DCCUMENT RESUME

02101 - [A1322275]

Payment of Hotel Accomodations in District of Columbia. B-159633. May 4, 1977. 5 pp.

Decision by Paul G. Dembling (for Elmer B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: General Government Matters.
Budget Function: General Government: Other General Government (806).
Organization Concerned: Equal Employment Opportunity Commission.
Authority: (19 Stat. 370; 40 U.S.C. 34); 46 Comp. Gen. 379. Federal Property and Administrative Services Act of 1949 (63 Stat. 377). District of Columbia Rent Control Act of 1973; 45 D.C. Code 1621. 5 U.S.C. 5702(a). 49 Comp. Gen. 305. 49 Comp. Gen. 308. 50 Comp. Gen. 610-612. 54 Comp. Gen. 1055 (1975).

The Wellington Hotel requested payment for accommodations furnished to the Equal Employment Opportunity Commission for a 1973 employee training conference. Denial of reimbursement on the basis of a general prohibition against procurement of space in the District of Columbia was affirmed, but partial payment was allowed, based on reduced per diem paid to guest employees. (RRS)

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DECISION THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

MAY 4 1977

FILE: B-159633 DATE:

MATTER OF: Payment of hotel accommodations in District of Columbia

DIGEST: Decision of September 10, 1974, B-159633, which denied payment to Wellington Hotel for lodging accommodations furnished to Federal agency in connection with training conference on basis of general prohibition in 40 U.S.C. § 34 against procurement of space in District of Columbia, is reaffirmed insofar as it holds that agency's procurement of hotel accommodations was subject to statutory prohibition. However, decision is also modified to allow partial payment to hotel based on difference between reduced per diem paid to guest employees and agency's regular per diem allowance at the time.

This decision responds to a claim by the Wellington Apartment Hotel, Washington, D.C., for payment of $2,784, representing accommodations furnished by the Hotel to the Equal Employment Opportunity Commission (EEOC) in connection with a 1973 employee training conference held by the Commission at the Hotel. In our decision B-159633, September 10, 1974, to an EEOC authorized certifying officer, we held that payment for these accommodations could not be made. Accordingly, the instant claim constitutes, in effect, a request for reconsideration of our prior decision.

Our prior decision set forth the relevant facts and legal considerations with respect to this matter as follows:

> "It is explained that the accommodations at the Wellington Hotel were provided to the employees in lieu of reimbursement of such expenses and the employees were authorized per diem at the reduced rate of $12 per day. In addition, conference space was provided by the hotel at no expense to the Commission.
>
> "Inasmuch as the Wellington Hotel is located in the District of Columbia, the certifying officer has doubt as to the propriety of payment because of the prohibition contained in the act of March 3, 1877, 19 Stat. 370, 40 U.S.C. 34 and Comptroller General decision 46 Comp. Gen. 379 (1966). The prohibition in 40 U.S.C. 34 reads as follows:

> 'No contract shall be made for the rent of any building, or part of any building, to be used for the purposes of the Government in the District of Columbia, until an appropriation therefor shall have been made in terms by Congress, and this clause shall be regarded as notice to all contractors or lessors of any such building or any part of building.'

"Based on this statute our Office held in 44 Comp. Gen. 379 that in the absence of express authority for the rental of hotel accommodations in Washington, D.C., for a conference, payment for the use of such space from appropriated funds is prohibited where General Services Administration (GSA) does not arrange for the space. This is also in accord with our holding that the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, authorizes GSA to enter into leasing agreements for the benefit and accommodation of Federal agencies and that if the Administrator of GSA authorizes the formation of a rental agreement, the statutory requirement of 40 U.S.C. 34 is satisfied. See B-159633, May 20, 1974."

The decision went on to conclude that since EEOC appropriations were not available for rental of buildings in the District of Columbia and the Commission had contracted with the Washington directly, rather than through or by delegation from GSA, payment for the accommodations was precluded by 40 U.S.C. § 34.

The instant claim consists of a letter to the EEOC from an attorney representing the Hotel setting forth several arguments for reconsideration of our 1974 decision, which may be summarized as follows:

--The accommodations requested by EEOC were, in fact, furnished and there is no contention that the accommodations were unsatisfactory or the price unreasonable.

--While 40 U.S.C. § 34 states that it constitutes "notice to all contractors and lessors," the statute is "a somewhat obscure and esoteric enactment." Neither the Washington nor the EEOC were aware of the statute. However, the Washington and another hotel have on other occasions received payment for accommodations furnished to Federal agencies.

