28549

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

FILE: B-211044 **DATE:** June 15, 1984

MATTER OF: Department of the Army--Crosswalk Construction

DIGEST: Appropriated funds may not be used to construct a crosswalk across a public highway since constructing an improvement on non-Federal property is prohibited in the absence of specific authority.

This is in response to a request from Robert A. Kaspari, Finance and Accounting Officer, United States Army Tank-Automotive Command (TACOM), Warren, Michigan, for an advance decision on whether appropriated funds may be used to construct and maintain a crosswalk across a public highway separating two Government facilities. For the reasons given below, we conclude that in the absence of specific authority, funds are not available for the proposed crosswalk.

TACOM has recently expanded its operations to a leased building directly across a public highway from its Government-owned facility. Apparently for the convenience of TACOM members and employees, TACOM proposes to pay for the construction of a crosswalk including a paved walk that would traverse approximately 15 yards of a grass median strip dividing the highway.

According to Mr. Kaspari, the crosswalk would be used primarily, although not exclusively, by Government personnel. The county where the TACOM buildings are located is responsible for the maintenance of the roadway and the median strip. The county has no objections to the proposed crosswalk and has expressed a willingness to grant the Federal Government a perpetual easement to construct a walkway across the grassy median since the county has no construction funds available. It appears from the information provided our Office that no attempts have been made to contact State and city officials to determine if any other funds are available. Instead, Mr. Kaspari suggests that the appropriation for the construction might be authorized by 41 C.F.R. § 101-20.b which implements 40 U.S.C. § 490(i) (1976) or on the basis of GAO's decision in 61 Comp. Gen. 501 (1982).

We concluded in 39 Comp. Gen. 388 (1959) that since agencies are specifically precluded under 41 U.S.C. § 12 from contracting for improvements on Federal property unless funds are specifically appropriated for that purpose, specific authority is also required to finance improvements on State property. That case concerned a proposal to use Federal funds to pay for State highway improvements that would provide the Government all weather access to one of its facilities. See also B-194135(1), November 19, 1979 (79-2 (PD 361)). The test stated in 39 Comp. Gen. 388 applies in this case since the proposal requires an improvement to property owned by the county.

The authority of 40 U.S.C. § 490(i) (1976) which is the statutory basis of the GSA regulation cited by the Army as authorizing payment for sidewalks around Federal buildings is a source of specific authority that can, if its terms are met, satisfy this test. Section 490(i) provides:

> "Any executive agency is authorized to install, repair, and replace sidewalks around buildings, installations, properties, or grounds under the control of such agency and owned by the United States * * *."

Accordingly, the fundamental question presented is whether the walkway on the median strip is a sidewalk covered by this statute. We think it is not. The legislative history of section 490(i) indicates that it was intended as a limited exception to the general rule of this Office set forth above. See S. Rep. 811, October 22, 1965. The exception was designed to permit agencies to pay for sidewalks around Federal buildings that had been falling into disrepair since local governments did not have money to pay for them and were precluded from assessing their cost against the Government. The law was intended to overcome the impasse created by the Government's immunity from taxation for local improvements such as sidewalks. This immunity, when joined with the general prohibition against using appropriated funds for improving property not owned by the Government, had resulted in the Government's inability to pay for sidewalk maintenance and improvement costs which admittedly were its responsibility.

The exemption created by 40 U.S.C. § 490(i), therefore, is limited to sidewalks abutting property owned by the Government. Since the walkway in question does not abut federally-owned land and would not link a federally-owned building with another federally-owned property, the statutory authorization is not, in our view, for application.

Similarly, the traffic light cases, e.g., 61 Comp. Gen. 501 (1982), are premised on whether or not the Government will be the primary beneficiary of a service provided or an improvement made by a State or local government. The walkway in this instance would appear to benefit the Government and the owner of the privately-owned building equally.

for Milton J. Socolar
Comptroller General
of the United States