COMPTROLLER GENERAL OF THE UNITED STATES
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Director, Defense Accounting and Auditing Division

Section 3(b)(4) of the Air Force Academy Act, Public Law 325, approved April 1, 1954, 68 Stat. 47, as amended by section 508 of Public Law 85-241, 71 Stat. 531, authorized the Secretary of the Air Force "to construct and equip temporary or permanent Public Works, including buildings, facilities, appurtenances and utilities, * * *" at the location of the Academy site. That act, as amended, authorized the appropriation of $135,425,000 to carry out the provisions of "this Act." Pursuant to that authorization, there has been appropriated to date for the construction of the Academy the amount of $133,567,000, which amount is funded through the appropriation, "Military Construction, Department of the Air Force."

The availability of an appropriation for a specific purpose depends not only upon the terms of the appropriation language, but also, upon the basic authority conferred on the agency involved by the provisions of permanent law applicable to the functions of such agency. A specific appropriation authorization having been made by the Congress and amounts having been appropriated pursuant to that authorization, it must be held that the specific appropriations made are solely available for the purposes enumerated in section 3(b)(4), supra. See 20 Comp. Gen. 272.

Therefore, as to the individual items set out below, the only question for consideration is whether the costs of such items are to be regarded as costs of constructing and equipping the Academy within the purview of section 3(b)(4).

In the case of Sharp v. Police Jury of Parish of East Baton Rouge, 193 So. 594, 596, the court held that the constructing of a public building means the actual furnishing and equipping of a building so that it can fulfill its logical destination as a public use or public function. See, also, 78 C.J.S., Schools and School Districts, section 266, to the effect that the statutory power to construct a school building includes the power to include the ordinary equipment therefor. In 19 Comp. Gen. 778, we held that costs necessary to the completion of a construction project are, essentially, construction costs, and not costs of maintenance and

operation which ordinarily arise only after completion of the construction project. However, it is difficult, in the absence of a clear expression of legislative intent which is not present here, to ascribe any definitive meaning to the words "facilities" and "appurtenances" as used in section 3(b)(4). The word "facilities" or its singular may embrace anything which aids or makes easier the performance of the activities involved in the business of a person or corporation. Hartford Electric Light Co. v. Federal Power Commission, 131 F. 2d 953, 961. "Facilities" may also encompass machinery and equipment. Briggs Mfg. Co. v. United States, 30 F. 2d 962, 964. See, also, B-123918, June 9, 1955. "Appurtenances" generally is understood to mean that which belongs to something else; incident to a chief or principal thing. Thus, it might be said that together "facilities" and "appurtenances" include all those items which complete, aesthetically and practically, the Academy for the purpose intended. However, there is no apparent congressional intent evidencing a desire that all costs incident to the construction of the Academy of whatever character should be funded from the construction appropriation to the exclusion of otherwise available appropriations. Neither is there any contrary intent that only "pure" construction costs are to be so funded. Hence, the criteria to be applied is whether particular items of costs come within the purview of section 3(b)(4) of the Academy Act so as to require their charge to the construction appropriation to the exclusion of other appropriations. In view thereof, the particular items will be considered below in the order presented in your supplemental memorandum of December 23, 1958, on the basis of their characteristics and relation to the "construction"of the Academy:

1. Salaries for conducting inspection services formerly performed by the Architect-Engineer under contract funded from the construction appropriation, but charged to the "Operations and Maintenance, Command Administration" appropriation.

Generally, in the absence of a specific appropriation therefor, costs of inspection services are chargeable to the appropriation made for the construction work. B-136642, October 20, 1958. Cf. B-71067, December 9, 1947. However, it is assumed that salaries and/or pay and allowances of Government personnel are involved. See page 753 of House Hearings on Air Force appropriations 1959. Also, in this connection we stated in letter of July 18, 1958, B-132109, to the

Chairman, Subcommittee on Military Construction, Committee on Appropriations, as follows:

> "With respect to items Nos. 1 and 2, it would seem that the expenses here involved are the usual military and civilian payroll costs plus some minor operational expenses. It is our understanding that it is the customary practice of the military agencies to charge such personnel costs to regular pay appropriations without regard to the activity involved. While we feel that costs incident to construction properly should be included as part of the overall costs of construction, we have no comment to offer with respect to these items in view of the long-established firm policy of the military regarding personnel costs."

What was stated there with respect to the items involved is equally applicable to the instant item.

> 2. Removal and relocation of hangar for interim fire station. Cost charged to "Operations and Maintenance, Command Administration."

This item while not involving primarily a construction function, may be said to fall generally within the authorization to construct and equip temporary public works, since necessarily modifications and alterations were involved to establish a "facility" which required the application of construction procedures by construction personnel. Accordingly, the construction appropriation should have been charged with the costs involved.