--40 U.S.C. § 34 is worded only in terms of "rent" and applies to "leases and contracts." Application of the statute to hotel accommodations is contrary to the District of Columbia Rent Control Act of 1973, 45 D.C. Code § 1621 (Supp. II, 1975), which expressly excludes hotel space from its coverage. Thus there is nothing in 40 U.S.C. § 34 to alert a reasonable hotel owner to the fact that the statute applies to hotel accommodations.

--The EEOC attorney who arranged for the instant hotel accommodations represented that he had full authority to do so.

The Hotel attorney's letter was forwarded to our Claims Division by an EEOC contracting officer, who states that:

> "The Equal Employment Opportunity Commission supports the claim of the Washington Hotel in this matter. The arrangements with the hotel was made in good faith, and the services had been rendered. To deny payment to the hotel would be to provide the government with unjust enrichment."

Neither the Hotel attorney's letter nor the forwarding letter from the EEOC contracting officer presents any new facts with respect to this matter.

We find no basis in the submissions to justify reversal of the essential holding in our 1974 decision that the prohibition of 40 U.S.C. § 34 applies to the instant transaction. Our Office has traditionally viewed the procurement of hotel space by a Federal agency as falling within the statute. See 49 Comp. Gen. 305, 308 (1969); 50 Comp. Gen. 610, 612 (1971); cf., B-173303, September 15, 1971;

46 Comp. Gen. 379 (1966).*/ In this regard, we must reject the argument that application of 40 U.S.C. § 34 to hotel accommodations is inconsistent with the District of Columbia Rent Control Act, [illegible]. These two statutes are designed for entirely different purposes, and the latter statute has no bearing on the interpretation of 40 U.S.C. § 34.

The other arguments advanced on behalf of the Hotel are equally unavailing. By its terms, 40 U.S.C. § 34 constitutes legal notice of the prohibition contained therein. Thus the good faith provision of accommodations in ignorance of the statute cannot avoid the prohibition; nor is it relevant that the accommodations were satisfactory and the price reasonable. Finally, we have no information concerning instances in which the Washington or other hotels in the District of Columbia have been paid for accommodations furnished directly to Federal agencies. In any event, a history of prior violations of 40 U.S.C. § 34 could hardly justify another violation.

For the reasons stated above, we adhere to our original holding that HEOC's procurement of accommodations at the Washington Hotel violated 40 U.S.C. § 34. However, we do find a basis for modifying our 1974 decision insofar as it denied any recovery to the Hotel. Had the HEOC employees rather than the agency arranged for the instant accommodations on an individual basis, HEOC could have, in effect, paid for these accommodations to the extent of the authorized per diem

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*/ Our recent decision at 54 Comp. Gen. 1055 (1975) held, on the basis of certain GSA regulations, that 40 U.S.C. § 34 would no longer be considered applicable to the procurement of short-term conference facilities. This decision, which overruled several prior decisions of our Office, permitted Federal agencies to procure such facilities in the District of Columbia, upon compliance with the requirements of the GSA regulation. 54 Comp. Gen. at 1057-58. However, the GSA regulations relied upon by us in our 1975 decision, and hence the decision itself, deal only with short-term conference facilities. Accordingly, this decision has no bearing on the Washington Hotel matter which, involves a claim for payment of lodging accommodations rather than conference space. As stated previously, no separate charge was made in this case for the conference facilities provided. We note that one of the decisions said to be overruled in our 1975 decision--49 Comp. Gen. 305 (1969)--also involved basically the procurement of lodging accommodations. To this extent, the 1969 decision is reinstated.

allowances for its employees. Such a per diem reimbursement arrangement would not, of course, violate the statute. Nevertheless, under our 1974 decision NSSC was relieved of any liability merely because it had chosen to preserve the accommodations directly and to make corresponding reductions in the per diem rates allowed its employees.

In these circumstances we believe it is appropriate and equitable to allow NSSC to pay the Wellington Hotel the difference between the reduced per diem which its employees received and the full per diem rate authorized at the time. This amount represents, in effect, costs which the agency would have properly incurred had it not procured the accommodations directly. The record before us indicates that the employees were paid per diem at the reduced rate of $12 a day. However, it is not clear precisely how many employees stayed at the Hotel. Nor do we have any information concerning the regular per diem rates authorized by NSSC at the time of this transaction, although the maximum statutory rate then applicable was $25 per day. See 5 U.S.C. § 5702(a)(1970). Therefore, NSSC should furnish to our Claims Division the information necessary to calculate the Wellington's entitlement on the basis of this decision and a settlement will issue accordingly.

Paul G. Dembling

for the Comptroller General
of the United States