



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

B-213033

August 7, 1984

The Honorable Allan B. Mollohan  
House of Representatives

Dear Mr. Mollohan:

*Released*  
This is in reponse to your letter of September 7, 1983, asking us to interpret certain provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Act), Pub. L. NO. 91-646, 84 Stat. 1894 (1971), codified at 42 U.S.C. §§ 4601-4655. Specifically, you ask whether the Veterans Administration (VA) would be required to pay relocation costs under the Act if the land to be used for expansion of a VA cemetery were purchased by a private veterans organization and subsequently donated to the VA. We conclude that in the circumstances described in your letter, once the VA has made a commitment to accept donation of the property in question or issued notices to vacate to owners or tenants of land to be acquired for its use, it would be required to pay relocation costs.

The facts as described in your letter are that a statewide veterans organization has been formed in West Virginia for the purpose of reopening the Veterans National Cemetery in Grafton, West Virginia, through an expansion project. The veterans organization plans to purchase all the land for expansion and to donate this land, which would at the time of donation to VA be free of obligation and clear of all structures. Your letter states that the veterans organization would not want to raise funds to purchase the needed land "without a reasonable expectation that the VA would accept it for expansion of the Grafton National Cemetery." We understand that VA has conducted topographic and site boring tests to determine if the land proposed for expansion would be suitable for burial purposes. According to the information you provided, the tests show that the land is suitable for burial purposes. The VA is now evaluating a cemetery development cost analysis to determine whether it is economically feasible for the project to be undertaken. Relocation costs would be an important factor in the evaluation if the VA must pay such costs.

To assist us in resolving this issue, we solicited the views of the VA. Relying on the legislative history of the Act and our decision at 51 Comp. Gen. 660 (1972), the VA concluded that it would be required to pay relocation benefits under the Act to persons displaced due to the acquisition of the land by the local group for eventual transfer to the VA. VA's letter stated as follows in support of its position:

"Furthermore, the Act would be applicable as the owners and tenants currently residing on the proposed cemetery expansion site constitute 'displaced persons' within the Act's meaning. The Comptroller General has held that a 'displaced person,' as defined in section 101 of the Act, is 'any person who \* \* \* moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property \* \* \* for a program or project undertaken by a Federal agency \* \* \*.' Comp. Gen. B-173882, April 21, 1972. [51 Comp. Gen. 660.] In this case, the veterans' organization would not be acquiring this property except for its ultimate transfer to the VA. Paraphrasing a statement in the subject GAO case, Id., the land would not be acquired nor these individuals displaced, if the VA was not utilizing the property for a cemetery project."

Section 101(6) of the Act, 42 U.S.C. § 4601(6)<sup>X</sup>, describes a displaced person for purposes of the Act as any person who moves or removes personal property from real property "as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency." Similarly, section 202(a) of the Act, 42 U.S.C. § 4622(a)<sup>X</sup>, provided for relocation assistance:

"whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person."

We have not had occasion to decide whether benefits under the Act are triggered when land is initially acquired by a private entity with the intent to transfer it to a Federal agency. We, however, have certain precedents in the area that are sufficiently analogous to the situation here so as to assist us in resolving the issue.

Clearly, there is no need for a Federal agency to acquire title to real property or to contribute to the cost of its acquisition for benefits to be triggered under the Act. See 51 Comp. Gen. 660<sup>X</sup>(1972). In that case, GSA contracted to lease space in a building to be constructed on land that was being used as a trailer park. The tenants of the trailer park were required to move and sought relocation benefits under the Act.

