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UNITED STATES GENERAL ACCOUNTING OFFICE
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RELEASED

CIVIL ACCOUNTING AND
AUDITING DIVISION

B-143167-11M

General Counsel

In October 1959 the Federal Deposit Insurance Corporation (FDIC) purchased land in the District of Columbia costing about \$1.6 million. It now plans to construct an office building on the site estimated to cost about \$8.4 million. General Services Administration acquired the land as agent for FDIC and in that capacity has awarded a contract for architectural and engineering services in connection with the proposed new building. Recently, certain Congressmen questioned whether FDIC had the authority to purchase the land, and whether it is authorized to construct the building.

In a letter dated June 4, 1960, to the Chairman of the Board of Directors, FDIC, Congressman Wright Patman stated that he believed the Corporation purchased the land without regard for the provisions of the Public Buildings Act of 1959. A thermo-fax copy of the Congressman's letter is enclosed. Briefly, Congressman Patman contends that FDIC's proposed building comes within the 1959 act because of the language in section 2, which states that no public building shall be constructed except by the Administrator, GSA. In a letter dated June 6, 1960, to the Comptroller General of the United States, Congressman Patman also said that he intended to oppose the construction of FDIC's building unless the Corporation obtained Congressional approval.

In the fiscal year 1961 appropriation hearings, members of the Independent Offices Subcommittee of the Senate Committee on Appropriations, questioned officials of FDIC and GSA (pp. 190 and 321) as to the authority under which FDIC obtained the site and the authority under which it planned to construct the building.

On the basis of our review of the Public Buildings Act of 1959, we believe that the language in section 7 might be construed as making the act applicable to construction of buildings to be paid for from appropriated funds only. Since FDIC does not intend to use appropriated funds, the law might be taken to mean that FDIC's proposed building does not come within the meaning of the 1959 act. In this connection, see page 16921, Congressional Record, August 25, 1959.

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 33a) specifically prohibits wholly-owned Government corporations from acquiring land and/or office buildings. At the time the Government Corporation Control Act was enacted, (December 6, 1945), FDIC was defined as a mixed-ownership corporation because the capital stock of the Corporation was subscribed to by the Secretary of the Treasury and Federal Reserve banks. Since that date, however, all of the Corporation's outstanding stock has been retired. On this basis, notwithstanding its classification in the Corporation Control Act, FDIC legally might be considered a wholly-owned Government corporation. In that event the 1949 act would prohibit FDIC from acquiring land and constructing a building.

The Federal Deposit Insurance Act (12 U.S.C. 1811) is silent on whether FDIC is authorized to purchase land or construct a building. However, in 1950, officials of the Corporation appeared before the Congress seeking legislation authorizing FDIC to construct an office building. This authorization reached the floor of the Senate as S. 2923, but failed to pass. The Corporation's position as to their present authority to construct a building is contained in the enclosed letter dated May 9, 1960, and in the enclosed memorandum dated April 1, 1958, from an FDIC attorney to FDIC's General Counsel.

The Corporation's plans call for construction of the building to be handled by the General Services Administration. Section 210(c) of the Federal Property and Administrative Services Act of 1949 gives GSA, at the request of any Federal agency or any mixed-ownership corporation, the authority to: (1) acquire land for buildings and projects authorized by the Congress, (2) prepare plans and specifications for such buildings and projects, and (3) to contract for and to supervise the construction, development, and equipping of such buildings or projects. GSA officials have advised us that GSA's actions to date on the matter have been pursuant to section 210(c) cited above and that they have accepted FDIC's legal position as to FDIC's authority to acquire land and construct a building.

If FDIC has acted without regard to legislative restrictions, the matter will be disclosed in our fiscal year 1960 audit report to the Congress. However, the language of the pertinent laws seems to be subject to different interpretations, and we are unable to determine whether FDIC's authority extends to acquiring land and a building. We, therefore, request a decision on (1) whether FDIC had the proper authorization to obtain the site, and

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(2) whether it is authorized to build an office building. In the event either of these questions is answerable in the negative, decision is requested as to whether GSA has exceeded its authority in acting as an agent for FDIC in handling the site acquisition and architectural services.

