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DECISION

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

FILE: B-177610 DATE: December 15, 1977

MATTER OF: Liability of General Services Administration for Damage to Agency Property

DIGEST: General Services Administration (GSA) is not required to reimburse tenant agencies for damage to agency property caused by building failures or to lower Standard Level User Charges by amount equal to liability insurance premium paid by commercial landlords. The general rule is that one Federal agency is not liable to another for property damages. There is no basis in Federal Property and Administrative Services Act or its legislative history to create an exception to this general rule where GSA serves as landlord.

This decision is in response to a request by the Deputy Assistant Secretary of Defense (Administration) for our views concerning the liability of the General Services Administration (GSA) for damage to the property of Federal agencies which rent space in buildings owned or leased by GSA.

Specifically, the Department of Defense (DOD) wants to know whether GSA should reimburse agencies "for damage to or losses of furniture, furnishings, or equipment which result from building failures" where a commercial landlord would be liable "either by recovery from a lessor, where one is involved, or through a set-aside for that purpose in the Federal Buildings Fund." As an alternative to reimbursement for damages, DOD suggests that GSA "reduce its Standard Level User Charges to the Agencies by an amount equivalent to the premiums paid by the commercial landlords for liability coverage so that the agencies could then underwrite their position as self-insurers."

The landlord-tenant relationship between GSA and the various agencies is governed by the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 471 et seq. (1970 and Supp. V, 1975). Section 490(j) of title 40 provides in pertinent part:

"* * * The Administrator is authorized and directed to charge anyone furnished services,

> space, quarters, maintenance, repair, or other facilities (hereinafter referred to as space and services), at rates to be determined by the Administrator from time to time and provided for in regulations issued by him. Such rates and charges shall approximate commercial charges for comparable space and services * * *."

Since the damages to agency property referred to by DOD are those for which a commercial landlord would be liable, the question is whether GSA's status as a Federal agency would affect its liability to another Federal agency for damages. We think that it would.

The general rule governing claims for damages between Federal agencies was stated in B-137208, December 16, 1958:

> "It has been a rule of long standing that funds of Government Departments and agencies subject to the control of the accounting officers of the Government are not available for the payment of claims for damages to property of other Government Departments and agencies. See 25 Comp. Gen. 49, 54 and cases cited therein. Such holdings have been based upon the premise that ownership of property is in the Government and not in a particular Department * * *."

Given the general rule which prohibits claims for damages between Federal agencies, recovery of damages from GSA would depend upon whether, in providing that rental rates "shall approximate commercial charges for comparable space and services," rather than providing that such rates be based on cost alone, Congress intended to invest tenant agencies with all the rights that the agencies would have against a commercial landlord. On this issue, both the legislative history of section 490(j) and our comments on the draft bill are instructive.

The legislative history makes it clear that the purpose for providing that rental rates approximate commercial charges was two-fold. The first was to encourage the agencies to consolidate their space requirements by making them pay higher rental charges and the second was to generate extra funds to be used by GSA to finance construction of new buildings. See 118 Cong. Rec. 13500 (1972) (remarks of Rep. Gray). In B-95136, May 18, 1971, in comments on the draft bill, we said:

> "The method of basing rental rates on cost recovery was rejected by GSA because it would not produce sufficient income to finance construction and major repairs. * * * It is more economical for the Government to occupy space in its own buildings than to lease commercial space, and, as indicated above, there is currently a backlog of $900 million of authorized but unfunded construction projects which apparently is not being significantly reduced at the present level of construction appropriations. Therefore if the proposed procedure is adopted, there would seem to be some merit in basing the rental rate on commercial charges rather than at rates designed to recover only GSA's actual cost."

In view of the above, it seems clear that Congress intended by the reference to "commercial" charges only to create extra revenue, not to invest tenant agencies with all rights they would have against a "commercial" landlord.

For the same reasons, it is also clear that GSA is not required to lower its rental charges by an amount equal to that which a commercial landlord would pay for liability insurance since the rental charges are not based on cost. There are many expenditures that go into a commercial rental charge for space that are not applicable to GSA. Among these are taxes, depreciation, interest on a long-term debt, and profit, as well as liability insurance. Since it was the intent of Congress that the funds representing the difference between rates based on cost and commercial rates be used to finance new buildings, the rental charges should not be lowered.

Of course, if GSA does not own the building, but is renting it from a commercial landlord, it should attempt to recover for damages caused by building defects. This would not be in violation of the rule against claims for damages between Federal agencies.

Deputy Comptroller General
of the United States