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DECISION

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

FILE: B-198629 DATE: July 28, 1980

MATTER OF: [Payment For Improvements to Private Property ~~under section~~ Leased to Government] 322 of the Economy Act of 1932, as amended, 40 U.S.C. § 278a.

DIGEST:

1. While as a general policy rule, appropriated funds are not available for improvement of private property, Government is authorized by 40 U.S.C. § 278a to expend up to 25 percent of the first year rent for Parklawn facility for repairs, alterations or improvements to the facility, including installation of high-intensity lights on the north parking lot.

2. If installation of high-intensity lights at Parklawn facility could be shown to contribute to economy or efficiency of Government, the Administrator of General Services is authorized to waive 25 percent limitation on improvements to leased property altogether provided total cost (rentals, repairs, alterations, and improvements) to Government for expected life of the lease is less than cost of alternative space which needs no repairs, alterations or improvements. 40 U.S.C. § 490(a)(8).

3. Possible legal liability of United States to employees for injury caused by inadequate lighting on north parking lot of Parklawn facility is not alone a basis under 40 U.S.C. §§ 278a and 490(a)(8) for authorizing expenditure of appropriated funds for installation of high-intensity lights on property leased to the Government.

The Chief Security Officer, Public Health Service (PHS), Department of Health and Human Services (formerly Health, Education and Welfare) asks whether the Economy Act of 1932 as amended, 40 U.S.C. § 278a, prohibits the Government from paying for the installation of high-intensity lights on the Parklawn Office Building's north parking lot as a safety measure. He also asks whether the Government would be liable if someone were injured as a result of inadequate lighting in the parking lot.

The Parklawn facility is leased by the General Services Administration (GSA) to house various Federal agencies. As a result of three attempted assaults on women in the north parking lot, the National Rape Center recommended the installation of high-intensity lights.

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Thereafter, at the PHS's request, the Federal Protective Service surveyed the north parking lot. The Service found, among other things, that adequate lighting would reduce further incidents. However, GSA has refused to approve installation of high-intensity lighting, relying on decisions of this Office holding that appropriated funds may not be used for the permanent improvement of privately owned property in the absence of express statutory authority.

While as a general policy rule, appropriated funds are not available for the improvement of private property, this rule is not without its exceptions. One of these exceptions specifically applicable to leased property is set forth in section 322 of the Economy Act of 1932, as amended, 40 U.S.C. § 278a, which provides that:

> "* * * no appropriation shall be obligated or expended * * * for alteration, improvements, and repairs of the rented premises in excess of 25 per centum of the amount of the rent for the first year of the rental term, or for the rental term if less than one year * * *."

Additionally, the Administrator of General Services is authorized to exceed the 25 percent limitation for improvements to leased premises upon his determination that this is advantageous to the Government in terms of economy, efficiency, or national security, provided the total cost (rentals, repairs, alterations, and improvements) to the Government for the expected life of the lease is less than the cost of alternative space which needs no repairs, alterations or improvements. 40 U.S.C. § 490(a)(8).

Thus the Government is authorized to expend up to 25 percent of the first year rent for the Parklawn facility for repairs, alterations or improvements to the facility, including installation of high-intensity lights on the north parking lot. (We have no information on whether this 25 percent limitation has already been reached because of any other repairs or improvements the Government might have made to the Parklawn facility.) Furthermore, if the installation of these lights could be shown to contribute to economy or efficiency of the Government, the Administrator could waive the 25 percent limitation altogether, provided the other statutory requirements could be met.

Whether the Government would be legally liable to an employee for death or injuries suffered in the north parking lot as a result of inadequate lighting depends on a number of factors. Such a claim would be governed by the Federal Employees' Compensation Act (5 U.S.C. §§ 8101 et seq.) if the injury is considered to have been sustained while the employee was engaged in the performance of his duty, without regard to whether the Government was at fault. Any liability for loss or damage to property incident to the victim's service would be governed by the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. §§ 240-243), also without regard to whether the Government was negligent.

If the Federal Employees' Compensation Act does not apply, either because the injured employee is not deemed to have been engaged in the performance of his duty when injured or for other reasons, then the victim may be able to make a claim under the Federal Tort Claims Act (28 U.S.C. §§ 2671 et seq.). In that case, however, the Government must be shown to have been negligent. Similarly, a claim for property damage not cognizable under the Military Personnel and Civilian Employees' Claims Act might be the subject of a claim under the Federal Tort Claims Act. In this regard, an official of the GSA has informally advised us that under the agreement, the Government is not responsible for maintenance of the parking lot. If this is the case, it may affect the ability of the injured person to be compensated under the Federal Tort Claims Act since Government negligence is a necessary element.

In any event, a possible liability on the part of the United States is not alone a basis under the statutes involved for authorizing expenditure of funds for improvements to private property. The second question is answered accordingly.

However, before determining whether the cost of installing high-intensity lighting would exceed the limits of the 40 U.S.C. § 278a authority or whether such limit may be considered waivable under 40 U.S.C. § 490(a)(8), we suggest that PHS and GSA explore with local authorities the possibility that the owner of the Parklawn facility is not complying with applicable local regulations or ordinances concerning lighting on parking lots. If the owner is not, then GSA and the PHS should seek to enforce compliance thereby eliminating the need to spend appropriated funds for improvements to private property.

Milton J. Socolar

For the Comptroller General
of the United States