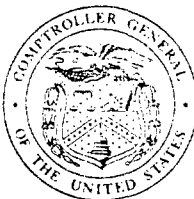


**DECISION**



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

GGM  
Mr. Erick

12091

FILE: B-194861

DATE: November 20, 1979

MATTER OF: Use of One Agency's Real Property by Another  
Liability for Damage Resulting From

DIGEST: In the absence of specific statutory authority, the Department of Army may not reimburse the Department of Agriculture for cost of restoration of real property damaged by Army training exercises in De Soto National Forest. Generally, one executive department may not be reimbursed for real property damaged by another executive department. 44 Comp. Gen. 695 (1965).

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The Acting Chief, Field Services Office, U.S. Army Finance and Accounting Center, Department of the Army, asks in effect whether funds are available to reimburse the United States Forest Service, Department of Agriculture, for the cost of restoration of damaged property in the De Soto National Forest. The property was damaged by the 220th Military Police Brigade during training exercises conducted August 6-10, 1978. The land was loaned for the training exercises pursuant to a memorandum of understanding between the Army and the Forest Service authorizing use by the Army of the De Soto National Forest. While this document was not included in the submission, it appears that it included provision for payment by the Army for damage as a result of Army's use of the property.

A voucher for \$922, for restoration of the damage was presented to the Finance and Accounting Officer, Headquarters United States Army Aviation Center and Fort Rucker, for certification. On the basis of the following, we believe this voucher may not be certified for payment.

Generally, in the absence of statutory authority, one executive department cannot pay another executive department for use of or for the restoration cost of real property loaned to or used by the former department, even though the use permits that were issued required restoration of the property or payment of damages. (This longstanding general rule is referred to as the interdepartmental waiver doctrine.) 32 Comp. Gen. 179 (1952); 44 Comp. Gen. 693 (1965).

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However, an opinion from the Office of the Staff Judge Advocate (SJA), Headquarters, 1st United States Army, cites a Senate Appropriations Committee report on the Department of Defense Appropriations Bill for 1966 (S. Rep. No. 625, 89th Cong., 1st Sess. 23 (1965)), which states, under the heading, "Damage to Federal Lands Resulting from Maneuvers," that

"Such funds as may be required [apparently referring to operation and maintenance funds] may be used to restore lands under jurisdiction of other Government agencies, damaged while being used for military training purposes under agreement with such agencies."

The SJA suggests that this legislative history, coupled with language included in the Department of Defense Appropriations Act for 1966, does provide authority to pay the damages. An Army witness, testifying on that appropriation, stated that our Office had informally indicated that an expression of congressional intent would suffice to permit interdepartmental reimbursements. Hearings on H.R. 9221 before a Subcommittee of the Senate Committee on Appropriations, 89th Cong., 1st Sess. 114 (1965) (statement of General Taylor). The quoted language was apparently put in the Senate Report to accomplish this.

A Comptroller of the Army memorandum, dated September 24, 1965, to the Chief of Engineers, states the Comptroller's understanding that, given this express intent in the Senate Committee Report, the Army could use appropriations for operations and maintenance to pay for damages caused by the use of property for military training. According to the submission, the Comptroller of the Army has informally advised that he takes the position that language in subsequent appropriation acts continues the authority to make such payments.

It is apparently the Comptroller's view, joined by the SJA, that, although the language quoted above only appeared in the 1965 Senate Report, the appropriation acts from that year on carried forward the intent stated in the 1965 report. According to them, the following provision in the 1979 Appropriation Act, and similar provisions in earlier acts, authorize payment by Army of the cost of restoration of the Forest Service property:

"Sec. 808. Appropriations for the Department of Defense for the current fiscal year shall be available \* \* \*  
(e) for leasing of buildings and facilities including payment of rentals for special purpose space at the

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625 (S. Rep. No. 625)

seat of government, and in the conduct of field exercises and maneuvers or, in administering the provisions of title 43, United States Code section 315q, rentals may be paid in advance \* \* \*." Pub. L. No. 95-457. (Emphasis added.)

The Fort Rucker Staff Judge Advocate, on the other hand, argues that no payments can be made to the Department of Agriculture. He does not believe that section 808(e) constitutes specific statutory authority to avoid the interdepartmental waiver doctrine. He points out that the 1964 Defense Appropriations Act which was applicable and was considered in our decision in 44 Comp. Gen. 693 (1965), included essentially the same language concerning field exercises quoted above from section 808(e) of the 1979 Act. See 77 Stat. 258, 264. That opinion held that the interdepartmental waiver doctrine applied and that no specific statutory authority for payment was found in the 1964 Appropriations Act. As to the Senate Report language purporting to authorize payment, the Fort Rucker SJA points out that no similar statement could be found in reports on later appropriation acts containing the section 808(e) language in essence.

The interdepartmental waiver doctrine is based upon the premise that ownership of property is in the Government and not in a particular department. Since any repairs or replacement would be for the future use and benefit of the loaning department the appropriation of the borrowing agency may not be charged with the cost. B-159559, August 12, 1968. In 32 Comp. Gen. 179 (1952) this Office stated that the concept of interdepartmental waiver is so "firmly imbedded in the substantive law of the United States as to require specific statutory authority to overcome the rule." At 180.

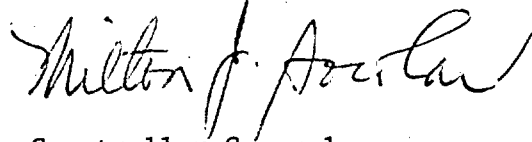
We recognize that the language in Senate Report No. 625, 89th Cong., was a direct response to 44 Comp. Gen. 693, intended to overcome its effect but, whatever its legal effect at the time, the Report language was applicable only to the appropriation for fiscal year 1966. Subsequent reports have not repeated it, as far as we have been able to determine.

The Comptroller of the Army refers to section 808(e) of the General Provisions as providing the necessary statutory authority today. This language was also in the Appropriations Act for 1966, but it cannot be read to supply the specific statutory authority necessary to overcome the interdepartmental waiver doctrine. The clause simply authorizes advance payment for use of property in the conduct of field exercises and maneuvers, with no mention of payment of damages.

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Concerning the memorandum of understanding in which the agreement was made to reimburse for damages, in 44 Comp. Gen. 693, 695, we stated that such an agreement was contrary to the established principle that an executive department may not be reimbursed for use or depreciation of real property loaned, used, or damaged by another department and was therefore impermissible. See also 32 Comp. Gen. 179 (1952).

Under these circumstances, the prohibition against reimbursement for property damages during an interdepartmental loan remains applicable. The voucher may not be certified for payment.

A handwritten signature in cursive script, appearing to read "Milton F. Auzan".

For The Comptroller General  
of the United States