



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Propriety of SSA paying Municipality's Alarm
System Registration Fee.

File: B-227388

Date: September 3, 1987

DIGEST

1. The alarm system registration fee imposed by the City of Council Bluffs, Iowa, is actually a tax which is levied to defray the costs of emergency services which are required by law to be provided. These services must be provided to the United States on the same basis as to any citizen, even though the federal government is constitutionally immune from paying the taxes which support these services.

2. The false alarm fines imposed by the City of Council Bluffs, Iowa, are not payable by the federal government unless there has been an express statutory waiver of sovereign immunity.

DECISION

By letter dated May 28, 1987, an authorized certifying officer of the Social Security Administration (SSA), Department of Health and Human Services, requested a decision concerning the propriety of paying various fees and fines imposed by the City of Council Bluffs, Iowa, relating to alarm systems. For the reasons indicated below, we hold that the fee and fines imposed by the City of Council Bluffs, Iowa, are charges which the United States is constitutionally immune from paying.

ALARM SYSTEM REGISTRATION FEE

The City of Council Bluffs has imposed a fifty dollar alarm system registration fee on the SSA field office in Council Bluffs. The fee is made payable to the City Clerk ostensibly to support the Pottawattamie County Division of Communications 9-1-1 Center. We have addressed the issue of service fees a number of times and have followed the general rule that where the service "is authorized or required by law to be offered and a service fee is assessed to defray its costs, the fee amounts to a tax which the federal government may not constitutionally be required to pay." B-215735.2, April 20, 1987, 66 Comp. Gen. ____; see also, 64 Comp. Gen. 655, 657-58 (1985); B-168024, Dec. 13, 1973.

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This case is distinguishable from the cases where we have held that the United States may pay fees which represent reasonable charges for services rendered. B-168024, Dec. 13, 1973. In determining whether the fee being charged is a tax or a service charge, we are required to look beyond the name given to the fee in the municipal code. If the state or municipality does not show that the fee was calculated solely on the basis of the value of the service provided to the government, then the fee is a tax which may not be paid. B-207695, June 13, 1983; see also 49 Comp. Gen. 72 (1969).

Because the SSA's alarm systems terminate in a General Services Administration (GSA) Federal Protection Service Command Center, the municipality does not provide any extra service until it responds to a GSA alert. Therefore, we hold that the fifty dollar alarm system registration fee is not calculated on the basis of any benefit conferred on the government. There is nothing in the record to show that the fee is anything other than a tax on the federal government used to defray the administrative costs of running the Pottawattamie County Division of Communications 9-1-1 Center.

The communications and dispatch services of the 9-1-1 Center, as well as the police, fire, and ambulance services that the SSA's alarm system could summon, are required by law to be provided to the public at large and must be provided to the United States on the same basis as to any citizen, even though the federal government is constitutionally immune from paying the taxes which support these services. B-215735.2, Apr. 20, 1987, 66 Comp. Gen. ____.

FALSE ALARM FINES

The City of Council Bluffs also fines owners of alarm systems for false alarms. The fines range from \$25 to \$100 per false alarm depending on the number of past offenses. Council Bluffs Municipal Code § 8.29.040 (1986). The SSA thinks that there is a difference between false alarms caused by SSA employees and false alarms caused by non-SSA employees. The letter requesting our decision indicates that the SSA is currently paying fines only for false alarms caused by SSA employees.

As far as the liability of the federal government is concerned, the cause of the false alarm is immaterial. The issue is basically one of sovereign immunity. In order for the SSA to be liable for a fine or penalty, there must be an express statutory waiver of sovereign immunity. B-191747, June 6, 1978. We are aware of no federal statute which

subjects the United States or its agencies to fines of the above type. Therefore, the fines imposed under the Council Bluffs Municipal Code are not payable by the SSA. To the extent that any fines have already been paid to the city, the SSA must seek to recover them.

for *Melton J. Jovan*
Comptroller General
of the United States