

GENERAL ACCOUNTING OFFICE

WASHINGTON

OFFICE OF GENERAL COUNSEL

B-119846

May 27, 1954

The Director
National Bureau of Standards
Department of Commerce

Dear Mr. Astin:

There has been questioned in the audit of the National Bureau of Standards the propriety of the expenditures originally made from the Bureau's working capital fund, established by the Deficiency Appropriation Act, 1950 (64 Stat. 279), for the construction of the tire testing laboratory 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 Division of Audits of this Office by letter dated March 2, 1954, addressed to the Associate Director for Administration, National Bureau of Standards, raised certain questions in connection with the financing of this building, one of which was the legal authority relied upon in undertaking its construction. I understand that no reply thereto has been received to date.

The two Army appropriations do not appear to be available specifically for the construction of buildings or the making of public improvements and, therefore, would not be available to reimburse the working capital fund for expenditures for that purpose, unless such appropriations are impliedly available therefor and the building is a temporary one absolutely essential to carry out the purposes for which those appropriations were made. See 10 Comp. Gen. 140. There is nothing in the record here to establish that such appropriations are impliedly available for the construction of buildings nor is there anything in the file indicating that the building is a temporary one essential to carry out the purposes of the appropriations involved. It thus appears that the working capital fund was not available for the original expenditures here involved. 30 Comp. Gen. 453.

However, it is understood that representatives of the Bureau have stated that the availability of the Army funds for construction is of no importance for the reason that this building does not constitute a "public building" or "public improvement" within the meaning of those terms as used in section 3733, Revised Statutes (41 U.S.C. 12). The meaning of those terms as therein used has been the subject of numerous decisions both by former Comptrollers of the Treasury and by this Office, and the general and uniform holding seems to have been 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. As may be seen from those decisions and others cited therein, many structures of more or less temporary character or at least intended for use during temporary periods have been held to come within the meaning of those terms.

Accordingly, an expression of your views as to the availability of the involved appropriations of both the Bureau and the Army for the construction of the tire testing laboratory building and as to the legal authority for its construction is requested.

Sincerely,

W. L. Morrow

Associate General Counsel