COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-119846

July 23, 1954

The Honorable

The Secretary of Commerce

Dear Mr. Secretary:

There has been questioned in the audit of the National Bureau of Standards the propriety of the expenditures originally made from the Bureau's working capital fund, established by the Deficiency Appropriation Act, 1950 (64 Stat. 279), for the construction of the tire testing building at a cost of approximately $150,000. The working capital fund was reimbursed by transfers of slightly more than $25,000 from two of the Bureau's appropriations and the remainder from two advances received from the appropriations of the Department of the Army, "Research and Development, Army (21X2040)" and "Research and Development, Army (2122040)." The Director, National Bureau of Standards, by letter dated June 14, 1954, in reply to Office letter of May 27, 1954, questioning the legal authority for construction of this building, takes the position that this building is not a "public building" or "public improvement" within the meaning of those terms as used in section 3733, Revised Statutes. He states that at the time the project was nearing the end of the preliminary design stage, it was decided that the exterior shell of the facility constituted a building and, accordingly,

its costs, which, therefore, could not be charged to the Army funds, were charged to the Bureau's appropriation, Operation and Administration. However, the Bureau now believes that such decision was overly cautious and that no part of the facility need have been described as a public improvement, but that its full costs could have been charged to appropriations such as Research and Development, Army, and Research and Testing, National Bureau of Standards, neither of which is specifically available for the construction of buildings or the making of public improvements.

The basis set out in the letter of June 14 for the Bureau's position is that "the shell of the structure is merely a casing and framing for a complicated mechanism and has no separate value"; that the "facility is, in fact, a tire testing machine and because of its very specialized nature, it is not possible to distinguish between the machine and the 'building'"; and that "Removal of the test track and control equipment would not leave a usable separate structure."

The meaning of the terms "public building" or "public improvement" as used in section 3733, Revised Statutes (41 U.S.C. 12), has been the subject of numerous decisions both by former Comptrollers of the Treasury and by this Office over a long period of time, and the general and uniform holding is that any structure in the form of a building not clearly of a temporary character is a public building or public improvement within the meaning of that statute. See 30

Comp. Gen. 487 and decisions cited therein. Not only is the tire testing building a structure in the form of a building, it is a structure of brick enclosing a space within its walls and covered with a roof, which falls within the generally accepted definitions of the word "building" and which any average person would recognize as just another building. Any building might be said to be merely a casing and framing for the purpose for which constructed. The fact that the building has no separate value or that the removal of the test track and control equipment would not leave a usable separate structure does not in any way mean that the structure is not a building. Also, the allegation that it is not possible to distinguish between the machine and the building would seem to be a much better basis for concluding that the entire facility is a "building" rather than that the entire facility is a "tire testing machine" as contended by the Bureau.

There is another position taken by the Bureau in its letter of June 14, 1954, which requires some comment. The Bureau felt a need for an "indoor method" of road testing tires but that the total program could not be supported out of appropriations made to the Bureau. The Bureau believed this to be a valid program to pursue under its basic legal responsibilities to the extent that its funds would permit and that it was valid to request other agencies to support the work. It was the result of such a request that the Department of the Army contributed to this project under the authority of section 601 of the Economy Act of 1932, 47 Stat. 417, as amended, 31 U.S.C.

686. That provision of law contemplates that one agency would render services to another agency only when the performing agency is already "in a position to supply or equipped to render" such services. It was not contemplated that one agency would acquire, even with its own funds, substantial equipment for the sole purpose of being in a position to supply or equipped to render services to other agencies, let alone to request other agencies to support the cost of constructing entire facilities such as this tire testing building.

This matter is called to your attention for the reason that the erroneous position taken by the Bureau in this case may be due to its interpretation of its Administrative Bulletin No. 52-24, dated December 8, 1952, which was transmitted to this Office by the Acting Secretary of Commerce in letter of March 13, 1953, presenting for decision certain other questions involving the alterations of a part of the Chevy Chase Ice Palace which had been leased to the Government. You were advised in Office reply of May 8, 1953, B-114240, that the policy set forth in the National Bureau of Standards Administrative Bulletin No. 52-24, dated December 8, 1952, appeared generally to conform to 20 Comp. Gen. 105 and the decisions referred to therein (relating to alterations to Government-rented buildings) but that blanket approval of all payments which might be made thereunder could not be given. While the Bulletin may conform to the decision published at 20 Comp. Gen. 105 concerning Government-rented buildings, it appears that section 2.03 of the Bulletin might

be construed to authorize the construction of buildings in contravention of what has been stated herein. Also, this section of the Bulletin limits the definition of "Improvements" to alterations or permanent additions to buildings which enhance their value for general Bureau use. The enhancement of the value of the property would seem to be the criterion to be applied regardless of whether or not its value was enhanced for general Bureau use.

Accordingly, it is requested that the National Bureau of Standards be instructed of the principles stated herein and to revise its Administrative Bulletin No. 52-24 to conform to those principles.

Sincerely yours,

FRANK H. WEITZEL

Acting Comptroller General
of the United States