A. T. Samuelson
Director

Enclosures

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Director, Civil Accounting and Auditing Division

Returned. As indicated in your memorandum, the Federal Deposit Insurance Corporation is defined in section 201 of the Government Corporation Control Act, 31 U. S. C. 856, as a "mixed-ownership" Government corporation. Hence, even though all the Corporation's stock has been retired, it may not be considered a wholly-owned Government corporation under existing law. Accordingly, the statute (40 U. S. C. 33a) which prohibits wholly-owned Government corporations from using their funds to purchase or construct office buildings for certain purposes in the absence of specific statutory authority is not applicable to the Federal Deposit Insurance Corporation.

As to the authority of the Federal Deposit Insurance Corporation to use its funds to purchase land and construct an office building thereon for use by the Corporation, section 9 of the Federal Deposit Insurance Act, as amended, 12 U. S. C. 1819, provides, in pertinent part, that the Corporation shall have power:

* * * * *

"Third. To make contracts."

* * * * *

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"Seventh. To exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this chapter, and such incidental powers as shall be necessary to carry out the powers so granted." (Emphasis added.)

Further, section 10(a) of the act, 12 U. S. C. 1820(a), provides, in part, as follows:

"* * * The Board of Directors of the Corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid. The Corporation shall be entitled to the free use of the United States mails in the same manner as the executive departments of the Government. The Corporation with the consent of any Federal Reserve bank or of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, services, and facilities thereof in carrying out the provisions of this chapter." (Emphasis added.)

Under the above-quoted provisions of the Federal Deposit Insurance Act,^X there is implied legal authority for the Federal Deposit Insurance Corporation to acquire land and construct a building thereon, if it determines such facilities are necessary to carry out the purposes of the act, absent, of course, other provisions of law to the contrary. However, there arises a question as to whether the Federal Deposit Insurance Corporation and the proposed building come within the purview of the Public Buildings Act of 1959, 73 Stat. 479. 40 USC 601

(1) Section 13(1) of the Public Buildings Act of 1959, defines the term "public building" as far as pertinent here, as any building suitable for office or storage space or both for the use of mixed-ownership corporations. Section 13(4) of the act defines the terms "executive agency" (4) as including the Federal Deposit Insurance Corporation. Thus it is clear that the proposed building will be a public building and that the Federal Deposit Insurance Corporation comes within the purview of the Public Buildings Act of 1959.^X

Section 2 of the last cited act provides that no public building shall be constructed except by the Administrator of General Services in accordance with the provisions of the act. The act, however, does not limit the Administrator's authority to construct public buildings to public buildings which are to be constructed from appropriated funds. Since the General Services Administration is going to construct the proposed building for the Federal Deposit Insurance Corporation there will be a compliance with section 2.^X

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USE 606 Section 7 of the Public Buildings Act of 1959 provides that no appropriation shall be made to construct a public building involving an expenditure in excess of \$100,000 unless such construction is approved by resolution adopted by both the House and Senate Committees on Public Works, and requires the Administrator of General Services to submit a prospectus to the Congress for the purpose of securing consideration of such approval. However, section 7 would not apply to the construction of the building for the Federal Deposit Insurance Corporation, since appropriated funds will not be involved. Thus, the General Services Administration will not be required to obtain the approval of the House and Senate Public Works Committees or submit a prospectus of the proposed building to the Congress. See in this connection our report dated April 29, 1959, B-103967, B-103991, to the Chairman, Committee on Public Works, House of Representatives (copy attached), wherein we expressed a similar view.

There is nothing in the present record to indicate that the Federal Deposit Insurance Corporation has acted without regard to statutory restrictions. Moreover, in light of what is stated above, the Federal Deposit Insurance Corporation has authority to use its funds for site acquisition and construction of an office building for its own use, and, in effect, is required by section 2 of the Public Buildings Act of 1959 to have the General Services Administration construct the building in accordance with applicable provisions of the act (section 7 thereof not being applicable, as indicated above).

The questions presented are answered accordingly.

JOSEPH CAMPBELL

Comptroller General
of the United States

Attachments