COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-116413

August 19, 1953

Mr. P. J. Hennig, Jr., Authorized Certifying Officer
Soil Conservation Service
United States Department of Agriculture
434 North Plankinton Avenue
Milwaukee 3, Wisconsin

Dear Mr. Hennig:

Reference is made to your letter of July 17, 1953, transmitting a voucher stated in favor of A. W. Gadd and W. Z. Proctor, Administrators of the estate of Myrtle C. Gadd, for $70 as rent for the month of June 1953 for office space in a building at 319 Reed Street, Red Oak, Iowa, and requesting a decision as to whether the voucher may be certified for payment.

The voucher does not contain a statement thereon that the administrators are continuing to act as such in the administration of the estate as required by decision of October 7, 1929, 9 Comp. Gen. 154. You state that such signed statements have been furnished in the past on vouchers processed by your office, but you ask whether that requirement could be dispensed with in view of the provisions of Treasury Department Circular No. 21, Revised, relating to the endorsement and payment of Treasury checks.

You further state that prior to July 1, 1951, the space referred to was occupied under lease No. Asc(WI-0)-5291, dated June 7, 1949, with Myrtle Gadd, which continued in effect until June 30,

1951, but that the Soil Conservation Service has been unable to enter into a formal lease with the present owners of the property, and that occupancy of the space for the month covered by the voucher was made on "open market arrangement" which has been in effect since July 1, 1951.

Under the lease referred to, Myrtle Gadd leased the space to the Government for a term of one year beginning July 1, 1949, at a rental of $60 a month payable at the end of each month. The lease gave the Government the right to renew it from year to year, not, however, beyond June 30, 1955, at the same rental per month, upon giving the lessor written notice to that effect at least 30 days prior to the expiration of the original term or any renewal. It appears from the papers attached to the lease that it was renewed for the year ending June 30, 1951, by notice of May 26, 1950, to the lessor. Since the voucher is stated in favor of the administrators of the lessor's estate, it is, of course, understood that she is deceased and that, in view of the designation of administrators, that she died intestate. The date of her death is not shown. However, her death did not affect the Government's rights under the lease. Hence, since the lease gave the Government a right of renewal at a rental of $60 a month for a period extending through the period covered by the voucher, it is not apparent--and your letter does not show--why rental is charged on the voucher at $70 for the month of June 1953.

With reference to payment of the rental to the administrators of the lessor's estate, the general rule is that rental which accrues prior to the death of a lessor is payable to his executor or administrator, but rental accruing after his death vests in the heir or the devisee, as the case may be, unless a statute requires otherwise or, in the case of testacy, the will requires a different disposition. 23 C.J. 1139; 33 C.J.S. Executors and Administrators, S 105, 259. That appears to be the rule in Iowa. First Nat. Bank v. Murtha, 212 Iowa 415, 236 N.W. 433; In re Thompson's Estate, 234 Iowa 412, 12 N.W. 2d 318.

In the present case the rent for the month of June did not accrue until the end of that month. Hence, if the lessor died subsequent to June 30, the rent for that month would be payable to the administrator of her estate. If, on the other hand, she died prior to that date it would be payable to her heir or heirs, unless there is no heir present and competent to take the property, in which case the administrators would, in view of section 635.48, Iowa Code, Annotated, be entitled to receive the rent, or unless the property was by court action brought into the administration proceedings prior to the accrual of the rent. Since the date of the lessor's death is not shown and it is not shown whether said section 635.48 is applicable or whether the property was brought into the administration

proceedings by court action, it cannot be determined on the present record whether the rent is payable to the heirs or to the administrators of the lessor's estate.

The matter of a statement that the administrators are continuing to act as such in the administration of the estate is, of course, not material if the facts are such that the heirs and not the administrators are entitled to the rent. However, if the facts be such that the rent is for payment to the administrators, it may be pointed out--as was done in 9 Comp. Gen. 154--that executors and administrators of estates do not continue to act indefinitely and that the estates for which they are so acting may be closed and they may be discharged at any time. For this reason, and in the absence of a showing as to circumstances which may in particular instances justify an exception to the rule, there appears no reason to depart from the rule in this case. The provisions of Treasury Circular No. 21, Revised, to which you refer appear to relate to first endorsements made by a party other than the payee on behalf of the payee and therefore, if for no other reason, appear to have no particular bearing on the matter.

Accordingly, for the several reasons herein indicated, certification of the voucher, which is returned herewith, is not authorized on the present record.

Sincerely yours,

W. L. Morrow

Comptroller General
of the United States

Enclosure