

Decision

AF

Matter of: Drug Enforcement Administration--Permanent
Improvements to Leased Property

File: B-243866,1

Date: October 3, 1991

DIGEST

The Drug Enforcement Administration (DEA) may use appropriated funds to enclose and secure a carport at the Administrator's residence in response to a legitimate concern for the Administrator's safety. Generally, agencies may not use appropriated funds to make permanent improvements to private property. However, an agency may expend appropriated funds for such improvements if 1) the proposed alterations are incidental to and essential for the accomplishment of the purpose of the appropriation; 2) the cost of the alterations are reasonable; 3) the improvements are used for the principal benefit of the government; and 4) the government's interest in the improvements is protected.

DECISION

The Controller of the Drug Enforcement Administration (DEA) asks whether DEA may use appropriated funds to enclose and secure a carport at the DEA Administrator's leased residence. The Controller is concerned about making improvements to the Administrator's residence in light of the general policy against the expenditure of appropriated funds, absent specific statutory authority, for permanent alterations to private property. For the following reasons, we conclude that DEA may use appropriated funds to pay for the proposed enhancements to the carport.

BACKGROUND

According to the DEA, the safety of the Administrator of the DEA is a constant concern of the agency. A number of factors including the agency's drug enforcement mission, the existence of "Drug Kingpins," as well as documented threats, contribute to the likelihood that the Administrator could be the target of violence as a consequence of his position. This risk remains whether he is carrying out his duties as Administrator or is at home. Therefore, the Administrator's residence must meet certain security standards.

PUBLISHED DECISION

71 Comp. Gen. 4

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DEA's Office of Security Programs has determined that it is necessary to enclose and secure a carport at the Administrator's residence to meet these standards. DEA estimates that the improvements will cost between \$3,500 and \$3,800.

Discussion

It has been our long-standing position that agencies may not use appropriated funds to make permanent improvements to private property. See 65 Comp. Gen. 722/723-724 (1986). This rule is based upon the fact that no government official, in the absence of specific legislation, is authorized to give away government property. See 38 Comp. Gen. 143,145 (1958). However, this is not a statutory prohibition but one of public policy. 65 Comp. Gen. at 724. Thus, our decisions have recognized exceptions based on the facts and circumstances of particular cases. See, e.g., B-187482, Feb. 17, 1977; 38 Comp. Gen. 143(1958).

Certain factors should be present before an agency may expend appropriated funds for permanent alterations to private property. First, the proposed alterations must be incidental to and essential for the accomplishment of the purpose of the appropriation. Second, the cost of the alterations must be reasonable. Third, the improvements must be used for the principal benefit of the government. Fourth, the government's interest in the improvements must be protected. 69 Comp. Gen. 673,675 (1990).

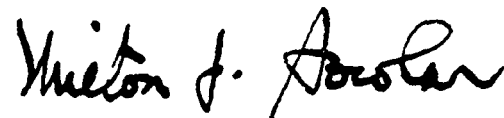
With respect to the first factor, we have generally not objected to an agency using appropriated funds to protect an agency official where the agency has a legitimate concern for the safety of the official and where the functioning of the agency may be impaired by the danger to the official. See 54 Comp. Gen. 624,629 (1979). Here, given the nature of DEA's mission and the documented threats, the DEA's concern for the safety of the Administrator appears legitimate. The constant risk to the Administrator could impair his ability to carry out his duties and could adversely affect the efficient functioning of the agency. Therefore, reduction of that risk by enclosing the carport as a security measure is incidental to and essential for the accomplishment of the DEA's mission.

The proposed alterations also appear to meet the second factor. The projected cost estimate of \$3,500 to \$3,800 to enclose and secure a carport does not appear to be excessive or unreasonable.

Although the alterations may enhance the value of the leased property and will obviously benefit the Administrator personally, we think the third factor, that the improvement

be used for the principal benefit of the government is also met. The alterations will reduce the danger to the Administrator resulting from the drug enforcement activities of the government and will ensure the efficient functioning of the agency. Thus, the improvements will be of principle benefit to the government. Any residual benefit to the owner of the property is purely coincidental and does not alter the fact that the primary benefit is to the DEA. See 65 Comp. Gen. 847, 849 (1986).

Hence, we would not object to the proposed improvements so long as the government's interest in the property is fully protected. We are not aware of any relationship, contractually or otherwise, between the government and the owner of the property.^{1/} The landlord-tenant relationship is between the owner and the Administrator personally. Therefore, the government's interest in the improvements is protected only through the Administrator and only to the extent of the Administrator's control of the premises. We recognize, however, that the government's interest in the improvements is a function of a number of factors including cost, nature of the improvements, residual value, cost of removal, etc. Taking these factors into account, DEA should determine whether the government's interest is sufficiently protected through its relationship with the Administrator or whether a provisional agreement with the owner of the property or the Administrator concerning disposition of the improvements is necessary. Cf. B-187482, Feb. 17, 1977 (in which the Environmental Protection Agency proposed inclusion of a provision in an agreement with a property owner to protect the government's interest in a cooling tower.)

for 
Comptroller General
of the United States

APPROPRIATIONS/FINANCIAL MANAGEMENT
Appropriation Availability
~~Purpose availability~~
~~Specific purpose restrictions~~
Leasehold improvement
Private property

^{1/} In previous decisions, the government sought approval to make improvements to property it had leased. See, e.g., 69 Comp. Gen. 673 (1990); 65 Comp. Gen. 847 (1986). In these cases the government interest in the improvement was protected through its contractual relationship with the owner of the property.