DECISION

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

10,735

FILE: B-195260 DATE: July 11, 1979

MATTER OF: Federal Emergency Management Agency - Authority to rent space in District of Columbia

DIGEST:

1. Director, Federal Emergency Management Agency (FEMA) may enter into contract for rental of space in District of Columbia pursuant to section 21(b)(3) of Federal Fire Prevention and Control Act of 1974, as amended, (Act), in order to provide space for activities falling under purview of Act, notwithstanding prohibition in 40 U.S.C. § 34, since Act authorizes Administrator to lease property "wherever situated."

2. FEMA may enter into multi-year lease for space to house fire prevention and control activities since funds provided to carry out purposes of Act are appropriated without fiscal year limitation. However, total amount of lease payments must be obligated at time contract is made, although payments may be made on a monthly basis.

The Acting Director, Federal Emergency Management Agency (FEMA) has raised the following questions for our decision:

1. Whether the FEMA can enter into a contract for the rental of space in the District of Columbia pursuant to the leasing authority in section 21(b)(3) of the Federal Fire Prevention and Control Act of 1974, as amended (Fire Prevention Act), 15 U.S.C. §2218(b)(3) (1976), notwithstanding the prohibition in 40 U.S.C. § 34 (1976);

2. If so, whether the lease may be for a multi-year period; and

3. Whether (if the lease is for a multi-year period) the FEMA should obligate funds on a monthly basis, in view of sections 21 and 25 of Office of Management and Budget (OMB) Circular No. A-34 on Budget Execution.

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For reasons which are discussed below, we conclude that FEMA may use "no-year" appropriations to enter into a multi-year lease for the rental of space, whether situated in the District of Columbia or not, but only for space necessary to carry out its responsibilities under the Fire Prevention Act. Obligations for the entire amount of rent due under the agreement must be recorded at the time the agreement is signed.

The Federal Emergency Management Agency was established, effective April 1, 1979, by Executive Order No. 12127, March 31, 1979, and Reorganization Plan Number 3 of 1978, 43 Fed. Reg. 41943, September 19, 1978. Transferred, among others, were functions which were vested in the Secretary of Commerce, the Administrator and Deputy Administrator of the National Fire Prevention and Control Administration (U.S. Fire Administration), and the Superintendent of the National Academy for Fire Prevention and Control.

Under section 21(b)(3) of the Fire Prevention Act, 15 U.S.C. § 2218(b)(3), supra, the Administrator of the U.S. Fire Administration (and now FEMA) was granted the following power:

> "(b) POWERS. - With respect to this Act, the Administrator is authorized to-
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> "(3) purchase, lease, or otherwise acquire, own, hold, improve, use, or deal in and with any property (real, personal, or mixed, tangible or intangible), or interest in property, wherever situated; and sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of property and assets; * * *" (Emphasis supplied.)

The first question is whether the authority given the administrator under 15 U.S.C. § 2218(b)(3), supra, to lease space "wherever situated" is sufficiently specific so as to overcome the prohibition against the rental of space in the District of Columbia in the Act of March 3, 1877, 40 U.S.C. § 34 (1976). The latter Act provides:

> "No contract shall be made for the rent of any building, or part of any building, to be used for the purposes of the Government in the District of Columbia, until an appropriation therefor shall have been made in terms by Congress, and this clause

> shall be regarded as notice to all contractors or lessors of any such building or part of any building."

This Office has generally held that in the absence of express authority for the rental of space in the District of Columbia, payment for the use of such space from appropriated funds is prohibited unless the General Services Administration (GSA) arranges for the space. This is in accord with our holding that the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 490 (h)(1) (1976) authorizes GSA to enter into leasing agreements within the District of Columbia for the benefit and accomodation of Federal agencies and that if the Administrator of GSA authorizes the formation of a rental agreement for space in the District of Columbia, the statutory requirement of 40 U.S.C. § 34, supra, is satisfied. See B-159633, September 10, 1974; B-159633, May 20, 1974; and 55 Comp. Gen. 1055, 1057 (1975).

The Acting Director contends that even if we find that FEMA lacks independent leasing authority in the District of Columbia, a letter from the Administrator of GSA attached to the submission "serves as his [the Administrator's] authorization for this agency's entering into such a lease." We do not agree that the referenced letter constitutes a delegation of GSA's authority. However, the letter does appear to recognize that the Director of FEMA may "acquire its own space" but only for activities that fall under the purview of the Fire Prevention Act. Any other space needs, according to the Administrator, must be satisfied by GSA.

We agree with the Administrator's assessment of FEMA's authority. It is hard to imagine any language more specific than an express grant of authority to lease property "wherever situated." Although the legislative history of the Fire Prevention Act is totally silent about the reasons for using the two quoted words, any normal, unstrained reading of them in context leads to the conclusion that the FEMA may lease space for Fire Prevention Act purposes, whether such space is located in the District of Columbia or anywhere else.

It is true that this express grant of authority is not located in an applicable appropriation act. However, to hold that the prohibition in 40 U.S.C. § 34 must therefore still apply to FEMA is to deprive the words "wherever situated" in FEMA's enabling act of any effect. In our view, this would be an overliteral interpretation of 40 U.S.C. § 34, an interpretation which would violate a time-honored canon of statutory construction that the words of the Congress should not be construed in a way that would render them null and void. Moreover, FEMA's appropriation (see quoted language, infra) is available

for all expenses necessary to carry out the Fire Prevention Act, and one of those authorized expenses is a lease of space wherever that space may be situated. We therefore conclude that the statutory prohibition against leasing space in the District of Columbia has been overcome.

With regard to the question raised about the term of the lease, it is our opinion that the FEMA may enter into a multi-year lease for space to house its fire prevention and control activities, because appropriations available to the National Fire Prevention and Control Administration have no fiscal year limitation. The Departments of State, Justice and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1979, Pub. L. No. 95-431, October 10, 1978, which includes the Administration's appropriation, provides for no-year funds as follows:

> "For expenses necessary to carry out the provisions of the Federal Fire Prevention and Control Act of 1974, as amended, $17,395,000, to remain available until expended." (emphasis added.)

Therefore, as long as there are sufficient unobligated funds available in its appropriation for this purpose for the full term of the lease, FEMA may consummate its proposed rental arrangement.

Upon entering into the multi-year lease, however, FEMA must obligate out of its no-year funds the rental charges for the full term of the lease. In the absence of specific statutory authority (like that available to the General Services Administration) to enter into multi-year leases and liquidate the obligation out of annual appropriations, an agency must obligate the full amount of its contractual obligations from currently available funds. The obligation arises at the time the debt is incurred--in this case, at the time the lease is signed--and must therefore be recorded promptly in accordance with 31 U.S.C. § 200. See 38 Comp. Gen. 81 (1958). However, rental payments can only be made after the space has been occupied at some reasonable interval, e.g., monthly, or as otherwise specified in the agreement, in order to avoid the prohibition against making advance payments in 31 U.S.C. § 529.

R.F.Keller

Deputy Comptroller General
of the United States