Economic Development Administration (EDA) grant for the Town. However, unknown to EDA, the First Selectman did not have the authority to accept the grant, so that there was no valid grant from EDA in fiscal year 1983. See B-220527, December 16, 1985. The Town expended funds for the project in fiscal year 1984 after the receipt of an EDA letter extending the period for project construction. By use of the doctrine of equitable estoppel the Town seeks to prevent EDA from denying that there was a valid grant. Since the Town knew that its official lacked the authority to accept the grant, its actions, and not any affirmative misconduct on the part of EDA, were responsible for the expenditure of funds for the project. Therefore, the doctrine of equitable estoppel is not applicable to this case. Also, there was no new grant offer, renewal, or ratification of the prior year's offer, in fiscal year 1984. Accordingly, the Town may not recover its expenses from EDA.

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### DECISION

The attorney for the Town of Franklin, Connecticut (Town) has requested that we consider the Town's claim for reimbursement of expenditures which are said to have been made in reliance upon the promise of funds from the Economic Development Administration (EDA) of the Department of Commerce.

In our decision B-220527, December 16, 1985, we concluded that EDA did not obligate fiscal year 1983 funds when it made an offer to the Town that was accepted by the First Selectman who lacked the authority to accept the grant offer. Accordingly, there was no valid grant. The Town's attorney now contends that a claim for expenditures of

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\$101,670.95 should be honored because of a promissory estoppel against EDA based on the Town's reasonable detrimental reliance on EDA's promise to make the grant. We disagree.

We have contacted the Department of Commerce for its comments on this issue as well as for additional information relating to this matter. We received a May 19, 1986, memorandum prepared by the Chief, Contract Law Division of the Department's Office of Assistant General Counsel for Finance and Litigation, a memorandum from the Assistant General Counsel for Finance and Litigation, dated July 21, 1986, and a letter from the Assistant Secretary for Economic Development, dated December 1, 1986. Pursuant to our request the Town's attorney on October 9, 1986, sent copies of correspondence between EDA and the Town. By letter dated March 16, 1987, the attorney supplied receipts supporting a claim for a total of \$101,670.95. Also included was a copy of correspondence between the Chairman of the Concerned Citizens of Franklin and the Assistant Secretary.

#### BACKGROUND

On September 29, 1983, an "Offer of Grant" was made by EDA to the Town for industrial park improvements. The offer provided that acceptance was to be made prior to September 30, 1983. The First Selectman of the Town accepted the offer on September 30, 1983, and the Assistant Town Clerk certified the First Selectman's authority to accept the offer. However, notwithstanding the certification, the First Selectman did not have acceptance authority.

On November 1, 1983, the Town held a referendum on the Industrial Park Project. In his letter of December 7, 1983, the Chairman of the Concerned Citizens of Franklin informed the Assistant Secretary for Economic Development that the question voted on was "To Accept the Proposed Industrial Park Project" and that the proposal was defeated. The Chairman included copies of several documents to this effect, including the explanatory text supplied to voters which explained that the issue was "To Accept the Federal Economic Development Agency Grant for the Industrial Park Project." In his January 3, 1984, reply to the Chairman, the Assistant Secretary stated that the Town had not notified EDA that the offer of grant had been rejected, and indicated that the information would be forwarded to the Philadelphia Regional Office.

The Inspector General described what happened subsequently, as follows:

"On February 9, 1984, the Chairman of the Concerned Citizens wrote to EDA again, advising it that the Town planned to hold a second referendum on this issue. The letter states, '. . . The plan that the Government granted is now being changed, and we urge you to scrutinize this entire package . . . .'

"In response to this letter, EDA's Philadelphia Regional Counsel issued an opinion to program staff on February 15, 1984. The opinion recommended that the project be deobligated if the second referendum was rejected by the Town's citizens. This opinion also urged program officials '. . . to make sure that the project has not changed . . . .' The second referendum on this issue was held on February 16, 1984. EDA's offer of grant was rejected again. On February 27, 1984, EDA was notified in a letter from the Chairman of the Concerned Citizens that the Industrial Park Project had been voted down a second time."

