The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of Education--Payment for Sewer Services

File: B-226503

Date: September 24, 1987

DIGEST

While the Department of Education (Department) may not pay a tax bill levied by the Town of Seneca Falls, New York for sewer services provided in 1986 to property owned by the Department, it must pay the Town the reasonable value of the services on a quantum meruit basis. The services would have constituted a permissible procurement, the government received and accepted the services, and the Town acted in good faith. The GAO offers a formula to assist the Department in calculating the dollar value of the benefits received.

DECISION

As discussed below, GAO finds that the Department of Education (Department) is not authorized to pay a 1986 tax bill levied by the Town of Seneca Falls (Town) for sewer services rendered to a defunct college which the Department acquired by foreclosure in 1985. Under well-established principles of constitutional law, a state may not impose an involuntary exaction on the federal government or its activities. For the same reason, Seneca Falls cannot enforce an oral compromise agreement against the Department to pay a lesser sum than the amount billed since the charges were not based on the actual amount of water and sewer services received and accepted by the Department. However, the GAO finds that Seneca Falls is entitled to be paid for the reasonable value of the sewer services it rendered to the Department on a quantum meruit basis. The GAO offers a formula to assist the Department in determining the amount of this payment.

BACKGROUND

In the late 1970s, Eisenhower College, located in Seneca Falls, New York, began to default on a number of housing and

academic facilities loans from the Department of Housing and Urban Development (HUD) and the Department of Health, Education and Welfare (HEW). In 1979, the Rochester Institute of Technology (RIT) assumed ownership of the college and responsibility for these loans on a nonrecourse liability basis. After incurring annual operating losses, RIT closed the campus in June 1984, and provided for the distribution of assets of the former Eisenhower College. On April 17, 1985, the Department of Education, having assumed responsibility for the outstanding loans from HUD and HEW, purchased the campus at foreclosure under authority in the Housing Act of 1950 and the Higher Education Act of 1965. 12 U.S.C. § 1749a(c)(4) (1982 & Supp. III), now classified at 20 U.S.C. § 1132g-1 (c)(3) (pertaining to foreclosure on properties in connection with loans made pursuant to the Housing Act of 1950); 20 U.S.C. § 1132d-1(b)(3) (1982) (pertaining to foreclosure on properties in connection with loans made under the Higher Education Act of 1965).

In January of 1986, the Bridgeport Sewer District, Town of Seneca Falls, in which the campus is located, sent a tax bill for $43,678.06 to the Department for services to be provided by the District during that year. The Town's method of calculating the amount of each tax assessment to Seneca Falls residents is not directly based on the amount of water and sewer services provided in the tax year in question. According to the Town's chief engineering consultant, each permanent single family residence was assigned a value of "one unit." The engineer then developed equivalent unit charges for "large water users," including the local country club, two hotels, a state park, and the Eisenhower campus. They obtained the actual incoming water meter readings for each large establishment in 1979 and 1980 and determined that the equivalent of one unit of water was 9,500 cubic feet or 71,000 gallons of water per year. Dividing Eisenhower's actual water usage in those years by 9,500 resulted in the assignment of 228 units to the college. The total bill for any given year includes this 1979-1980 average water use per unit plus additional factors for debt service and operation and maintenance. See Seneca Falls, New York, Local Ordinance No. 1-1982, Attachment A.1/

1/ The Bridgeport Sewer District of the Town of Seneca Falls, Seneca County, New York, was established in 1979. The Seneca Falls Town Board acts as governing body of the District. Seneca County cooperates with the District by sending tax bills on its behalf.

The Department did not pay the bill and oral negotiations apparently ensued between the Town of Seneca Falls and Mr. Richard Hastings, an official in the Office of the Assistant Secretary for Postsecondary Education in the Department. Although details of the negotiations remain unclear, they culminated in an oral offer from Mr. Hastings and an acceptance by the Town to settle the outstanding bill for $23,000.00. Because the Department has repudiated this agreement and no further payment has been made, GAO was requested by Representative Frank Horton to investigate the circumstances and determine whether the Town's claim should be paid.

ANALYSIS

I. Validity of Involuntary Exaction

The Town seeks payment of a sewer and water assessment imposed pursuant to a New York State law authorizing the creation of local taxing districts,2/ and the formal request for payment is labeled as a tax bill.3/

It is a long-standing rule of constitutional law that the doctrine of sovereign immunity and Article VI, Clause 2 of the Constitution prohibit a state from taxing the federal government or its activities. McCulloch v. Maryland, 17 U.S. (4 Wheat) 316 (1819). This general prohibition extends to property-related taxes, United States v. Allegheny County, 322 U.S.C. 174 (1944), and to assessments for

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2/ The Town of Seneca Falls indicated that the Bridgeport Sewer District was established under N.Y. Town Law § 200. However, that section relates to petitions for street improvements. The Town probably intended to cite N.Y. Town Law §§ 201 and 202, relating to sewer and water connections and the raising of the expenses of such improvements.

3/ The bill presented to us by officials of both Seneca County and the Town of Seneca Falls as having been received by the Department is labeled "1986, County of Seneca, Taxbill." On top of the left margin, in bold type, appears "STATEMENT OF TAXES." The bill indicates that checks should be made payable to the Seneca Falls Tax Collector. However, the Department presented us with a different bill as having been received. That bill is for ten cents less, indicates that checks should be made out to the Seneca County Treasurer and indicates that the assessed value of the property is 228 units. The two bills are alike in all other material respects.

local improvements. E.g., B-184146, August 20, 1975, B-160936, March 13, 1967 27 Comp. Gen. 20 (1947).

