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Director, Civil Accounting and Auditing Division

Answers to the questions submitted in the next to last paragraph of your memorandum necessarily require consideration of section 3736, Revised Statutes, 41 U.S.C. 14, providing that no land shall be purchased on account of the United States, except under a law authorizing such purchase.

You state that the major part of the space in the Kallison Building has been occupied by the Veterans Administration but that other agencies have been assigned space in the building. In this connection, it is noted that the memorandum of January 13, 1958, from the General Counsel, GSA, to the Commissioner of Public Buildings, justifies the acquisition primarily on the basis of the transfer of this building to GSA under Reorganization Plan No. 18 of 1950, 64 Stat. 1270, 5 U.S.C. 133z-15 note. Reference is made to section 100 of the Servicemen's Readjustment Act of 1944, 58 Stat. 284, as amended by the act of July 6, 1945, 59 Stat. 463, 38 U.S.C. 693, under which statute the Administrator of Veterans Affairs is authorized for the purpose of extending benefits to veterans and dependents, and to the extent he deems necessary, to procure the necessary space for administrative, clinical, medical, and out-patient treatment purposes by lease, purchase, or construction of buildings, or by condemnation or by declaration of taking pursuant to existing statutes. It is stated that as of July 1, 1950, all functions with respect to acquiring space in buildings by lease and all functions with respect to the operation, maintenance and custody of office buildings owned by the Government and of buildings or parts of buildings thereof acquired by lease were, with certain exceptions not here material, transferred from the Veterans Administration to GSA under Reorganization Plan No. 18 of 1950, 64 Stat. 1270, 5 U.S.C. 133z-15 note. Reference is made to Title 5 U.S.C. 133z-7(a) (1) and (2) under which Reorganization Plan No. 18 was adopted providing as follows:

"(a)(1) Any statute enacted, and any regulation or other action made, prescribed, issued, granted, or performed in respect of or by any agency or function affected by a reorganization under the provisions of sections 133z-133z-15 of this title, before the effective date of such reorganization, shall, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function have the same effect as if

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such reorganization had not been made; but where any such statute, regulation, or other action has vested the function in the agency from which it is removed under the plan, such function shall, insofar as it is to be exercised after the plan becomes effective, be considered as vested in the agency under which the function is placed by the plan.

"(2) As used in paragraph (1) of this subsection the term 'regulation or other action' means any regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action."

In view of the foregoing, it is stated that not only did the Administrator of GSA assume "all functions with respect to operation, maintenance and custody" of the leased premises, but that also there was vested in him by the above statutory provision the function of the Veterans Administration to determine if the best interests of the Government, as lessee, would be served by exercising said option to purchase together with the authority of the Veterans Administration to exercise the option.

Aside from the question whether the option could have been exercised by the Veterans Administration without a specific appropriation, the involved functions of the Veterans Administration to lease, purchase buildings or to acquire same by condemnation or by declaration of taking, as contained in 38 U.S.C. 693, were repealed effective as of January 1, 1958, by the Veterans Benefit Act of 1957, 71 Stat. 83, 170. Therefore, since the option to purchase was not exercised until June 11, 1958, effective as of June 30, 1958, and the conveyance did not take place until a later date, the general acquisition authority vested in the Administrator of Veterans Affairs by the act of July 6, 1945, 38 U.S.C. 693, may not be regarded as furnishing justification for the involved acquisition.

As further justification reference is made to section 210(a)(12) of the Federal Property and Administrative Services Act of 1949, as added by the act of September 5, 1950, 64 Stat. 578, 40 U.S.C. 490(a)(12) providing, as follows:

"Whenever and to the extent that the Administrator has been or hereafter may be authorized by any provision of law other than this subsection to maintain, operate, and protect any building, property, or grounds

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situated in or outside the District of Columbia, including the construction, repair preservation, demolition, furnishing, and equipment thereof, he is authorized in the discharge of the duties so conferred upon him \* \* \*

\* \* \*

"(12) to acquire, by purchase, condemnation, or otherwise, real estate and interests therein."

In explanation of the purposes of subsection 12, it is stated in Senate Report No. 2140, 81st Congress, accompanying S. 3959, which became Public Law 754, as follows:

"Subsection 12 is not new and may be found in a more limited form in other permanent legislation. It is believed advisable to broaden and more clearly define the authority of the Administrator to acquire land or interest therein when authorized by subsequent acts of the Congress." (Underscoring supplied.)

This view of the matter is consistent with the subsequent provision, subsection 210(c)(1) providing that at the request of any Federal agency or any mixed-ownership corporation, or the District of Columbia, the Administrator is thereby authorized to acquire land for buildings and projects "authorized by the Congress." Thus, it appears that subsection 210(a)(12) was not intended to be regarded as a general authorization permitting land acquisition but as merely permitting such procurement where otherwise authorized by subsequent acts of the Congress. In other words, it appears to have been regarded as being merely procedural in nature with a view to permitting acquisition of real estate or interests therein where otherwise authorized by law. That such was intended is indicated by the fact that in numerous instances the Congress has enacted specific legislation for such acquisitions. See in this connection Supplemental Appropriation Act, 1951, 64 Stat. 1044, 1055, where the Congress appropriated to GSA \$525,000 for the acquisition of land and improvements in the District of Columbia, together with \$3,000,000 to GSA for the acquisition of the land and improvements located at 536 South Clark Street, Chicago, Illinois, and the Supplemental Appropriation Act, 1957, 70 Stat. 678, appropriating \$250,000 to GSA for the acquisition of land and improvements in the District of Columbia.

