Timmerman
144799

Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Payment of Special Assessment to Finance City's Purchase of New Fire Truck

File: B-243004

Date: September 5, 1991

DIGEST

1. Special assessment imposed by City of Coulee Dam, Washington, to finance a new fire truck in support of municipal duty to provide fire protection within city limits is a tax and as such may not be paid by the Bureau of Reclamation with respect to Bureau property located within the city limits.

2. Bureau of Reclamation may not pay special assessment to finance fire truck purchase imposed by City of Coulee Dam, Washington, on Bureau property located outside the city limits. Fire truck assessment is based on 1980 sewer assessment and as such is not reasonably related to quantum of services provided.

DECISION

The Bureau of Reclamation, Department of Interior, has requested our opinion as to the propriety of paying a special assessment which was included on the Bureau's utility invoices from the City of Coulee Dam, Washington. We conclude that the Bureau may not pay the charges.

BACKGROUND

The City of Coulee Dam enacted an ordinance which provided for the assessment, commencing January 1, 1989, of a fee to finance the city's purchase of a new fire truck. The fee was calculated as 72 percent of the 1980 sewer assessment charge levied by the city. The sewer assessment charge was imposed by the city to finance a sewer rehabilitation project and was based on the user's monthly sewer service fee. The service fee is set by ordinance and, according to the bureau, is based generally on usage. The fire truck assessment was levied on the bureau's four property locations in the area. We are advised by the bureau that three of the four properties assessed are located outside city limits.

Analysis

Essential public services required by law to be provided to the public at large must be provided to the United States on the same basis as to any other citizen even though the federal government is constitutionally immune from paying the taxes which support these services. 66 Comp. Gen. 385, 386 (1987). The involuntary assessment of fees of any kind to provide for such services, including fire protection, and for equipment necessary to perform the services amounts to an unconstitutional tax. See 60 Comp. Gen. 637, 638, 641 (1981); 49 Comp. Gen. 72, 75 (1969).

The Revised Code of Washington, § 35.24.290 (1989), provides that a city shall have the power to provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires. We have held, particularly with respect to essential services, that statutes such as this which confer a power upon a governmental body or official which is exercised for the benefit of third persons should be construed as imposing a duty to provide such services. See, e.g., 49 Comp. Gen. 284 (1969); 24 Comp. Gen. 599 (1945); B-168024, Dec. 13, 1973. Since the city is required to provide fire services to its residents, the bureau may not pay the fee assessed by the city against the property that is within the city's limits.

With respect to the remainder of the bureau's property, we note that pursuant to the Revised Code of Washington, § 35.84.040 (1989), the city may, but is not required to, provide fire protection outside its corporate limits. We have held that in cases such as this, where there is no obligation to provide the services, the federal government may pay a charge for such service if the charge is reasonable in view of the service rendered. Thus, if the charge for firefighting service bears a reasonable relationship to the quantum of services provided and is charged proportionately against all who use the services, it need not be considered a tax but a fee for services rendered, and the United States may pay it. B-168024, Dec. 13, 1973.

Here, we do not find the method used to compute the charge to bear any particular relationship to the services rendered. The city computed the amount billed the bureau in exactly the same manner as amounts levied against nonfederal property owners, without any regard to the particular benefits or convenience provided the bureau. See 49 Comp. Gen. at 76. We note for instance, that the bureau has its own fire trucks and other equipment and, pursuant to a reciprocal aid agreement among the bureau, the city and three other cities, none of the parties to the agreement are to request firefighting assistance unless the fire is of such magnitude that the party

requesting aid cannot extinguish the fire itself.1/ Under such circumstances the bureau seems even less likely to require fire protection services from the city than the average resident. Further, the assessment does not seem to reflect the risk of fire inherent in the use of the property. For example, one of the properties, a bureau visitor center, does not appear, in our view, to be any more likely to use fire protection service than a private residence, yet the bureau's assessment is over 20 times that of a residence under the current method of assessment.

In sum, we find no correlation between the quantum of use of fire protection service and a fire truck assessment based on the 1980 sewer assessment charge. We therefore must conclude that the bureau also may not pay the City of Coulee Dam's fire truck assessment with regard to bureau property located outside city limits.

Shelton J. Jacobs

for Comptroller General
of the United States

1/ The reciprocal firefighting agreement provides for mutual firefighting assistance with nominal reimbursement on a fixed fee basis ($25.00 for each instance of assistance). The agreement also provides that "nothing in this agreement shall be deemed to relieve any city of its obligation to suppress any fire occurring within its corporate limits, whether on Federally-owned or other property, nor shall the United States be obligated to compensate any city for its expenses in suppressing such fires occurring within its corporate limits."