

UNITED STATES GENERAL ACCOUNTING OFFICE
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CIVIL ACCOUNTING AND
AUDITING DIVISION

The Comptroller General

In our audit of activities of the Agricultural Research Service (ARS), Department of Agriculture, question has arisen as to whether greenhouses requiring the use of structural steel, reinforced concrete, and the inclusion of plumbing and heating systems, may be erected without regard to the limitations imposed by the Congress on the construction of buildings in the pertinent annual appropriation acts. The Department of Agriculture and Farm Credit Administration Appropriation Act, 1959, authorized ARS to construct or improve five buildings at a cost in excess of \$10,000 but not in excess of \$20,000 each. Our review disclosed that construction contracts were awarded during fiscal year 1959 for the construction of greenhouses which appear to be of a permanent character but which were not considered to be subject to the appropriation limitation.

During fiscal year 1959, ARS constructed a sugarcane seedling greenhouse at Houma, Louisiana, at a cost of \$17,620. Plans and specifications provided for the use of structural steel, reinforced concrete, aluminum and glass, and the inclusion of a plumbing and heating system. A greenhouse of similar construction costing \$12,555 was erected at Shafter, California. The type of construction and nature of materials used would indicate that these facilities are not of a temporary character nor erected for temporary purposes.

In a letter to the Administrator, ARS, dated November 17, 1959 (exhibit A), we requested the agency's views as to whether these structures may be erected without regard to the limitations imposed by the Congress on the construction of buildings. In his reply dated December 18, 1959 (exhibit B), the Administrator has taken the position that:

1. Exemption of greenhouses from construction limitations has not been considered necessary because of various rulings of the Comptroller of the Treasury and the Comptroller General that greenhouses were not public buildings and legislative proceedings have supported this interpretation;

2. A greenhouse is a specialized facility and is not a building in the usual sense of providing suitable space for offices, laboratories or multiple-purpose use, and;
3. If the increased life expectancy of a greenhouse is sufficient to take it out of the "temporary" structure category heretofore recognized by the Comptroller General, it could be considered a "public improvement" and, as such, can be constructed without dollar limitation.

Our comments on each of the above items are as follows.

Item 1. The Administrator refers to rulings by the Comptroller of the Treasury on April 16, 1907, and January 19, 1916, and by the Comptroller General on June 24, 1926 (exhibits C, D, and E). These same rulings were referred to in the statement submitted to the House Appropriations Committee during hearings on the 1954 Budget Estimates (Part 2, page 761). No representation was made to the Congress by the agency that greenhouses were other than temporary structures. In addition, reference to the Comptroller General's decision may have inferred that he had rendered the same decision as previously rendered by the Comptroller of the Treasury, whereas the Comptroller General's decision actually denied the requested construction authority. In ZICD420, the Comptroller of the Treasury denied the Secretary of Agriculture's request for authority to construct a number of farm buildings on an experimental farm although these buildings were described as temporary. The administrator also refers us to 7 Comp. Gen. 629. From our review of this and other decisions on construction authority, it appears that a prime factor in each decision was the clearly temporary character and intended use of the building in question.

The Administrator points out that in the budget estimates for fiscal years 1959 and 1960, funds specifically shown for the construction of greenhouses at the National Arboretum were approved by the Congress. He concludes that because the applicable appropriation acts did not specifically exempt these greenhouses from construction limitations the Congress has approved the construction of all greenhouses without regard to limitations on construction of buildings. However, funds for the construction of the two greenhouses previously cited were not specifically itemized in the agency's budget estimates for fiscal year 1959.

In 2 Comp. Gen. 14 it was stated 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 section 3733 R.S. It appears to us that the nature and manner of construction and the agency's estimate of a useful life of 60 years for these structures is sufficient basis for removing these greenhouses from the "temporary" structure category.

Item 2. It does not appear that the particular use to be made of a structure has been a determining factor in past decisions on whether a structure was a public building. See 13 Comp. Dec. 355, 16 id. 685, 2 Comp. Gen. 14, and 30 id. 487. If it were decided that a structure erected for specialized use was not a building, the agency would not be prevented from constructing cattle barns, laboratories, experimental farm buildings, or other specialized facilities, without regard to construction limitations.

Item 3. To say that a structure is a public improvement rather than a public building does not seem to be sufficient, in itself, to avoid limitations imposed by the Congress on the construction of buildings. The phrase "public building or public improvement" appears to have been used inseparably in decisions rendered on the existence of construction authority. The Administrator states that 5 U.S.C. 565a and the appropriation language gives ARS authority to construct public improvements without dollar limitation. It is provided in 5 U.S.C. 565a that "no building or improvement shall be erected or altered under this authority unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein." The appropriation act for fiscal year 1959 provided funds to ARS for "the construction, alteration, and repair of buildings and improvements," and the only apparent limitation imposed was on the construction of buildings. In the absence of specific limitations in the appropriation act on the construction of improvements it would appear that the total amount of the appropriation is available for this purpose. However, it is not clear that this was the intention of the Congress. Decisions rendered in 10 Comp. Dec. 683 and 6 Comp. Gen. 60 would seem to indicate that improvements are subject to the same limitations imposed on the construction of buildings. If the designation of a permanent-type structure as a "public improvement" rather than a "public building" is sufficient to allow the construction of such structures without limitation, the agency could readily circumvent the limitations placed on the construction of buildings in the appropriation acts.

