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DECISION



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

FILE: B-199838

DATE: October 20, 1981

MATTER OF: Payment of Building Permit Fee for Government Construction Project

DIGEST: Claim by municipality for payment of building permit fee for Government construction project which arose in 1972, is barred by 31 U.S.C. § 71a, which bars claims accruing more than 6 years prior to receipt in the General Accounting Office. Statute's exception for claims by states, territories, possessions and the District of Columbia does not apply to subdivisions of states. See B-159110, June 27, 1966.

This is in response to a request made on behalf of the Secretary of Transportation for our opinion regarding the propriety of payment by the Federal Aviation Administration (FAA) of a building permit fee in the amount of \$2,826.50 to the Village of Farmington, Minnesota, in connection with the construction of the Minneapolis Air Route Traffic Control Center (ARTCC) in 1972.

The record shows that the Traffic Control Center was erected pursuant to a contract that contained the standard Permits and Responsibilities clause which provides that:

"The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. * * *"

However, the contractor apparently did not secure a building permit or pay the building permit fee in accordance with the requirements of the Farmington Village ordinance. Since the contractor dissolved its business upon completion of the ARTCC, the municipality now seeks payment by the FAA for the building permit fee.

A legal opinion prepared by the FAA Great Lakes Region takes the position that the building permit fee was in the nature of a tax against the Government and thus unauthorized. The opinion states that because no services were performed by the municipality in return for the fee, it amounted to a tax. The opinion also asserts that the responsibility for determining whether the fee was to be paid, and its payment if owed, rested with the contractor under the Permits and Responsibilities clause.

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We agree that the Permits and Responsibilities clause places the burden of ascertaining the applicability and payment of local permit, tax and licensing requirements on the contractor (see B-125577, October 11, 1955). In any event, the municipality's claim is barred by 31 U.S.C. § 71a. That section bars all claims and demands (except those by states, territories, possessions, or the District of Columbia) not received in the General Accounting Office within 6 years after the claim first accrues. In B-159110, June 27, 1966, our Office concluded that claims by political subdivisions of states were not included in the section's exception for claims by states.

Since the Village of Farmington's claim accrued in 1972, when the traffic control center was constructed, and was not received in our Office until 1980, it must be considered to be barred. Because the claim is time barred, we have not addressed the question of whether the claim could otherwise have been properly asserted against the Government as the builder's owner under the terms of the Village ordinance. Nor have we addressed the Government's rights under its construction contract.

Milton J. Fowler
for Comptroller General
of the United States