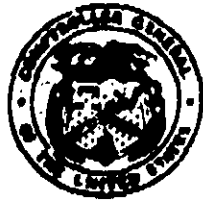


DECISION



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

FILE: D-114841

DATE: FEB 9 1977

**MATTER OF: United States Fish and Wildlife Service - Install-
ment Payments for Real Property**

DIGEST: United States Fish and Wildlife Service may enter into purchase agreement with owner of real property in which even though settlement is held and legal title to the land is vested in the Government, it agrees to landowner's request to disburse the purchase price to the vendor over a period not to exceed 4 years, provided it obligates the full purchase price from appropriations available for such purpose from the fiscal year in which the options to purchase are exercised by the Service to meet a need of that fiscal year.

This decision is in response to an inquiry from H. Gregory Ametiz, Acting Secretary of the Interior, concerning the legal propriety of a proposal whereby the United States Fish and Wildlife Service would obtain options on real property, exercise the option for the entire tract of land, obligate the full purchase price and take title and possession of the property in the customary manner. However, payments for the property would be disbursed over a period not to exceed 4 years out of funds appropriated for the fiscal year in which the option was obtained in accordance with the wishes of, and pursuant to a contract with the landowner. (Landowners wishing full payment at the time of acquisition are entitled thereto pursuant to 42 U.S.C. § 4651 (1970) and other authorities.)

The Acting Secretary states in his inquiry that:

"This change in real property acquisition procedures is due to a reluctance on the part of property owners to sell their land to the United States and receive a lump-sum payment therefor with the resulting increased capital gains tax liability. This attitude has, in the opinion of the United States Fish and Wildlife Service, resulted in a substantial increase of the purchase price which the seller is willing to accept. It is thought that if funds could be disbursed as suggested, the costs of acquisition of real property for authorized projects could be substantially reduced."

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No expenses concern, however, as to whether such deferred payments would be authorized following the end of the period of availability for fiscal year funds.

Funds appropriated to an agency for its use in a particular fiscal year are available for obligation only during that fiscal year. However, once obligated, the funds remain available for expenditure until the obligation is liquidated. See B-35181, February 15, 1948. See also 31 U.S.C. §§ 200 and 701-706 (1970, Supp. V). As we noted in 17 Comp. Gen. 664 (1937) with regard to options, funds are obligated when the option is exercised, *i.e.*, upon the creation of a mutually binding contract for purchase of the property.

The general rule relative to obligating fiscal year appropriations by contract is that (1) the contract must be made within the fiscal year covered by the appropriation sought to be charged, and (2) the subject matter must concern a need arising within that fiscal year. 32 Comp. Gen. 565 (1953) and 20 Comp. Gen. 436 (1941). Since proper exercise of the option during the fiscal year in which funds are available therefor creates a binding contract between the parties, the first requirement is thereby satisfied. The second requirement is met, provided there is a bona fide need for the property at the time the option is exercised and the funds obligated for the purchase; the timing of the actual expenditure of the funds is, for these purposes, irrelevant. We might note that not infrequently a contract is executed or an option exercised in one fiscal year, with settlement not being held and the actual payment of the purchase price not being made until the next fiscal year. The only difference in the instant circumstance is that payment, as a part of the consideration to be received by the landowner, will be made over several fiscal years. Thus, as distinguished from the installment purchase plan we considered in 48 Comp. Gen. 494 (1969), the subject proposal is proper since amounts sufficient to cover the entire purchase price will be obligated from the appropriate fiscal year for a need occurring in that year.

Therefore, with the exception that the funds obligated should be those available for the fiscal year in which the option is exercised rather than for the fiscal year in which the option is obtained, we see no legal objection to the acquisition of real property in the manner proposed by the United States Forest Service when the landowner requests that payment be so handled.

R. F. KELLER

Deputy Comptroller General
of the United States