



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

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The Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

Reference is made to your letter of July 30, 1976, requesting our comments on H.R. 14741, 94th Cong., 2d Sess., entitled "A BILL To amend section 203 of the Federal Property and Administrative Services Act of 1949 to control the disposal of property by exchange."

The bill would amend section 203(c) of the Federal Property and Administrative Services (FPAS) Act of 1949, as amended, 40 U.S.C. §484(c) (1970), to provide that neither the Administrator of the General Services Administration (GSA) nor any other agency authorized to dispose of surplus property may dispose of property by exchange under the FPAS Act or under any other provision of law unless the acquisition of property to be achieved by the exchange is authorized by, or pursuant to, and is conducted in accordance with applicable provisions of law governing the acquisition of property by purchase.

In introducing the bill, you said it would prevent the Government from acquiring property through an exchange of other Government property unless the acquisition has been authorized by Congress under applicable laws. We understand that the primary purpose of the bill is to prevent an agency from acquiring a public building valued over \$500,000 through an exchange of Government property, unless the acquisition has been approved by the House and Senate Committees on Public Works in accordance with section 7(a) of the Public Buildings Act of 1959, as amended, 40 U.S.C. §606(a) (Supp. IV, 1974), which states:

"In order to insure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings, except as provided in section 603 of this title, no appropriation shall be made to construct, alter, purchase, or to acquire any building to be used as a public building which involves a total expenditure in excess of \$500,000 if such construction, alteration,

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purchase, or acquisition has not been approved by resolutions adopted by the Committee on Public Works of the Senate and House of Representatives, respectively. No appropriations shall be made to lease any space at an average annual rental in excess of \$500,000 for use for public purposes if such lease has not been approved by resolutions adopted by the Committee on Public Works of the Senate and House of Representatives, respectively. For the purpose of securing consideration for such approval, the Administrator shall transmit to the Congress a prospectus of the proposed facility, including (but not limited to)--

"(1) a brief description of the building to be constructed, altered, purchased, acquired, or the space to be leased under this chapter;

"(2) the location of the building or space to be leased and an estimate of the maximum cost to the United States of the facility to be constructed, altered, purchased, acquired, or the space to be leased;

"(3) a comprehensive plan for providing space for all Government officers and employees in the locality of the proposed facility or the space to be leased, having due regard for suitable space which may continue to be available in existing Government-owned or occupied buildings;

"(4) with respect to any project for the construction, alteration, purchase, or acquisition of any building, a statement by the Administrator that suitable space owned by the Government is not available and that suitable rental space is not available at a price commensurate with that to be afforded through the proposed action; and

"(5) a statement of rents and other housing costs currently being paid by the Government for Federal agencies to be housed in the building to be constructed, altered, purchased, acquired, or the space to be leased."

The bill's primary purpose is in accord with certain Committee recommendations in House Report No. 94-783, 2d Sess. (1976) and with recommendations by our Office in a report to your Committee dated March 5, 1975 (B-165511). However, we question whether the bill, if

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enacted in its present form without a corresponding amendment to the Public Buildings Act, would require approval by the Public Works Committees of exchange transactions where public buildings valued over \$500,000 are acquired.

The approval required by 40 U.S.C. §606(a) applies where an appropriation of funds in excess of \$500,000 for a public building is involved. The acquisition of a public building through an exchange of Government property normally does not involve the appropriations process. Since 40 U.S.C. §606(a) does not apply to acquisitions of public buildings where there is no expenditure of appropriated funds in excess of \$500,000 the bill would not appear to have the effect of requiring such acquisitions, where accomplished by exchange, to be approved by the Public Works Committees.

In our opinion, to insure that the primary purpose of H.R. 14741 is achieved, 40 U.S.C. §606(a) should be amended to read in pertinent part as follows:

"In order to insure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings, except as provided in section 603 of this title--

"(1) no appropriation shall be made to construct, alter, purchase, or to acquire any building to be used as a public building which involves a total expenditure in excess of \$500,000; and

"(2) no excess or surplus property shall be disposed of by exchange to acquire any building valued in excess of \$500,000, which is to be used as a public building,

if such construction, alteration, purchase, acquisition, or exchange has not been approved by resolutions adopted by the Committee on Public Works of the Senate and House of Representatives, respectively. * * * "

Additionally, we believe the broad authority to dispose of and acquire property by exchange under the FPAS Act should be limited. One method would be to amend the last line of H.R. 14741 by deleting the words "by purchase" and by substituting ", including requirements for prospectus approval or other congressional authorization." This would require all acquisitions of property by exchange under the FPAS Act to be accomplished in accordance with applicable provisions of law authorizing such acquisitions, including prospectus approval for acquisitions of public buildings valued in excess of \$500,000.

An alternative to the above would be to amend section 203(c) of the FPAS Act by adding the following underlined words:

"Any executive agency designated or authorized by the Administrator to dispose of surplus property may do so by sale, exchange, lease, permit, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Administrator deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this subchapter, except that no exchange shall be made under this Act to acquire any building to be used as a public building which is valued in excess of \$500,000 if such exchange has not been approved in accordance with the requirements of section 7(a) of the Public Buildings Act of 1959, as amended."

The second alternative is not as broad as the first in limiting the authority of Federal agencies to dispose of and acquire property by exchange. However, it expressly requires prospectus approval of acquisitions by exchange of public buildings valued in excess of \$500,000.

We hope that these comments will be of assistance to you.

Sincerely yours,

R.F. KELLER

[Deputy] Comptroller General
of the United States