We held that the tenants were displaced persons under the Act because the building to be erected on the land was a lease construction project, which is a building erected by a lessor for the Government. In so ruling we relied on the legislative history of section 101(6) of the Act, 42 U.S.C. § 4601(6)<sup>X</sup>, discussing the definition of a displaced person in regard to a lease construction type project, that states:

"It is immaterial whether the real property is acquired before or after the effective date of the bill, or by Federal or State agency; or whether Federal funds contribute to the cost of the real property. The controlling point is that the real property must be acquired for a Federal or Federal financially assisted program or project. For example:

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"(b) Post Office Department witnesses before the committee called attention to the fact that although the Department's construction requirements involve about 1,000 buildings annually, the postal building program, as such, accounts for only a few construction starts each year. Occasionally, the Department acquires the site and transfers it to the successful bidder for construction and lease back to the Department. In most cases, however, building sites are obtained through the Department's leasing authority. Usually these sites are controlled through an option procedure with title neither vesting in or passing through the Post Office Department. Instead, the option is assigned to a successful bidder who becomes the owner of the land, and the Department's long-term lessor. Some of these sites are for large postal facilities to be constructed in metropolitan areas where the only available and suitable land is occupied by numerous low-income individuals and families, and by small businesses.

"It makes no difference to a person required to move because of the development of a postal facility, which method the postal authorities use to obtain the facility, or who acquires the site or holds the fee title to the property. Since the end product is the same, a facility which

serves the public and is regarded by the public as a public building, any person so required to move is a displaced person entitled to the benefits of legislation. (Emphasis supplied.)" 51 Comp. Gen. at 668 quoting H.R. Rep. No. 1656, 91st Cong., at 4.

In a later case concerning the same project, we concluded that tenants who moved before the Government signed a lease for space to be constructed on the site were not entitled to benefits even though it was clear that they moved in anticipation of the Government's acquisition of space. 54 Comp. Gen. 819N (1975).

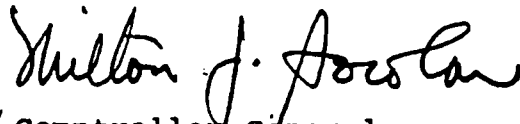
Similarly, in 55 Comp. Gen. 595N (1975), we held that a firm offer to buy real property was a sufficient commitment to trigger relocation benefits for displaced tenants even though the offer could have subsequently been revoked, because the Government's offer was a legal obligation to purchase the property upon acceptance. That case pointed out, however, that absent a notice to vacate, benefits could only be paid if the acquisition by the Government was subsequently completed since a claimant must have "moved as a result of the acquisition of the property."

In the case at hand, the facts presented by VA do not explain whether the VA has entered into a legally enforceable commitment to accept the property to be donated once it is acquired free of encumbrances. However, it is clear that once the land is acquired, it is VA's intention to accept it for expansion of the Grafton cemetery. Thus, VA has conducted topographic tests and is conducting a cost feasibility study. It also seems clear that the private veterans organization will not acquire the property in question in the absence of a commitment from VA to accept it. In our view, once accomplished, the contemplated transaction would qualify under the Act as an acquisition of property for a Federal program for the purpose of entitlement of relocation benefits. The facts that no Federal funds would be expended to acquire the property or that it will be free of all encumbrance when donated do not change this conclusion. This is because the sole purpose for acquiring the property and thus displacing current owners and tenants is to enable the VA to expand the Grafton cemetery--a clearly Federal purpose.

As mentioned above, however, entitlement to benefits does not arise under the Act until the Government gives notice to vacate or legally obligates itself to acquire an interest in land. 38 C.F.R. § 25.2N provides for the issuance by VA of

written notices to vacate where land is to be acquired for VA programs. Because the VA submission details steps that must be taken during the acquisition process in order to assist those who will be displaced, we suggest that VA issue notices to vacate at an appropriate time before negotiations for purchase of the land are concluded. Unless released earlier by your office, we will not further distribute this opinion for 30 days.

Sincerely yours,

*for*   
Comptroller General  
of the United States

August 7, 1984

Digest

The Veterans Administration would be required to pay relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act if a private organization purchases property to donate to VA for expansion of a VA cemetery. The private organization will only purchase the land if VA will accept it and, as such, the acquisition would be one for a Federal program.