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

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B-215591 March 24, 1986

The Honorable Bill Green
House of Representatives

Dear Mr. Green:

Your letter of November 12, 1985, as supplemented by subsequent correspondence forwarded to us on January 8 and 27, 1986, requests our views on recent allegations by In our decision to you of September 5, 1984, we determined that Mr. contention---that a federal grant was improperly expended by the town of Groton, Connecticut, when it acquired property---failed to state a cognizable claim. contends in his most recent correspondence that his allegations to date have not been reviewed on the merits.

On December 20, 1985, members of our Office of General Counsel met with your staff to discuss our preliminary conclusions. We reported that pertinent allegations have been reviewed on the merits by either the state or federal courts in Connecticut, the United States Department of Housing and Urban Development's (HUD) Office of General Counsel and Inspector General, or by this Office in our September 5, 1984, response to your initial request. For future reference, however, your staff asked us to provide a summary of the manner in which claims were resolved on the merits.

First, claims that he was denied the opportunity, as required by section 301(2) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the Act), 42 U.S.C. § 4651(2), to accompany an appraiser during the inspection of the property. The HUD Inspector General's Office was unable to locate any evidence indicating that was notified and given an opportunity to accompany the appraisers. HUD's General Counsel pointed out, however, that the Act expressly provides that section 301 "creates no rights or liabilities and shall not be held to affect the validity of any property acquisitions by purchase or condemnation," 42 U.S.C. § 4602(a), and that only HUD, as the agency administering the grant, could take action to enforce section 301. Since the project had been closed for 5 years, HUD concluded that this remedy was "no longer

appropriate." Under the circumstances, HUD's decision not to pursue the matter seems reasonable.

While the failure to give Mr. an opportunity to accompany the appraiser, if true, would be contrary to section 301 of the Act, we are aware of no evidence that Mr. was prejudiced thereby, i.e., deprived of any legally enforceable rights or remedies. The Connecticut proceeding provided an opportunity for to contest any aspects of the appraisal which he believed deficient. The Connecticut Superior Court increased the condemnation award to $402,570, approximately $304,170 more than the questioned compensation the town initially paid. See Johl, et al. v. Town of Groton, No. 046815 (Super. Ct., New London County, Conn., Sept. 1976).

Second, contends that he was coerced into receiving payment for his land in violation of the Act. In his review of this issue, HUD's General Counsel stated that the federal courts have determined the payment to be proper. Johl v. Johl et al., 556 F. Supp. 5, 9 (D. Conn. 1981), aff'd, 697 F.2d 291 (2d Cir. 1982), cert. den., 103 U.S. 1224, reh'g den., 103 U.S. 1807 (1983).

Third, argues that when the Connecticut Department of Environmental Protection characterized his property as wetlands in April 1972, thereby restricting its use, this constituted a taking of his land by the state. HUD's General Counsel reviewed this allegation and concluded that while this is an issue to be decided under Connecticut law, in general, designations such as these do not affect title to real property. apparently did not raise this issue during the subsequent state condemnation proceedings. We agree with HUD's General Counsel that, by itself, the characterization as wetlands for purposes of the Connecticut tidal wetlands statute, Conn. Stat. Ann. §§ 22a-28 to 22a-35, does not amount to a taking of property.

Fourth, in view, an error was made by the town of Groton when the town resolution condemning his property referred only to "tidal" wetlands. points out that his property also had been designated as "inland" and "unrestricted" wetlands for purposes of the Connecticut wetlands statute. believes, therefore, that federal grant funds should not have been expended for those portions of his land classified as other than "tidal" wetlands.

This is ultimately, as HUD points out, a question of state law. We note, however, that the resolution in question clearly described the parcel of land to be acquired as the "Johl tract" and also described the land in surveyor's metes and bounds. Notwithstanding the wetlands description, the resolution clearly describes the town's primary intent and was, therefore, sufficient in our view. See Hutchinson v. Board of Zoning Appeals of the Town of Stafford, 140 Conn. 381, 100 A.2d 839 (1954). Furthermore, the town's certificate of taking indicates that the land the town agreed to acquire with the federal monies was the same land actually condemned.

Fifth, contends that the wetlands characterization by the state and an affidavit he filed in the land records office describing his concerns clouded the interest taken by the town in the condemnation proceedings. HUD's General Counsel stated after reviewing this contention that in his opinion the affidavit and the declaration had no effect on the title which vested in the town of Groton as a result of the condemnation action. We agree.

Finally, seeks several changes in the administration of the Act. Specifically, he requests that several forms he has prepared be adopted by HUD and used in conjunction with the appraisal process under the Act. Authority to implement the Act by adopting such forms rests with the agencies charged with the Act's administration, such as HUD. See 24 C.F.R. § 42 et seq. (1985). However, the Congress in 1974, effective January 1, 1975, terminated HUD's authority to make open space grants previously authorized by title VII of the Housing Act of 1961, as amended, 42 U.S.C. § 1500 et seq., Pub. L. No. 93-383, 88 Stat. 652, 653, Aug. 22, 1974. J suggested changes could not, therefore, improve the open space program under which his property was taken.

As we said in our September 5 letter, a claim which is cognizable by this Office has not been stated. The federal government provided grant funds to the town of Groton, which agreed with HUD to acquire a fee simple interest in the Johl land for open space purposes, and the record shows these actions were executed. Our review of the investigative and adjudicatory reports on this condemnation action, the materials furnished by l, and the record of this

transaction do not support the claim that the federal grant funds were improperly expended.

We hope the foregoing will be of assistance to you.

Sincerely yours,

Shelton J. Jordan

for Comptroller General
of the United States