The Supreme Court has held that "[a]ssessments upon property for local improvements are involuntary exactions, and in that respect stand on the same footing with ordinary taxes." Hagar v. Reclamation District No. 108, 111 U.S. 701, 707 (1884). The 1986 tax bill against the Department is based on a formula unrelated to actual sewer usage on the campus in 1986 and thus constitutes such an involuntary exaction. Cf. United States v. Harford, 572 F. Supp. 239 (D. Md. 1983) (local benefit assessment for sewer services to U.S. Postal Service based on "front foot assessment" was not allowed even though the Court recognized that charges based on the actual quantum of water used by the federal government would be permissible). Therefore, we find that Seneca Falls may not bill the DOE in the manner contemplated in its 1986 Statement of Taxes against the Eisenhower campus.

As mentioned earlier, Seneca Falls also alleges that it received an oral offer from Mr. Hastings, a Department official, which it accepted, to pay the amount of $23,000.00 in full settlement of its outstanding bill for sewer services received in 1986.4/ However, in response to our inquiry, the Department indicated that Mr. Hastings had no authority to make such an agreement on its behalf and that the Department would not voluntarily make payment under it. Documentary evidence of a binding written agreement is required to obligate funds of the federal government, 31 U.S.C. § 1501(a)(1), and no such evidence exists here. Moreover, payment of the lesser sum is also prohibited because it is a tax imposed without regard to the actual services rendered to the Department.

II. Validity of Payment Based on Quantum Meruit.

Although there is no basis for the Department to pay Seneca Falls under the tax assessment or the alleged oral agreement, the Department may compensate Seneca Falls based on the doctrine of quantum meruit. The doctrine of quantum meruit is based on the equitable concept of unjust enrichment. Under this doctrine, the federal government may be obligated to pay the reasonable value of services that it actually receives on an implied, quasi-contractual basis. See B-221604, March 16, 1987; 62 Comp. Gen. 337 (1983).

4/ Both the Town of Seneca Falls and Mr. Hastings of the Department of Education have indicated that this amount was never intended to represent the actual value of sewer services rendered by the Town to the Department in 1986.

In 64 Comp. Gen. 727, 728 (1985), this Office reiterated the test for recovery under quantum meruit. First, we must make a threshold determination that the services would have been a permissible procurement had formal procedures been followed. 64 Comp. Gen. at 728. We have held that the federal government may properly pay service charges "representing the fair and reasonable value of the services actually received by the United States." We have no objection to a government entity entering into a utility-type service agreement based on the value of services to be received. See 49 Comp. Gen. 72, 77 (1969); B-158832, May 2, 1966. Therefore, sewer services received by the federal government on the former Eisenhower campus could have been procured through formal agreement.

Next, we must find that the federal government received and accepted the benefit of the services provided, the persons seeking payment acted in good faith, and the amount claimed represents the reasonable value of the benefit received. 64 Comp. Gen. at 728.

In our opinion, the Department received and accepted a benefit here. After receiving a tax bill in January 1986 for sewer services to be provided during that year, the Department continued to use the services throughout 1986. Cf. B-222035, July 2, 1986 (continued use of sewer services after receipt of sewer assessment bill sufficient to document federal government's acceptance and receipt of services). In addition to the actual usage which took place during 1986, there can be no doubt that the Department benefited by the mere existence of the connection to the sewer system. Generally, the presence of a sewer connection enhances the value of property. In addition, in this specific instance, the sewer helped to carry off excess groundwater which threatened to damage the property.

There is also no question of the good faith of the Town of Seneca Falls in providing services to the Department. Town officials apparently believed that Seneca Falls would eventually receive payment for sewer services provided in 1986. The apparent existence of an oral agreement with a Department official supports this view. In addition, Town officials had evidence that termination of the sewer services would damage the campus and therefore elected to continue the service as a cooperative gesture.

The final element to be established to allow for recovery under quantum meruit is an amount which represents the reasonable value of the benefit received by the Department.

The value of this benefit relates directly to the Department's actual use of the system during 1986. This Office sent two representatives to Seneca Falls to determine if the value of actual use could be calculated in this case. Based on their discussions with Seneca Falls town officials, this Office concludes that the value of the Department's actual use of the sewer system in 1986 is calculable. We offer below our method of calculating this value to the Department to assist it in arriving at the dollar value of the benefit it received and accepted.

While visiting Seneca Falls, our representatives determined that the outflow pipes connecting the campus to the main system were defective, resulting in a considerable groundwater runoff from the campus finding its way into the main system in 1986. Therefore, even though the campus did not operate during 1986, the presence of the defective pipes resulted in a campus-caused burden on the main system, requiring treatment of groundwater runoff. For this reason, we think that the Department's actual use of the system in 1986 should be determined by measuring the outflow of water from the campus into the main sewer system. Seneca Falls has prepared an estimate of actual water flow from the campus into the main sewer system, totaling 7,729,000 gallons for 1986. Given our understanding that the campus' defective pipes caused unusually heavy groundwater runoff from the campus into the system in 1986, we think this figure is reasonable.

The value of a flow of 7,729,000 gallons is determined by multiplying that number by the value of 1 gallon of flow for 1986. The value of 1 gallon is determined by dividing the total gallons of water flow in the entire District for 1986 (44,307,000 gallons) into the total operating budget of the District for 1986 ($230,676.90, which included all fixed and variable costs incurred in that year). This yields a value of $.0052062 per gallon of water flow in 1986. That amount, multiplied by 7,729,000 gallons, results in a total value of $40,242.36 for the Department's actual use of the system during that year. Unless the Department can make a more precise calculation of the value of sewer services that it received in 1986, we suggest that it pay this amount to the Town of Seneca Falls.

for Harry R. Van Cleve
Comptroller General
of the United States