



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

APR 10 1947

B-61717

Director of Central Intelligence,
Central Intelligence Group,
National Intelligence Authority.

My dear General Vandenberg:

I have your letter of March 7, 1947, as follows:

"We refer to an undated letter from the Director of Central Intelligence received by you on November 7, 1946, and your reply thereto dated December 10, 1946, concerning the disposal of a warehouse erected by the Government on the property of Mr. John E. Fowler in Rosslyn, Va. Full details concerning the erection of this building and the lease of the land on which it stands were given to you in the above-mentioned letter from this office, but to repeat in brief, the lease of the land to the Government was for the stated sum of \$1.00 per year, the lease to expire six months after the cessation of hostilities. In our original request for a ruling, we proposed the immediate termination of this lease, the transfer of the Government property erected thereon to Mr. Fowler on certain terms, and the negotiation of the new lease for the property and building. Your ruling noted, among other objections, that our proposal was fatally defective for lack of statutory authority to dispose of the property in question.

"Subsequent to the date of your ruling on December 10, 1946, the President of the United States, in Proclamation 2714, proclaimed the cessation of hostilities of World War II effective 12:00 o'clock noon December 31, 1946 (12 FR 1). According to the terms of the lease referred to above, it will automatically terminate six months from the date of the President's Proclamation, which will be the 30th day of June 1947. The owner of the real property involved has informed us that he will not renew the lease at that time, and the Government will consequently lose the use of the improvements erected on the land. This in effect forces the warehouse and other improvements erected by the Government into the category of surplus property. It would, therefore, appear that the regulations issued pursuant to the Surplus Property Act of 1944 may now govern the disposition of the warehouse in question.

"Since our inquiry to which your previous ruling was directed did not raise the issue of surplus property, we now respectfully request your opinion as to whether the change in circumstances brings this matter within the scope of the Surplus Property Act so that this agency, as the owning agency, may dispose of its entire interest in the improvements in accordance with the provisions of War Assets Administration Regulation 18 issued pursuant to the above Act. If we may so proceed, negotiations will be entered into to transfer the property to Mr. Fowler effective June 30, 1947, upon delivery by him of adequate consideration as provided for in the said regulations. With reference to the comments in the final paragraph of your letter of December 10 concerning acquisition of fee simple in the entire property by the Government, careful consideration has been given to this proposition both before and since our original request for your opinion, and further attention will be given it in the event that negotiations for the disposal of property fail to produce satisfactory terms from the owner in accordance with applicable law and regulations."

Under section 3(e) of the Surplus Property Act of 1944, 58 Stat. 767, the term "surplus property" is defined as any property which has been determined to be "surplus to the needs and responsibilities" of the department or agency having control of such property. Of course, ordinarily such a determination would be largely an administrative matter, since the conclusion necessarily would have to be based upon a knowledge of the conditions existing within a particular agency and, also, would involve, to some extent, an exercise of administrative discretion. But, at the same time, it hardly need be stated that property may not arbitrarily be classified as surplus merely to bring it within the provisions of a statute authorizing the disposition of surplus property.

Reviewing the facts of the present matter briefly, it is understood that by lease No. OSS-162, dated March 8, 1943, Mr.

John H. Fowler leased to the Government certain warehouse property in Rosslyn, Virginia, for a term beginning on that date and ending June 30, 1943, at a rental of \$10,500 a year, with an option in the Government to renew the lease from year to year not beyond June 30, 1945. It appears that the lease was renewed for the fiscal years 1944 and 1945, and that the property was occupied by the Government until June 30, 1946, when the lesser notified the Government that he would not renew the lease further. Also, it appears that by lease No. OSS-401, dated August 10, 1943, Mr. Fowler leased to the Government a vacant lot adjacent to the building covered by the first lease at a rental of \$1 a year for a term beginning on that date and ending June 30, 1944, with an option in the Government to renew the lease from year to year not beyond "six months after hostilities in the present World War shall have ceased."

Paragraph 8 of lease No. OSS-401 provided that the Government should have the right to erect structures on the property, which structures were to remain the property of the Government and could be removed by the Government prior to the termination of the lease. Said paragraph further provided that the Government, if required by the lessor, should, before the expiration of the lease as extended by any renewals thereof, restore the premises to the same condition as that existing at the time of entering upon them under the lease, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government had no

control, excepted, provided the lessor gave the Government 30 days' written notice requiring such restoration. On the property covered by said lease No. OSS-401--i.e., the vacant lot--the Office of Strategic Services erected a warehouse.

When the matter was submitted originally for decision, it was stated that your agency also is occupying a warehouse in Bethesda, Maryland; that the present operation of widely scattered warehouses is inconvenient; that the warehouse in Bethesda has no railway connection--as the two warehouses in Rosslyn apparently have; that the Government has a distinct interest in acquiring the use of both warehouses in Rosslyn and in giving up the Bethesda warehouse; and that such an arrangement would give a centralized warehousing and issuing center and far greater security to operational communications equipment.

Thus, the property here involved can in no sense be regarded as surplus to the needs and responsibilities of your agency, regardless of the fact that with the termination of the lease on June 30, 1947, the land on which it is located will have to be restored to its original condition, necessitating the removal of the warehouse building. The fact of the matter is that the continued use of the warehouse property by your agency after June 30 is deemed desirable and of great advantage to the United States for various reasons. The sole difficulty is in effecting an arrangement to insure such continued use upon favorable terms. And, while such

difficulty is fully appreciated, there is perceived no legal basis for holding that the Surplus Property Act of 1944 contains authority to dispose of property which in fact is not surplus.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General
of the United States.