Subsequently, on March 8, 1984, the EDA Regional Director wrote to the First Selectman. He noted that although construction was to start 180 days after EDA approval on September 29, 1983, no final plans and specifications had been received. The letter asked for information as to the Town's intentions respecting the project. The Regional Director indicated that reasonable extensions are considered and usually granted to assist a grantee to meet the requirements and conditions of a grant. On March 19, 1984, the First Selectman responded to the Regional Director. She said that because of alleged irregularities in the last referendum a new referendum would "decide the future of this project. If negative I will send a letter recommending the Grant be recaptured by the U.S. Dept. of Commerce."

On March 29, 1984, the Regional Director wrote to the First Selectman. Based on the prior letter and a conference call, it was agreed that if the vote were negative the Town would request termination of the grant. If positive, a formal request for an extension of time would be submitted for the Assistant Secretary's approval. The Chairman of the Franklin Economic Development Commission wrote to the Regional Director on April 12, 1984. He said that the referendum held on April 10, 1984, authorized acceptance of the EDA grant and authorized the Town's consultant to begin design work. The letter requested an extension of 180 days for the start of construction with work beginning on September 27, 1984. The Chairman stated as follows: "The

recent organizational changes in the community resulted in delaying the Town's process of accepting the grant."

On June 1, 1984, the Regional Director replied to the Chairman of the Economic Development Commission. The request for approval of a time schedule was granted provided construction was started no later than September 24, 1984.

In July 1984, an audit conducted by the Department of Commerce's Office of Inspector General questioned the validity of the grant acceptance. According to the Town's attorney the Town has spent \$101,670.95, primarily for engineering studies. No grant funds have been received from EDA in payment for these expenses.

In an August 15, 1984, letter to the First Selectman, the Town's attorney opined that EDA is estopped from denying that there was a valid acceptance of the grant in fiscal year 1983. He noted that many referendums had been had on the grant, to the knowledge of EDA. He pointed out the Regional Counsel's opinion of February 15, 1984, had not mentioned the lack of a valid acceptance by the Town in fiscal year 1983. Regarding the EDA letters of March 8 and 29, 1984, and the letter granting the 180-day extension, the attorney noted that at no time did EDA indicate that there was any problem concerning a valid acceptance of the grant offer during the 1983 fiscal year.

In response to our request for information, the Assistant Secretary for Economic Development stated as follows:

"The exchange of information in the correspondence between EDA's Philadelphia Regional Director and the Town's First Selectman is consistent with EDA's mistaken impression that funds for the project had been properly obligated during fiscal year 1983 by the Town's acceptance on September 29, 1983. . . . EDA's Regional Director believed that the grant to the Town was a valid fiscal year 1983 obligation, and the inquiry in fiscal year 1984 was routine postapproval monitoring directed to finding out why no progress was being made in carrying out the project.

"EDA believed that the referenda conducted by the Town related to (1) how the details of the project were to be accomplished, or (2) if the project was to be undertaken at all -- not to the question of whether the Town would accept the grant. EDA became aware of that issue only when it was raised by the Department's Office of the Inspector General."

## ANALYSIS

Equitable estoppel is the doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Black's Law Dictionary, 483 (5th ed. 1979). To apply this doctrine against the government four requirements must be met:

1. The government must know the facts.
2. The government must intend that its conduct shall be acted on, or must so act that the party asserting estoppel has a right to believe it is so intended.
3. The party asserting estoppel must have been ignorant of the facts.
4. The party asserting estoppel must reasonably rely on the other's conduct to its substantial injury. T.R.W., Inc. v. FTC, *infra*, 950, 951.

Based on similar requirements that were set forth in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970), we held that the government was estopped from denying the existence of a contract between itself and a bidder, because of the procuring activity's misfeasance. 53 Comp. Gen. 502 (1974). Under TRW, Inc. v. F.T.C., 647 F.2d 942 (9th Cir. 1981.) and cases cited therein, the government action upon which estoppel is based must amount to affirmative misconduct, which is something more than mere negligence.

We now consider the elements of equitable estoppel, all of which are necessary to sustain the contention that the United States is prevented from denying that there was a valid grant made to the Town in fiscal year 1983.

