

## Memorandum

GENERAL ACCOUNTING OFFICE - DEFENSE ACCOUNTING AND AUDITING DIVISION

General Counsel

DATE: MAR 7 1962

Associate Director  
(Hassell B. Bell)SUBJECT: Request for Legal Opinion on Matters Pertaining  
to the Construction of the Airfield at  
Fort Lee, Virginia

Recorded MAR 7 1962

G.A.O.

The construction of an airfield at Fort Lee, Virginia was reported in the January 1961 Report of the Comptroller General to the Congress in the Review of Programming and Financing of Selected Facilities Constructed at Army, Navy and Air Force Installations, Department of Defense.

The airfield was constructed in 1958 as a troop training project with engineering troops from Fort Belvoir furnishing all of the construction labor, which at standard rates amounted to about \$225,000, and also furnishing a considerable quantity of government-owned construction equipment having an assigned rental value of about \$131,000. An estimated \$84,000 was paid out for per diem and for gasoline consumed in transporting the troops between Fort Belvoir and Fort Lee. In addition, materials costing over \$60,000 were procured from commercial sources and were financed from the Operation and Maintenance (O&M) appropriation.

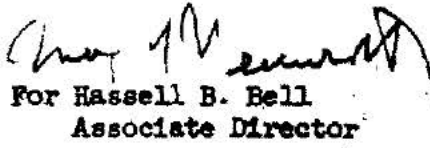
Although the Army had estimated that the project would cost approximately \$141,000 including \$116,000 of unfunded costs, the airfield actually cost almost \$600,000.

Following our review we filed notices of exception against the certifying officers for the amount of O&M funds obligated for the purchase of materials in excess of \$25,000, the maximum which could be spent on urgently needed construction projects in accordance with Sec. 408 (b) of Public Law 968, 84th Congress, approved August 3, 1956.

The Executive and Legislative Reorganization Subcommittee of the House Committee on Government Operations has scheduled hearings on the airfield construction to begin March 14, 1962, at which representatives of GAO will appear. In preliminary discussions which we have held with the Committee staff they have raised some questions concerning certain legal aspects of the case which we are submitting to you for resolution before the hearings begin.

Section 408 (a) permits the military departments, subject to certain limitations, to acquire, construct, convert, extend or install permanent or temporary public works determined to be urgently required, and which are not otherwise authorized by law, when the cost of the project is not in excess of \$200,000. Such projects may be financed from the military construction appropriation. The departments are permitted by Sec 408 (b) to utilize O&M funds for similar construction - type work where the project cost does not exceed \$25,000.

1. Does the term "cost of the project" as used in the statute embrace only the so-called "funded" cost or does it also extend to "unfunded" cost?
2. If it embraces all costs, both funded and unfunded, then would the Army have been precluded from using operation and maintenance funds to finance any portion of the airfield since the sum of the estimated funded and unfunded project cost exceeded \$25,000? If this is so, should not the exceptions taken have been for the full cost of the materials acquired with O&M funds rather than just the cost in excess of \$25,000?
3. Should the \$225,000 salaries of the engineer troop labor, the \$84,000 cost of per diem and gasoline used in transporting the troops from Fort Belvoir to Fort Lee and back, and the \$113,000 assigned value of the equipment loaned by the Army engineers to Fort Lee for use in constructing the airfield, all be treated as training costs not subject to the project cost limitations prescribed in Section 408 (a) and 408 (b) of the statute?
4. If any of the costs delineated in (3) above are held to be includable in project cost within the meaning of the statute and, if, when added to the cost of the materials purchased from commercial sources the sum exceeds \$200,000, would this have precluded Fort Lee from constructing the airfield under the provisions of the statute?

  
For Hassell B. Bell  
Associate Director

Indorsement

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Director, Defense Accounting and Auditing Division

Returned. The provisions of section 408 of the act of August 1956, Public Law 968, 84th Congress, 70 Stat. 1016, formed the basis for the provisions now codified in 10 U.S.C. 2674 which read as follows:

"(a) Under such regulations as the Secretary of Defense may prescribe, the Secretary of a military department may acquire, construct, convert, extend, and install, at military installations and facilities, urgently needed permanent or temporary public works not otherwise authorized by law, including the preparation of sites and the furnishing of appurtenances, utilities, and equipment, but excluding the construction of family quarters.

"(b) This section does not authorize a project costing more than \$200,000. A project costing more than \$50,000 must be approved in advance by the Secretary of Defense, and a project costing more than \$25,000 must be approved in advance by the Secretary concerned.

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"(c) Appropriations available for military construction may be used for the purposes of this section. In addition, the Secretary concerned may spend, from appropriations available for maintenance and operations, amounts necessary for any project costing not more than \$25,000 that is authorized under this section."

The word "cost" is a word of general import and is not subject to a precise definition. It can relate to funded, unfunded, replacement, incremental, or other types of costs. A review of the legislative history of the foregoing provision in both the cited 1956 act and in preceding annual appropriation acts reveals no specific comments

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as to the meaning intended by the Congress when it used the phrases "costing not more than" in these limitations. However, the fact that the limitation originally appeared in annual appropriation acts lends weight to the view that the Congress was concerned primarily with the costs financed from appropriations. Also, the military departments apparently have consistently construed the limitations as applying only to costs financed from appropriations and the limitations have been reenacted by the Congress a number of times. Moreover, it is probable that the military departments can establish that the cognizant committees of Congress were aware of their interpretation. There thus appear to be for application two well-known rules of statutory construction: (1) an administrative interpretation of long-standing is entitled to great weight and (2) when a long-standing and uniform construction has been given a statute by the Government agency concerned, similar language in a subsequent statute on the same subject matter will, if possible, receive the same construction.

In the absence of clarification of the limitation by the Congress, there does not appear any adequate basis to question the Department of Defense's interpretation at this time. Of course, costs, regardless of the source of financing, should be disclosed in any requests for approval either by higher military authority or by the Congress.

Accordingly, in answer to question 1, the limitation is applicable only to the "funded" costs of the project.

No answer to question 2 is required. It may be stated though that if it were known at the time construction of the project was authorized that the funded costs would exceed \$25,000, the exception should include all of the costs.

In answer to question 3, only the funded costs of transportation and per diem costs necessitated by the project are subject to the limitation. See paragraph 3 1 of AR No. 415-35, dated September 21, 1961.

Question 4 is answered in the affirmative.

R. F. KELLER

General Counsel