



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-165868

JUN 30 1971

Dear Mr. Murphy:

Further reference is made to your request of December 1, 1970, for additional information concerning the possible exchange of Miller Field, Staten Island, New York, for the Willard Hotel, Washington, D. C., by the General Services Administration, which was the subject of our letters to you of July 21 and September 29, 1970.

You request our report on all aspects of plans for disposal of Miller Field. In particular, you question GSA's reliance on "unusual circumstances" as justifying negotiation of the exchange and bypassing the screening of other Federal agencies for possible interest in use of the property. In this connection, you state your understanding that while GSA is considering the request of the Department of Health, Education and Welfare for 25 acres to turn over to the City of New York for a high school, it is not granting the same consideration to the Post Office Department's request for 10 acres for a new Post Office. You also state your understanding that other Federal agencies have expressed interest in the property. In this regard, you ask to be advised whether there are priorities among the Federal agencies established by law and what discretion GSA has in the matter. Finally, you want to know if there is any law under which the local community would be entitled to express its needs and desires through hearings and consultations or to stop the proposed exchange.

We previously advised you that under section 203(a) of the Federal Property and Administrative Services Act of 1949 (the Act), as amended, 40 U.S.C. 484(a), the Administrator of GSA is granted supervision and direction over disposition of surplus property. Section 203(e) of the Act, 40 U.S.C. 484(e), provides authority to dispose of surplus property by sale, exchange, lease, permit or transfer, for cash, credit, or other property, and upon such terms and conditions as the Administrator deems proper. Disposals and contracts for disposal of surplus real property may be negotiated pursuant to section 203(e)(3)(G) of the Act, 40 U.S.C. 484(e)(3)(g), if the character or condition of the property or unusual circumstances make it impractical to advertise publicly for ~~competitive bids and the fair market value of the property and other~~

satisfactory terms can be obtained by negotiation. In this regard we advised you of our opinion that since the proposed exchange involved the acquisition of specific property to satisfy an agency need, the transaction did not lend itself to the kind of objective and precise evaluation contemplated by formal advertising and, therefore, constituted "unusual circumstances" justifying negotiation. Further, we advised you of our opinion that the GSA regulations and the Office of Management and Budget (formerly Bureau of the Budget) guidelines are adequate to assure obtaining the fair market value of the property being exchanged.

GSA has on several occasions advised our Office that its final plan for disposal of Miller Field will include consideration of local uses such as education and recreation, as well as a hospital and streets and boulevards. Furthermore, we have been advised that on numerous occasions since June 16, 1970, GSA has consulted with appropriate officials of the City of New York to insure that the disposal plan will be consistent with local needs and desires, as contemplated under the Federal Urban Land-Use Act, 40 U.S.C. 531, et seq. Although we are not aware of any law which requires GSA to conduct hearings prior to disposal, section 803 of the Act, 40 U.S.C. 532, provides that the Administrator shall prior to disposal give reasonable notice to the head of the governing body of the local government unit having jurisdiction over zoning and land-use regulation in order to afford the Government the opportunity of zoning for the use of the land in accordance with local comprehensive planning. In addition, an explanatory statement of the circumstances of any disposal plan will be filed with the appropriate Committees of the Congress prior to consummation of an exchange as required by section 203(e)(6) of the Act, 40 U.S.C. 484(e)(6).

The authority of the Administrator of General Services to sell or exchange Federal property to private parties is applicable only to surplus property. See section 203(a) and (c) of the Act, 40 U.S.C. 484(a) and (c). The term "surplus property" is defined in section 3(g) of the Act, 40 U.S.C. 472(g), as follows:

"The term 'surplus property' means any excess property not required for the needs and the discharge of the responsibilities of all Federal agencies, as determined by the Administrator."

The Department of the Army has properly declared Miller Field to be "excess property" as that term is defined in section 3(e) of the Act,

40 U.S.C. 472(e). Miller Field does not become surplus property available for sale or exchange to private parties, however, until the Administrator determines that such property is "not required for the needs and the discharge of the responsibilities of all Federal agencies." In a letter of February 5, 1971, from the Acting Administrator to us it is stated:

"We have not bypassed screening of Miller Field with other Federal agencies. Rather, we have determined that the possible exchange of a portion of Miller Field for the Willard Hotel, to satisfy the needs of the Department of the Interior, is the paramount use for the Miller Field property. This use has been given precedence over any other Federal utilization of the property which could be developed.

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"If the exchange does not materialize, we would then ascertain if there are other Federal requirements for Miller Field by the screening of Federal agencies. We are aware of possible interest of the Post Office Department in a portion of Miller Field for a new consolidated postal facility and the Department of Agriculture as a site for an animal quarantine station. However, since a substantial portion of the property will be utilized to satisfy a Federal program and other portions for incidental development uses, if our exchange proposal is implemented, we consider it to be within our authority and discretion to devise a comprehensive plan of disposal that involves Federal and non-Federal uses."

The legislative history of the Federal Property and Administrative Services Act of 1949 indicates that incident to making his determination that property is surplus the Administrator of General Services is to survey the needs of Federal agencies. The term "survey" is a flexible one. In our opinion the Administrator is not obligated to "survey" the property needs of Federal agencies in any given case by following specifically detailed procedures. Rather, he may execute his survey on the basis of a broad analysis from an overall viewpoint making use of his general and specific knowledge of the situation in his role as the manager of the Government's property.

Here the Administrator had information as to the stated needs of the Post Office Department and the Department of Agriculture for portions of Miller Field. He is not bound to satisfy those needs if he determines that to do so would constitute an injudicious use of the property involved. At the same time he had a specific request from the Department of the Interior that he obtain for its use the Willard Hotel property. With those interests and needs in mind, as well as certain local government needs relating to the Miller Field property, the Administrator made a determination as to what he considered a paramount use of the Miller Field property. Inherent in his determination it would seem was his finding that the Miller Field property was "surplus"--that it could not be utilized prudently to satisfy the needs of any Federal agency under the circumstances.

In view of the discretionary authority in the Administrator to declare property as "surplus," the legality of his determination in that regard could not be questioned by our Office unless such determination was clearly arbitrary or capricious. Even then the only action we could take would be to report the matter to the Congress, or perhaps to the Attorney General for any possible legal proceeding to recover the property.

On the record before us, we find no reasonable basis for holding that the Administrator's actions concerning the Miller Field property were arbitrary or capricious.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General  
of the United States

The Honorable John M. Murphy  
House of Representatives