

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON 25, D. C.

AUG 4 1959

CIVIL ACCOUNTING AND
AUDITING DIVISION

The Comptroller General

During the course of a review of licensing and leasing of land in the 12th Coast Guard District, San Francisco, California, our San Francisco Regional Office examined a transaction in which land in the vicinity of the Point Pinos Light Station in California was licensed by the Coast Guard to the City of Pacific Grove, California, for a golf course in consideration of \$1 per annum, a \$16,550 housing unit, and other property improvements. Our Regional Office believes that the transaction is a violation of 40 U.S.C. 303 (b) which states that:

"Except as otherwise specifically provided by law, the leasing of buildings and properties of the United States shall be for a money consideration only, and there shall not be included in the lease any provision for the alteration, repair, or improvement of such buildings or properties as a part of the consideration for the rental to be paid for the use and occupation of the same. The moneys derived from such rentals shall be deposited and covered into the Treasury as miscellaneous receipts."

Officials in the 12th Coast Guard District Office cite 14 U.S.C. 93(n) and provisions of the U. S. Coast Guard Regulations, Chapter 15, Part 15-2-23, as authority for the transaction. Title 14 U.S.C. 93(n) provides that:

"For the purpose of executing the duties and functions of the Coast Guard the Commandant may:

(n) rent or lease, under such terms and conditions as are deemed advisable, for a period not exceeding five years, such real property under the control of the Coast Guard as may not be required for immediate use by the Coast Guard, the monies received from any such rental or lease, less amount of expenses incurred (exclusive of governmental personal services), to be covered into the Treasury;"

The U. S. Coast Guard Regulations, Chapter 15, Part 15-2-23, state:

"C.Revocable licenses will not be approved by the Commandant unless the contemplated use is a reasonable one and some advantage therefrom, financial or otherwise, accrues to the Government."

The San Francisco Regional Office is of the opinion that the authorizations cited by the Coast Guard District officials are not a defense against the prohibitive provisions of 40 U.S.C. 303 (b). The Regional Office is also of the opinion that the consideration for the license should have been an annual money consideration commensurate with the value of the land and returnable to the Treasury as miscellaneous receipts. In addition to the question of legal authority, we believe that the transaction improperly supplemented the Coast Guard Operating Expenses appropriation to the extent of the cost of the housing unit and the other property improvements which the City of Pacific Grove agreed to make.

In view of the conflicting opinions concerning the legality of the transaction, we submit the following questions in advance of the proposed audit report which the San Francisco Regional Office is currently preparing.

1. Is the Coast Guard license transaction proper in view of the provisions of 40 U.S.C. 303 (b)?
2. Do the provisions of 14 U.S.C. 93(n) serve to set aside the provisions of 40 U.S.C. 303 (b)?
3. If question 1 is answered in the negative, what courses of action are available to us in addition to including the matter in an audit report?
4. Can the Coast Guard be required to deposit as miscellaneous receipts of the Treasury an amount from its current Operating Expenses appropriation equal to the costs of the housing unit and other property improvements?

(Signed) S. B. Savage, Jr.

S. B. Savage, Jr.
Deputy Director, Civil Accounting
and Auditing Division

Enclosures:

- Letter from the San Francisco Regional Manager dated July 24, 1959,
with attachments
- Copy of the pertinent section of the U. S. Coast Guard Regulations
- Copy of B-77467-O.M., dated September 27, 1948

B-140397-O.M.

RMF

August 20, 1959

Director, Civil Accounting and Auditing Division

Returned. Section 321 of the Economy Act of June 30, 1932, 47 Stat. 412, 40 U.S.C. 303(b) prohibits, "except as otherwise specifically provided by law," the leasing of buildings and properties of the United States for other than a money consideration and the inclusion in such

leases of any provision for the alteration, repair, or improvement of the buildings or properties as a part of the rental consideration.

Section 93(n) of the act of August 4, 1949, 63 Stat. 504, 14 U.S.C. 93(n) cited as authority for the leasing transaction provides that the Commandant of the Coast Guard may:

"rent or lease, under such terms and conditions as are deemed advisable, for a period not exceeding five years, such real property under the control of the Coast Guard as may not be required for immediate use of the Coast Guard, the monies received from any such rental or lease, less amount of expenses incurred (exclusive of governmental personal services), to be covered into the Treasury;"

The general terms of section 93(n) do not specifically authorize the Commandant to lease property for other than a money consideration. As stated in Kepner v. United States, 195 U. S. 100, 125, "It is a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling." See also, B-117919, February 5, 1954, and court cases therein cited. In a number of instances the Congress has used specific language to avoid the operation of the 1932 prohibition; for example, in section 12 of the act of September 1, 1937, 50 Stat. 894, authorizing leases of low rent housing projects of the United States Housing Authority; section 1, act of July 2, 1940, 54 Stat. 712, authorizing leases of defense plants; section 1, act of August 5, 1947, 61 Stat. 774, dealing with leases of property of the Army and Navy Departments. The act of July 2, 1940, is especially pertinent since it contains broad general language almost identical with that used in 14 U.S.C. 93(n) namely, "under such terms and conditions as he may deem advisable," but this statute also contains the specific provision "and without regard to the provisions of section 321 of the act of June 30, 1932, 47 Stat. 412." In view of the foregoing it must be concluded that the authority conferred upon the Commandant by 14 U.S.C. 93(n) is limited by the specific provisions of section 321 of the act of June 30, 1932, and this conclusion is strengthened by the express provision for deposit of the monies received.

Even if the 1949 act could be construed to avoid the 1932 statute, the construction by the licensee of the improvements pursuant to the provisions of the so-called license of February 19, 1958, when considered in connection with the nominal rental of \$1 per annum for the 54.6 acre tract and in the light of the letter of March 12, 1958, appears--at least technically--to be in contravention of section 3733 Revised Statutes

B-1140397-O.M.

(41 U.S.C. 12), prohibiting the execution of contracts for "the erection, repair or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose." See also in this connection B-114807-O.M., September 4, 1958.

Accordingly, your first and second questions are answered in the negative. As to questions (3) and (4) the construction of the housing unit and the erection of the fence and other improvements would not appear to have resulted in an augmentation of the Coast Guard appropriation, unless there was an appropriation available which could have been used for such construction. In any event, since a transfer of funds equivalent to the cost of the new improvements would result only in reducing the unobligated balance subject to possible future restoration no effective action could be taken in the matter, other than including the transaction in an audit report. B-134188-O.M., April 3, 1958.

Joseph Campbell

Comptroller General
of the United States

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Attachments