



DIRECTOR GENERAL - GGM

1107d
Rel 4/3/80
cmg

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

D

B-95136

SEP 27 1978

The Honorable Daniel Patrick Moynihan
United States Senate

Dear Senator Moynihan:

This responds to the joint request by you and three other Members of the Committee on Environment and Public Works for our opinion on whether section 7(a) of the Public Buildings Act of 1959, as amended, 40 U.S.C. § 606(a), permits expenditures of up to \$500,000 on a building construction, alteration, leasing, or repair project having a total cost exceeding that amount, prior to congressional approval of the building prospectus. You also ask for a report on any prior instances in which the General Services Administration (GSA) has spent up to \$500,000 prior to prospectus approval, on a project with a total cost exceeding \$500,000 and requiring congressional approval.

Section 7(a) of the Act provides as follows:

"In order to insure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings, except as provided in section 603 of this title, no appropriation shall be made to construct, alter, purchase, or to acquire any building to be used as a public building which involves a total expenditure in excess of \$500,000 if such construction, alteration, purchase, or acquisition has not been approved by resolutions adopted by the Committee on Public Works of the Senate and House of Representatives, respectively. No appropriation shall be made to lease any space at an average annual rental in excess of \$500,000 for use for public purposes if such lease has not been approved by resolutions adopted by the Committee on Public Works of the Senate and House of Representatives, respectively. For the purpose of securing consideration for such approval, the Administrator shall transmit to the Congress a prospectus of the proposed facility
* * *"

The legislative history of the Act indicates that the primary purpose of the Act is--

B-95136

"* * * to provide the basic statute which would vest in the Administrator of General Services authority and responsibility for acquiring, constructing, altering, repairing, remodeling, improving, or extending public buildings and acquiring the necessary sites or additions to sites in connection therewith. The bill provides authority needed by the Administrator of General Services to carry out his responsibilities with respect to public buildings in an economical and efficient manner." H. R. Rep. No. 557, 86th Cong. 2 (1959).

The Act provides the Administrator with broad, continuing authority for carrying out a program for the repair, remodeling, improvement and new construction of public buildings. However, under the conditions outlined in section 7(a) of the Act, approval by the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation is necessary before appropriations can be made to construct, alter, or acquire any public building. See S. Rep. No. 894, 86th Cong. 3 (1959). Prospectus approval is required under section 7(a) of the Act if the construction, alteration, purchase, or acquisition of a public building will involve a total expenditure in excess of \$500,000; or if a lease of space for public purposes is at an average annual rental in excess of \$500,000. 40 U.S.C. § 606, supra.

It is clear that section 7(a) is essentially a restriction upon the appropriation of funds for projects within the scope of that section. The section does not prohibit expenditures for such projects if appropriations were made available by the Congress notwithstanding the restrictive language in section 7(a). In other words, in the absence of strict compliance with the procedures described in section 7 of the Act, a point of order might lie in connection with the consideration of such appropriations (although rulings thereon are exclusively within the province of the presiding officers of each House). However, if the Congress, notwithstanding the restriction in question, appropriates funds to GSA for the projects, we would not question the use of the funds for the purposes appropriated, such appropriations being the latest expression of congressional intent.

Therefore, the GSA may use funds appropriated for projects requiring prospectus approval prior to the submission or approval of the prospectus in a situation where Congress specifically appropriates funds to GSA for the project.

With regard to your question about prior GSA practices, we asked GSA for a report but have not yet received a response. However, we have been told informally by staff that GSA believes that under the

D-88188

Act, it can spend a cumulative total of \$500,000 for repairs and alterations to a public building without prospectus approval. GSA seeks prospectus approval whenever \$500,000 in repairs and alterations have been performed on a building and more work is determined to be necessary. Once it is decided that a prospectus will be prepared for a building, it is the policy of GSA not to spend money on items included in the prospectus prior to prospectus approval by the committee, unless in an emergency or where failure to act quickly would be detrimental to Government operations. If this is in fact GSA's official view, we disagree to the extent that prospectus approval is not sought when GSA knows or reasonably believes that the project will ultimately cost more than \$500,000. The requirement for prospectus approval is imposed on projects whose attributes will ultimately require an expenditure over the statutory limit. It is not imposed only on the surplus cost over \$500,000.

Sincerely yours,

R. F. KIRKMAN

2-11-71

Comptroller General
of the United States

PUBLIC BUILDINGS

Expenditures
Limitations

of available funds a large amount of
funds are allocated to the various
departments and agencies and the
amount available for the various
departments and agencies is
determined on the basis of the
amount of funds available for the
various departments and agencies
and the amount of funds available
for the various departments and
agencies is determined on the
basis of the amount of funds
available for the various
departments and agencies.

APPROPRIATIONS

Limitations
Total costs limitation

The total cost limitation for the
various departments and agencies
is determined on the basis of the
amount of funds available for the
various departments and agencies
and the amount of funds available
for the various departments and
agencies is determined on the
basis of the amount of funds
available for the various
departments and agencies.

Agency statement

Statement of the
various departments and agencies