> 3. Security and fire protection funded from "Base Operation and Maintenance."

It is understood that primarily personal services are rendered for the protection of real estate, supplies and equipment. See what was said under Item 1 with respect to the charging of personnel costs.

> 4. Providing display models of the Academy; funded from "Operations and Maintenance, Command Administration."

In view of the nature of this item to illustrate the completed Academy, which is customarily furnished by the Architect-Engineer as part of its contract responsibilities, we believe that construction funds were

solely available for this cost.

5. Rehabilitating Pine Valley Club; funded from "Base Operation and Maintenance" and "Major Repairs."

We understand that the building was rehabilitated for use as a temporary residence for the Academy superintendent, and that considerable construction work was involved. Hence, such work would appear to constitute the constructing and equipping of temporary public works and, as such, chargeable against the construction appropriation.

6. Rehabilitation of existing structures, including equipment installations and construction; funded from "Base Operation and Maintenance."

Here, we are of the view that this item was clearly contemplated in authorizing the construction appropriation.

7. Provide liquid petroleum gas service, etc., to facilities and quarters; funded from "Base Operation and Maintenance."

So far as this item includes the costs of facilities for furnishing gas service, as distinguished from the cost of the petroleum, such costs represent facilities chargeable to the construction appropriation.

8. Pneumatic tube system in base supply warehouse; funded from "Shop Machinery and Equipment."

This charge is justified because the system was not a fixed installed equipment (see pages 1026 and 1240, House Hearings, Military Construction Appropriations, 1959). However, this item is an appurtenance incident to construction and reasonably is included also within the authorization for equipping permanent public works at the Academy site. The hearings cited do not justify the charge as made; in fact, the committee did not fully accept the Air Force position (see page 1030 of the cited hearings).

9. Installation of shoe racks in Cadet Quarters; funded from "Base Operation and Maintenance."

This item appears to be one contemplated by section 3(b)(4) as a cost of equipping the Academy.

10. Providing and servicing chemical toilets; funded from "Base Operation and Maintenance."

The cost of providing this item appears to be an appurtenance and/or facility to be funded from the construction appropriation.

11. Installation of grating, railings, street lighting standards and flood lights; retaining walls, catch basins and drain; funded from "Base Operation and Maintenance."

Clearly, these represent facilities incident to construction and construction funds should have been charged.

12. Erosion control; charged to "Base Operation and Maintenance."

Apparently, this item was represented by the Air Force to be a construction cost. See page 103, House Hearings, Military Construction Appropriations, 1957.

13. Traffic and road signs; funded from "Base Operation and Maintenance."

If this item was included in the road construction contract it properly should have been charged to construction funds. If not, the appropriation charged need not be questioned.

14. Bridge and pipe line crossing license; funded from "Base Operation and Maintenance."

The procuring of licenses incident to construction of a facility from local authorities reasonably should be regarded as a cost thereof in the absence of clear language in the appropriation that such license fees are specifically included within base operation expenses. In usual practice, such fees are included in the cost of constructing the facility as part of the contractor's responsibility. See Article 10, Standard Form No. 23-Rev., Construction Contract, 41 U.S.C. App. 54.13.

15. Dun and Bradstreet reports; funded from "Operation and Maintenance, Command Administration."

In the absence of more information relating to the purpose for which such reports were obtained, we find no basis to question this item, especially since there appears to be involved personal services only remotely incident to construction.

16. Lease of motor vehicles; charged to "Base Operation and Maintenance."

In the event this item refers to vehicles furnished to a construction contractor for use in performing contract work and, for that reason, would represent a cost of construction, we feel that construction funds should have been charged. If, however, the lease of vehicles was for the purpose of providing local transportation to administrative personnel, no basis would exist for questioning this item.

17. Procurement of planetarium projector; funded from "Operational Training Devices."

It is contended by the Air Force that this item is not fixed installed equipment and, as such, chargeable to the cited appropriation. However, the construction appropriation is available for the costs of equipping public works constructed at the Academy site. Hence, and in view of the fact that the projector is installed in a building finally constructed as a planetarium, the cost of the projector appears to constitute an item of construction within the meaning of section 3(b)(4).

18. Procurement and installation of removable partitions; funded from "Base Operation and Maintenance."

As indicated on page 142-143, House Hearings, Military Construction Appropriations, 1959, GSA regards movable partitions as part of the building construction. While the partitions are movable, as distinguished from being permanently built into the building, nevertheless, when installed and in place, they are in effect part of the building and therefore are a part of the cost of construction of the building properly chargeable to the construction appropriation.

As to the other remaining items, the criteria as outlined above may be applied to determine the proper appropriation chargeable.

The appropriate section of the draft report should be changed accordingly.

Joseph Campbell

Comptroller General
of the United States

Attachments