First, did EDA know that the First Selectman did not have the authority to sign the grant agreement? The information of record shows that the issue of her authority was first raised in the Inspector General's audit in July 1984. The Assistant Secretary for Economic Development states that EDA became aware of this issue only when it was raised by the audit. However, the Chairman of the Concerned Citizens of Franklin's letter to him dated December 7, 1983, indicated that the November 1 referendum, which was defeated, was for the purpose of accepting the grant. Other correspondence between the Department and the Town, as well as correspondence from the Chairman of the Concerned Citizens, received prior to July 1984, was not clear as to the reason for the additional referenda. We are not aware of a statement to

the Department that the First Selectman's signing of the grant agreement was unauthorized and that the Assistant Town Clerk's certification of her authority was incorrect.

The December 7, 1983, letter from the citizens group to the Assistant Secretary should have caused EDA to investigate the necessity for acceptance by the Town of a grant thought to have been already accepted by it on September 30, 1983. The Assistant General Counsel for Finance and Litigation has stated that notice of expenditures was first received in a letter of December 11, 1984, from the First Selectman to the Secretary of Commerce. However, EDA's failure to inquire so as to learn of the true circumstances is not so egregious as to amount to affirmative misconduct so that the government would be held to know of the Town's lack of authority to accept the grant in fiscal year 1983.

Second, did EDA intend that the Town would proceed with the grant following receipt of the June 1, 1984, letter from the Regional Director? This letter granted an extension of time for project completion provided construction was begun no later than September 24, 1984. EDA clearly intended the Town to rely on the letter in beginning construction. However, EDA believed that the grant was valid.

Third, was the Town of Franklin ignorant of the facts? The First Selectman knew of her lack of authority and that the Assistant Town Clerk's certification was wrong. This information was known by the party seeking estoppel and not known by the party against whom the doctrine is asserted.

Fourth, did the Town rely on EDA's conduct to its detriment? The Town relied on the EDA letter of June 1, 1984, which granted an extension of time for project completion, and procured services in furtherance of the project. However, EDA in issuing the letter had relied on the Town's certification that its grant acceptance of September 30, 1983, was valid.

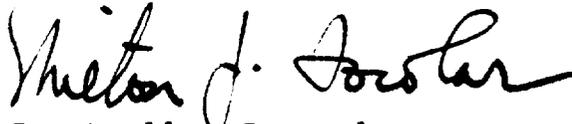
In dealing with this matter we have also considered if the fiscal year 1983 EDA grant offer might have been renewed or ratified in the following fiscal year or a new offer made. The Assistant General Counsel has told us that EDA had both program authority and funds under which a grant might have been made in fiscal year 1984. However, the Assistant Secretary has stated that EDA did not intend to make a grant to the Town of Franklin in fiscal year 1984 since the agency was under the mistaken impression that the fiscal year 1983 grant offer had been validly accepted. The Department of Commerce's correspondence does not by its terms make a new grant offer, nor does it expressly renew or ratify the 1983 offer. Neither has the Town indicated that it received a

new, revised, or ratified offer in 1984. Accordingly, we find that there was no valid grant from EDA to the Town of Franklin in fiscal year 1984.

#### CONCLUSION

In summary, it appears to us that the Town's expenditure of \$101,670.95 for grant purposes, although there was no valid grant, resulted primarily from the conduct of its own officials. The First Selectman signed the grant agreement without authority to do so, and the Assistant Town Clerk incorrectly certified to the First Selectman's authority. It was the acts of the Town officials and not EDA which prevented a valid grant award. EDA did not withhold knowledge of these acts from the Town.

All of the requirements necessary to estop the government have not been established. Therefore, in the case before us we are of the opinion that the doctrine of equitable estoppel should not be applied against the government, and that it is not prevented from denying the existence of an industrial park development grant from EDA to the Town of Franklin in fiscal year 1983. Also, as there was no new grant offer, renewal, or ratification of the prior year's offer, in fiscal year 1984, we think that the Town of Franklin's claim for project expenses should be denied.

*for*   
Comptroller General  
of the United States