

DECISION



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

FILE: B-219532

DATE: November 4, 1985

MATTER OF: Veterans Administration - False Alarm  
Charges

DIGEST: Unless expressly waived by statute, a Federal agency is not liable for a civil fine or penalty by reason of sovereign immunity. Therefore, appropriated funds cannot be used to pay a penalty imposed by the Boston City Fire Department for answering false alarms resulting from a malfunction of a fire alarm system in a Veterans Administration Medical Center.

The Veterans Administration (VA) has requested an opinion as to its liability for fees charged by the City of Boston for malfunctions of a fire detection/suppression system in the West Roxbury Veterans Administration Medical Center which result in needless responses by the Boston Fire Department. The VA takes the position that the fee is actually a penalty from which the Federal Government is "insulated" as a matter of sovereign immunity. We agree that the VA is not liable for the fees for the reasons discussed below.

The City of Boston allows private fire alarm systems to be directly connected to the Fire Alarm Division of the Boston Fire Department. City of Boston Code, Ordinances, Title 14, Section 426, clause 262a. In addition to providing for the connection of fire alarm systems, the clause also provides:

"an additional fee \* \* \* [f]or every (private) alarm system malfunction resulting in a fire department response in the then next prior licensed year, \$100.00 for each such through the fifth malfunction; \$200.00 for each such in excess of five but less than eleven; \$400.00 for each such in excess of ten but less than sixteen; and \$800.00 for each such in excess of fifteen. For the purpose of this ordinance, a malfunction is defined as the failure of an alarm system to operate in the normal or usual manner, due to improper installation and/or maintenance of the system, resulting in the transmittal of a needless alarm signal to the fire department."

Thus every private alarm licensee is potentially liable under this clause for the payment of "fees" when its fire alarm goes

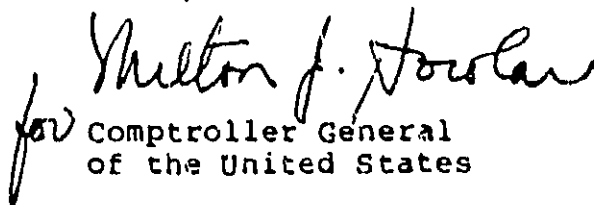
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off and the Boston Fire Department responds to the false alarm.

As a general proposition, no authority exists for the Federal Government to use appropriated funds to pay fines or penalties incurred as a result of its activities or those of its employees. WP-191747, June 6, 1978. In order for a Federal agency to be liable for a fine or penalty, there must be an express statutory waiver of sovereign immunity. Cf. Hancock v. Train, 426 U.S. 167 (1976). The VA can pay for the reasonable cost of services provided by the city, provided all property owners within the jurisdiction pay for such services under similar circumstances. See 24 Comp. Gen. #99; 49 Comp. Gen. #484 (1969). The issue therefore is whether the fee imposed by the Boston Fire Department is a penalty fee or a fee for services. In our view, the assessment against the VA is a fine or penalty rather than a fee for services. First, the fee structure itself indicates that it is a penalty. The obvious intent behind the ascending fee schedule based on the number of violations is to offer incentives to the owner of the malfunctioning fire alarm system to correct the problem. There is also no apparent relation between the ascending fee structure and the actual cost to the City of Boston of responding to a malfunction. Although we recognize that the fee could have the indirect effect of defraying the cost of answering such calls, the primary nature of the fee appears to be that of a fine or penalty. It is also apparent that the Boston Fire Department itself considers these fees to be penalties. In its notice to the VA, the Boston Fire Department consistently refers to the fee as a "penalty fee." For example, in a notice dated March 13, 1985, the City of Boston notified the VA that:

"The property you own located at 1400 VFW Parkway had a total of 41 malfunctions during the period 1 January 1984 to 31 December 1984. The penalty fee for these malfunctions is \$24,300." (Emphasis added.)

We know of no statutory authority which would operate as an express waiver of sovereign immunity and permit the payment of this penalty to the City of Boston for the malfunction of the VA's fire alarm system. Accordingly, appropriated funds cannot be used to pay the fee that has been charged against the VA in this case.

*for*   
Comptroller General  
of the United States

FINES

Government liability

APPROPRIATIONS

Availability

State imposed fees