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

B-173882 JUN 8 1972

Dear Mr. Broyhill:

Your letter of May 5, 1972, transmits, and requests a report on, a letter from one of your constituents, Mr. Winston J. Morgan, of Vienna, Virginia.

Mr. Morgan enclosed a copy of an article which appeared in the April 24, 1972, edition of the Washington Post, which article dealt with a recent decision of our Office. Mr. Morgan questions the propriety of our ruling which, he feels, requires the Government to pay relocation expenses involved in a forced displacement of a number of mobile home owners from rented property in order to make room for a building which will ultimately be rented by the Government. Your constituent indicates that he believes the owner and builder of the land and building should have the responsibility to pay for any relocation expenses incurred by the mobile home owners.

The opinion referred to in the Washington Post article is B-173882, dated April 21, 1972, 51 Comp. Gen. ___, two copies of which are enclosed for your information. The issue raised in that decision was whether the tenants of the Temple Trailer Village in Alexandria, Virginia, are entitled to relocation expenses and assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Relocation Act), Public Law 91-646, 42 U.S.C. 4601. The purpose of title II of the Relocation Act is "to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as the result of programs designed for the benefit of the public as a whole." As noted in our decision, the legislative history of the Relocation Act makes it clear that it should make no difference to a person required to move because of the development of a building to be used by the Government whether or not the Government acquires the site or holds fee title to the property from which a person is displaced. Rather, since the result is the same, any person who is required to move to make way for a facility which will serve the public and which is regarded by the public as a public building is to be considered a displaced person entitled to the benefits of the legislation. Thus, as House Report 91-1656 makes clear, persons displaced by Government lease-construction projects are entitled to the benefits of the Relocation Act.

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The General Services Administration (GSA) is responsible for acquiring buildings for the use of Federal departments or agencies. These buildings are either federally owned or leased. By law GSA is authorized to enter into leases, not to exceed 20 years, for buildings which are in existence or which are to be erected by the lessors for Government use. However, since 1963, the annual GSA appropriation acts have contained restrictions requiring GSA to obtain the approval of the Public Works Committees of the Congress for the lease of buildings for use by Federal agencies, "to be erected by the lessor for such agencies at an estimated cost of construction in excess of $200,000." GSA, through its regulations, considers that these restrictive provisions in its appropriation acts are not applicable to the leasing of a building that is classified as being under construction--whether or not actual physical construction had begun--at the time of the issuance of solicitation for offers of space if the bidder for the lease meets the following conditions: (1) it has title to, or control of, a building site; (2) it has a complete design of the building; (3) it has construction financing fully committed; (4) it has a building permit for the entire building; and (5) it has a firm construction contract or has started construction. GSA feels that for the purposes of its statutory authority, a building need not be available immediately for occupancy, but rather that the building will qualify as an existing building if the space therein will be available for occupancy when it is needed by the Government.

The General Accounting Office recently examined into GSA's administration of the aforementioned criteria implementing the requirements in the annual appropriation acts that prospectuses for leasing of buildings to be erected for lease to the Government be submitted to, and approved by, the Public Works Committees of the Congress. The results of our review were submitted to the Congress in a report dated April 19, 1972, B-118623, entitled "Administration of Criteria for the Leasing of Buildings to be Constructed: General Services Administration." In that report, we concluded that considering all of the facts and circumstances surrounding the implementation of these criteria--including the advance discussions and negotiations with private developers, the absence of developers undertaking construction as private venturers when GSA first made known its space requirements, and GSA's delay in issuing lease solicitations until it was satisfied that the developers with whom discussions had been held had met the five criteria--the practices employed by GSA did not constitute an objective administrative application of the criteria implementing the appropriation act restrictions. We determined that these five-point criteria transactions--including the one involving the Temple Trailer Village, the facts which are discussed in the enclosed decision of April 21, 1972, B-173882, and in the Washington Post article

enclosed by your constituent--amount, in effect, to Government lease-construction projects for the purposes of the Relocation Act notwithstanding that the five points were not complied with. Accordingly, we concluded that since the residents were required to move to make way for a building to be erected on the trailer park property for the primary use of the Federal Government, the benefits of the Relocation Act, including payment of relocation expenses thereunder, are available to those occupants of Temple Trailer Village who otherwise qualify for such benefits.

Your constituent further states: "The ultimate winner in this issue is the Hoffman Corporation [one of the joint venturers constructing this building] which, constructing the building for government occupancy, financed by a government loan, manages to have the government fund their responsibilities." We might first point out that the construction of the subject building was not financed by Government loan, but rather was financed through a loan from the United Virginia Bank. (See page 9 of our decision in this matter) Second, we should point out that our decision does not require the Government to assume the responsibilities for relocation payments which otherwise would belong to the builder of the building, since, absent a special provision in the lease to the contrary, a landlord who rightfully terminates a lease is not required to pay relocation expenses to his tenant. It is our understanding that the tenants of the Temple Trailer Village were on month-to-month leases which, upon the proper giving of notice, the landlord could terminate without liability. Such notice was given in this case.

Persons on month-to-month leases and persons who are tenants at will or at suffrance are not generally eligible for compensation for moving expenses under normal concepts of eminent domain. The Congress recognized this and specifically covered such persons in the Relocation Act. Thus, with regard to section 204 of the Relocation Act dealing with replacement housing for tenants and certain others, it is stated in House Report No. 91-1656, dated December 2, 1970 (page 12), that:

> "The lack of decent, safe, and sanitary rental housing for displaced lower income families and individuals, at rentals they can afford, presents the most difficult of all relocation problems. These persons generally are tenants at will or suffrance who receive no compensation whatever upon displacement under eminent domain concepts of just compensation.
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> "This section provides payments for tenants and for home owners not eligible for assistance under section 203, who are displaced from dwellings for Federal projects * * *."

Thus, in our decision of B-173882, which was questioned by your constituent, this Office was simply carrying out the policy declared by the Congress that all persons who are required to move to make way for the construction of a Federal (or federally assisted) project should be and are entitled to relocation assistance. If such persons were not eligible for assistance under the Relocation Act, they would not receive any compensation for expenses incurred by them for moving to make way for the construction of the building.

We trust the above will be of assistance to you in responding to your constituent. As requested, we are returning herewith the correspondence enclosed with your letter.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosures

The Honorable Joel T. Broyhill
House of Representatives