



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

July 23, 1954

B-118030

Honorable Dewey Short, Chairman

Armed Services Committee

House of Representatives

Dear Mr. Short:

During the course of a recent examination of the accounts and records of the Rock Island Arsenal at Rock Island, Illinois, in connection with a survey of procurement practices in the Army Ordnance Corps, the following facts were disclosed.

Under date of December 5, 1905, the then Secretary of War, William Howard Taft, executed a license to an organization known as the Rock Island Arsenal Golf Club, composed of residents of Davenport, Iowa, Rock Island and Moline, Illinois. Under the terms of the license, which was revocable at will by the Secretary of War, the club members were authorized to use a golf course previously constructed on the Arsenal grounds, said to occupy 208 acres, and to erect a club building on the site for the exclusive use of the members. The license is silent with respect to the payment by the club of any fee or other monetary consideration to the United States for the property occupied.

Present personnel of the club, totaling approximately 600, includes the 12 Army officers stationed at the Arsenal, who

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receive free membership; also, some 50 civilian employees of the Arsenal--out of approximately 6,000 civilians employed at the Arsenal--have limited golf privileges but no right to use the clubhouse. The balance of the memberships are held by residents of the area who pay \$150 entrance fee and annual dues of \$138, plus tax.

Since the Government has received no rental for the use of the property or reimbursement for services rendered to the club by the Arsenal, and since there was doubt as to the legal authority for the arrangement, the matter was brought to the attention of the Under Secretary of the Army by Office letter of June 15, 1953. In response thereto, the Department of the Army advised of an opinion rendered by the Office of the Judge Advocate General to the effect that the original license was issued pursuant to clear legal authority. However, the Army did review the terms of the license in the light of changes in the law and conditions and executed a five-year revocable lease, at an annual rental of \$1,200, with the club. This action purportedly was taken pursuant to the provisions of the act of August 5, 1947, 10 U.S.C. 1270.

In the opinion of the Judge Advocate General's Office it was stated--

"In view of the broad administrative power regarded as vesting in the Secretary of War at the time of the issuance of the license of 5 December 1905, and his power to grant a lease, or a license as a lesser included interest, under the act of 28 July

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1892, of land under his control for other than a monetary consideration, considered in the light of the benefits which it was determined would be derived by the United States by permitting the Rock Island Arsenal Golf Club to use and occupy a portion of the Arsenal grounds, legal authority clearly existed for the issuance of the license. * * *"

The cited act of July 28, 1892, 40 U.S.C. 303, is, in part, as follows:

"Authority is given to the Secretary of War, when in his discretion it will be for the public good, to lease, for a period not exceeding five years and revocable at any time, such property of the United States under his control as may not for the time be required for public use * * *."

With respect to the extensive powers exercised, generally, by the heads of the various Departments in such matters, it was stated in 22 Op. Atty. Gen. 240, that--

"Long-continued exercise of a power of this kind by the Secretary of War, and the open and notorious use of Government reservations by such licensees without legislative objection from Congress and without the adoption of any legislative rule upon the subject, implies the tacit assent of Congress to this custom. * * *"

The provisions of the act of July 28, 1892, conferring authority upon the Secretary of War to lease property of the United States for periods not to exceed five years may, of course, be construed to authorize the granting of a lesser interest, such as a revocable license. But it seems clear that any license issued for the use and occupancy of Government property "which may not for the time be required for public use" must be for a temporary duration "not exceeding five years," as set forth in

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the basic statute. In the instant case, there is serious question whether an arrangement which included the right to erect a clubhouse was one involving only temporary occupancy. In 21 Op. Atty. Gen. 537, dated May 19, 1897, it was held that a revocable license, without limitation as to time, issued by the Secretary of War to a Roman Catholic archbishop, to erect and maintain a chapel on the military reservation at West Point, was in violation of the statute. Such conclusion was predicated upon the proposition that any license for an indefinite period of time which contemplates a degree of permanent occupation in excess of five years is forbidden by the act, since it in effect constitutes a disposition of property. That right is reserved to the Congress by section 3 of Article 4 of the Constitution, which provides that--

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *."

In view of the foregoing, this Office is of the view that the authority of the Secretary to execute the subject license in connection with the property here involved is not free from doubt. See also, 22 Op. Atty. Gen. 544; 34 id. 320.

As heretofore stated, the Rock Island Golf Club has now been extended a five-year revocable lease, citing as authority the act of August 5, 1947, 10 U.S.C. 1270. That statute provides, in pertinent part, as follows:

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"Whenever the Secretary of the Army shall deem it to be advantageous to the Government he is authorized to lease such real or personal property under the control of his Department as is not surplus to the needs of the Department * * * and is not for the time required for public use * * *." (Emphasis supplied.)

It is apparent that this statute applies only to such property "as is not surplus to the needs of the Department." It is difficult to perceive how the property occupied by the Rock Island Arsenal Golf Club could be viewed as falling in that category, since it has been in uninterrupted use and occupancy by the club for the past 49 years. This has been a period covering two World Wars when presumably every available facility and property of the Army would be put to use. Accordingly, the conclusion is almost inescapable that the property is surplus to the needs of the Department, in which case the act of August 5, 1947, supra, confers no authority upon the Secretary of the Army to execute the lease of April 12, 1954.

It is believed that your Committee may wish to examine the facts involved in the foregoing transaction and to take such corrective action as may be deemed appropriate.

Sincerely yours,

FRANK H. WEITZEL

Acting Comptroller General
of the United States