Your decision is requested as to the acceptability of the views of the Agricultural Research Service justifying the construction of permanent-type greenhouses without consideration of the monetary limitations imposed by the Congress on the construction of buildings. If the agency practice is considered unauthorized, we suggest that your decision be communicated to the Secretary of Agriculture to effect appropriate corrective action until specific exemption is made by the Congress or specific itemization of greenhouse construction plans is made in budget estimates submitted to the Congress.

John P. Abbadessa

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Deputy Director

February 17, 1960

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Director, Civil Accounting and Auditing Division

Returned. It is noted that since as early as the decision of April 16, 1907, by the Comptroller of the Treasury, greenhouses have been held to be without the prohibition contained in section 3733, Revised Statutes, 41 U.S.C. 12. Although authority to construct a greenhouse at Ball, Maryland was denied in A-14192, June 24, 1926, such denial was not based on section 3733 but rather was based on the fact that a previous appropriation act had provided for the erection of all necessary buildings and equipment. See 7 Comp. Gen. 629. In decision of August 28, 1914, 70 MS. Comp. Dec. 822, the construction of a greenhouse having side walls three feet high constructed of concrete was held not to be prohibited by section 3733.

While the greenhouses involved in those cases were considered to be temporary in nature it was held in A-80735-O.M., October 15, 1936, that "Greenhouses erected by the Department of Agriculture for experimental purposes are not to be considered public buildings or public improvements within the purview of section 3733, Revised Statutes." It is for noting that the two greenhouses involved in that decision cost a total of \$26,869 and the record indicates that the structures were of a permanent character. Also, it is noted that the maximum statutory cost of erecting any building at that time was \$1,500.

Consequently, there appears no reason to question the statement set forth at page 761 of the House Hearings on the Department of Agriculture Appropriations for 1954, where, when questioned as to the authority to construct greenhouses, it was explained that specific authority was not needed for such construction.

That explanation reads in part, as follows:

"Title 5 United States Code, section 565a (September 21, 1944, ch. 412, title VII, par. 703, 58 Stat. 742), provides, 'The Department of Agriculture is authorized to erect, alter, and repair such buildings and other public improvements as may be necessary to carry out its authorized work: Provided, That no building or improvement shall be erected or altered under this authority unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of the limitations prescribed therein.' The annual appropriation to the Office of Administrator, Agricultural Research Administration, provides, 'That the several appropriations of the Agricultural Research Administration shall be available for the construction, alteration, and repair of buildings and improvements: Provided, however, That unless otherwise provided, the cost of constructing any one building (excepting headhouses connecting greenhouses and experimental farm houses) shall not exceed \$5,000, the total amount for construction of buildings costing more than \$2,500 each shall be within the limits of the estimates submitted and approved therefor * * *.' (Emphasis supplied.)

"During the consideration of the 1938 Agricultural Appropriation Act, a change was authorized in the language of the 'Salaries and expenses' subappropriation of the Bureau of Plant Industry, to provide for increasing the limitation on the construction of a 'building' from \$1,500 to \$2,500, and at the same time there was added to such language after the word 'building': 'except headhouses connecting greenhouses'. This was in recognition of the fact that it was occasionally necessary to erect headhouses connecting to greenhouses so that such headhouses formed a connecting range with a cost considerably in excess of the building limitation. No question was raised relative to the necessity for including greenhouses as exemptions from the limitation, presumably on the basis of various decisions that greenhouses were not subject to the limitation."

At that time the Department was requesting funds for construction of two greenhouses at Orlando, Florida. We have been informed that the cost of

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one of those greenhouses was approximately \$10,700 and it is for noting that the statutory maximum cost for buildings and improvements at that time was \$5,000.

While, as stated above, our earlier decisions concerned greenhouses which were stated to be temporary in nature, the greenhouses constructed in recent years such as that involved in the hearings on the 1954 Agriculture appropriation bill, presumably, are little, if any different than the greenhouses now questioned in your memorandum. Furthermore, the Congress in making specific exceptions for the construction of "headhouses connecting greenhouses" without specifically exempting greenhouses must be presumed as having recognized the fact that the construction of such headhouses was made necessary primarily because of the construction of new greenhouses. Those greenhouses have been described in recent hearings as being of substantial size and the amounts involved indicate the cost thereof to be in excess of \$10,000, the maximum authorized for buildings in the current departmental appropriation act. See, for example part 2, page 681, of the House Hearings on the Department of Agriculture Appropriations for 1960.

Accordingly, this matter need not be further questioned at this time.

FRANK H. WEITZEL

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of the United States