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Even though subsection 210(a)(12)<sup>X</sup> could be regarded as a general authorization for the acquisition of land and improvements, an acquisition under such statutory provision still would not be justified in the absence of an appropriation available for payment of the purchase price. B-137279, September 19, 1958. Also, section 3734, Revised Statutes, 40 U.S.C. 259, prohibits the expenditure of money by the United States for the purchase of any site for a public building in excess of the amount specifically appropriated for that purpose.

The appropriation charged in this instance for payment of the purchase price is "Operating Expenses, Public Buildings Service, 1958," 71 Stat, 229, which provides as follows:

P.L. 85-224 (6/29/57) ✓  
"Operating expenses, Public Buildings Service; For necessary expenses of real property management and related activities as provided by law; furnishings and equipment; rental of buildings in the District of Columbia; \* \* \* acquisition by purchase or otherwise and disposal by sale or otherwise of real estate and interests therein \* \* \*" (Under-scoring supplied.)

It is understood to be your view that while the foregoing appropriation language properly may be regarded as providing funds for necessary expenses incidental to acquisition and disposal the Congress did not intend that the appropriation would be available for the cost of acquisition of real estate and interests therein. In support of such view, it is stated that the underscored appropriation language first appeared in the GSA appropriation for 1951; that the budget request for this item was justified by GSA at that time largely on the basis of personal service expenses incident to execution of the new expanded functions authorized by the Federal Property Act of 1949. As evidence that this is still the view of the Congress and that the item for "acquisition by purchase or otherwise \* \* \* of real estate and interests therein" in the appropriation "Operating Expenses, Public Buildings Service, 1958," was intended to be limited to necessary expenses incident to acquisition, there is quoted in your memorandum a discussion during the Committee hearings between Congressman Thomas and Mr. Knott of GSA in support of your view.

In this connection, on page 248 of The Budget for Fiscal Year 1958, it is explained that the involved appropriation provides for basic real property operations of the Administration including the planning and direction of all real property programs; acquisition,

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operation and utilization of general-purpose space, etc. As to acquisition and disposal it is stated that--

"This activity provides for real property operations not otherwise provided for, including (a) acquisition of property by lease, purchase, exchange, or donation; \* \* \*"

The budget estimate for 1958 for acquisition and disposal shows the cost of this program as \$4,572,400 and the breakdown of this amount under the heading "Obligations By Objects" does not show any amount for the purchase of real property, said amount consisting primarily of salaries for personnel, travel, taxes and assessments, together with other miscellaneous expenses.

While section 3736<sup>k</sup> Revised Statutes does not require any specific formula of language to be used which will authorize the purchase of lands on account of the United States (10 Comp. Dec. 132, 139), it does require express statutory authority for the purchase of land. Concerning the requirements of the Statute, it is stated in 7 Comp. Dec. 712, 714, as follows:

"The provisions of the Revised Statutes are permanent legislation, and many of these provisions are intended to restrict general implications arising from subsequent general laws and particular appropriation acts. Otherwise it would be necessary for Congress to repeat these restrictive provisions year after year in numerous statutes. In considering a subsequent statute, therefore, it is to be read as if it actually contained these provisions, so far as they are applicable thereto, unless the terms of the statute clearly indicate a contrary intention or are repugnant thereto. It is also to be presumed that every statute passed by Congress is framed in contemplation of these provisions, and that it is not intended to abrogate any of them or to operate as an exception thereto unless such an intention is clearly manifested, and then to no greater extent than is so manifested."

The involved appropriation language under consideration is in broad terms providing "For necessary expenses of \* \* \* acquisition by purchase or otherwise \* \* \* of real estate and interests therein." It is doubtful, however, that it was intended that the appropriation would be available for the cost of acquisition of real estate. Rather, it appears that the Congress intended that the use of the appropriation would be confined to necessary expenses incidental to

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such acquisition. Even if the appropriation could be regarded as legally available for payment of the purchase price of the involved property, in view of the legislative history, including the statements of the GSA representative, Mr. Knott, before the House Subcommittee on Appropriations, the question arises whether, in using the involved appropriation for payment of the purchase price of the building, there is a keeping of faith with the Congress which apparently had been led to believe that the use of the appropriation would be confined to necessary expenses incidental to the acquisition of real estate.

Based upon the foregoing, it would not be proper, on the present record at least, to impute to the Congress an intent that the appropriation properly could be used for the payment of the purchase price of real estate. Accordingly, there would appear to be a reasonable basis for including this matter in a draft of report to be submitted to the Congress. After obtaining GSA's comments on the draft report, the draft report and comments should be presented to the General Counsel for consideration.

FRANK H. WEITZEL

Comptroller General  
*Assistant* of the United States

Attachments

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D. C.

... to ... and ...

... of ...

ROBERT H. SMITH

LEASES

- Options to purchase
- Authority for purchase

REAL PROPERTY  
Acquisition  
Authority