



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

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OCT 11 1979

B-95136

The Honorable Jennings Randolph
Chairman, Committee on Environmental
and Public Works
United States Senate

Dear Mr. Chairman:

This is in response to your request, co-signed by Senator Robert T. Stafford, Ranking Minority Member, for a report from this Office concerning the General Services Administration's (GSA) leasing practices vis-a-vis prospectuses approved under the provisions of the Public Buildings Act of 1959, as amended, 40 U.S.C. § 601 et seq. (1976).

It was agreed by a member of the Committee staff and representatives of this Office that while the requested report as to non-legal issues could be deferred until a later date, the Committee still desired a legal opinion by October 1, 1979, if possible, on whether or not a Committee resolution approving a prospectus constitutes an authorization. If so, what are its limitations and terms and how is it defined and measured.

Section 7(a) of the Act, as amended, 40 U.S.C. § 606(a) (1976) provides that:

"* * * No appropriations 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 * * *

This section appears to contemplate GSA's obtaining prospectus approval prior to the passage of the appropriations act. However, as we understand it, in actual practice since enactment of section 7(a) in 1972, prospectus approval has generally been sought and obtained after the annual appropriation act was passed.

The longstanding opinion of this Office is that section 7(a) is a restriction upon congressional authority to appropriate funds for projects within the scope of that section. In the absence of specific congressional

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indication to the contrary, we must presume that Congress has complied with this statutory restriction. Taking cognizance of the contemporaneous and longstanding practice of the Congress and GSA in implementing this provision, it is our view that appropriations made for the leasing of buildings are available for leases with annual rentals in excess of \$500,000 if, before or after the appropriation act passes, the lease prospectus has been approved in accordance with section 7(a).x

Except for the situation discussed below, GSA's authorization to enter into these leases is derived from committee approval of the lease prospectus and the appropriation of funds available for this purpose. Prospectus approval thus constitutes an authorization to enter into the lease. The agency may then enter into a lease which falls within the description provided in the prospectus. Either committee could, of course, require amendment of the prospectus as originally submitted as a condition precedent for its approval. With respect to the prospectus, section 7(a) requires, among other things, a brief description of the space to be leased, its location and its estimated maximum cost. In our view the actual lease must generally conform to the proposal, contained in the prospectus, as approved by the committees; significant deviations would presumably need to be resubmitted for further approval.

We should point out, however, that prospectus approval is not the only method of making funds available for leases in excess of \$500,000. Section 7(a) does not prohibit, in our view, the agency from making expenditures for certain leases if appropriations were specifically made available for those leases by the Congress even absent an approved prospectus. In the absence of strict compliance with section 7 procedures, 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 point of order fails or is never raised and Congress appropriates funds to GSA for specific leasing projects without requiring prospectus approval, those funds may be expended on these projects since the appropriation act must be regarded as the latest expression of congressional will.

As to whether it may be said that an appropriation was in fact made for, or whether the Congress included in a lump-sum appropriation funds for, a project for which a prospectus was not submitted and approved in accordance with section 7(a) would depend on facts and circumstances in each case. The Congress can, advisedly and deliberately, make provision in an appropriation act for a lease for which a prospectus was not submitted and approved in accordance with section 7(a).x However, in the absence of express and specific language in the appropriation act so providing, resort must be made to the legislative history of such act to determine whether it was intended that the appropriation involved could be used for such lease.

If the legislative history of the appropriation act involved clearly discloses that the Congress was specifically informed that GSA was requesting funds for a lease for which a prospectus was not submitted and approved in accordance with section 7(a) and that the Congress with full knowledge of all the facts specifically included in the appropriation funds requested for the lease, there would appear to be an adequate indication of congressional intent to permit the use of the funds for such lease. Cf. 44 Comp. Gen. 204 and B-153601, September 24, 1964. However, the mere fact that a lease is included in the backup material in support of the budget estimates is not, standing alone, sufficient to make the funds available for a lease for which a prospectus was not submitted and approved in accordance with section 7(a).

In summary, unless the Congress specifically appropriates funds for particular leases without the need for prospectus approval, approval of a lease prospectus by the statutorily designated committees constitutes the authorization GSA needs to enter into a lease with an annual rental in excess of \$500,000. The actual lease should conform to the space description, location, and estimated cost set forth in the approved prospectus and significant deviations would require further committee approval.

We trust this information is responsive to your inquiry.

Sincerely yours,

Signed Elmer B. Staats

Comptroller General
of the United States

PUBLIC BUILDINGS

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Congressional approval

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LEASES

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