



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON 25

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B-62051

JAN 17 1947

Administrator,

War Assets Administration.

My dear General Littlejohn:

Reference is made to your letter of November 20, 1946, as follows:

"This Administration has requested the Public Buildings Administration to provide office space for War Assets Administration activities outside of Washington, D. C. Pursuant to our request for this space, Public Buildings Administration has entered into leases in excess of one year (usually five years), without a cancellation clause, and representatives of PBA have indicated verbally that they expect WAA to obligate its funds for the full period of the lease. The War Assets Administration did not request or expect PBA to enter into leases on these terms since WAA could not expect to require office space for any such period, being primarily a liquidating agency.

"It has been held repeatedly that the liability of the Government under a lease for a term of years is binding on the Government only until the end of the fiscal year in which the lease is made, in the absence of specific statutory authority therefor. See 24 Comp. Gen. 195. The appropriation for WAA for the fiscal year ending June 30, 1947, contained in the Third Deficiency Appropriation Act, approved July 23, 1946, contains no provisions for obligating such appropriation for rentals for a period beyond June 30, 1947. Furthermore, in the estimates for this appropriation no amount was considered to be required for the payment of rentals for any period beyond June 30, 1947, nor was the Congress requested to appropriate any funds for such purposes. PBA has indicated that such leases were made for five-year terms since the only way PBA could secure the required office space for WAA was under those terms. However, Section 304(c) of Title 40 U.S.C. provides:

"The Commissioner of Public Buildings, with the approval of the Federal Works Administrator, is further authorized to procure space by lease, on such terms and for such period not in excess of five years as he may deem in the public interest, for the housing of any Federal agency or agencies outside of the District of Columbia, except the Post Office Department, and to

assign and reassign space therein in the same manner as is authorized with respect to surplus real property by section 304a of this title, and to require the Federal agencies to whom space is assigned therein to pay the total expenditures required under such lease during its entire term in the manner specified in section 304b of this chapter. August 27, 1935, c. 744, § 3, 49 Stat. 886; July 18, 1940, c. 635, § 3, 54 Stat. 765.

Section 304(b) of Title 40 U.S.C. provides:

"Whenever after investigation it is determined by the Commissioner of Public Buildings that any such real property should be used for the accommodation of any Federal agency or agencies, the Commissioner of Public Buildings is authorized to make any repairs thereto or alterations thereof which he deems necessary or advisable and to maintain and operate the same. To the extent that the appropriations of the Public Buildings Administration not otherwise allocated are inadequate for such repairs, alterations, maintenance, or operation, the Commissioner of Public Buildings may require each Federal agency to which space has been assigned therein pursuant to the provisions of section 304a of this chapter to pay promptly by check to the Public Buildings Administration out of its appropriation for rent, either in advance of or upon or during occupancy of such space, all or part of the estimated or actual cost of such repairs, alterations, maintenance, and operation."

"There appears to be no question as to the authority of PBA to enter into such five-year leases; however, there is some doubt as to whether an appropriation of one agency (WAA) may be obligated through the action of another agency (PBA) when the first agency (WAA) is without legal authority to obligate its appropriation for such expenditures.

"Accordingly, your decision is requested as to whether WAA may be required to obligate its appropriation for the fiscal year ending June 30, 1947, for an amount sufficient to cover the full period of such leases as have been entered into by PBA for WAA."

While the inquiry in your letter is whether the War Assets Administration may be required to "obligate" its appropriation for the fiscal year 1947 for an amount sufficient to cover the full periods of the leases—that is, up to five years—it is

understood informally from your office that the Public Buildings Administration desires the War Assets Administration to advance to it the full amount of the rent for the full terms of the leases from the War Assets Administration appropriation for the fiscal year 1947. At any rate, the question of whether the appropriation may be obligated at this time for the rent for the full terms of the leases would appear to be controlled by somewhat the same principles and statutory provisions as would be applicable to an advance to the Public Buildings Administration of the rent for the entire terms of the leases.

Under the provisions of section 3 of the act of August 27, 1935, as amended, 40 U.S.C. 304c, quoted in your letter, the Commissioner of Public Buildings, with the approval of the Federal Works Administrator, is authorized to make leases for not in excess of five years for space for the use of Federal agencies and to assign and reassign space therein to Federal agencies in the manner authorized by section 1 of the act, 40 U.S.C. 304a, and to require the agencies to whom such space is assigned to pay the total expenditures required under the lease during the entire term in the manner specified in section 2 of the act, 40 U.S.C. 304b. Thus, it clearly appears that a lease for not in excess of five years for such purposes may be validly made when administratively deemed in the public interest. However, whether an annual appropriation for rent of an agency using the leased premises is

available for the payment of rent accruing after the termination of the fiscal year or whether such an appropriation may be obligated to such extent is a wholly different matter and the validity of such a lease is not affected by the fact that at the time the lease is made no appropriation or fund is available to pay rent thereunder beyond the end of the fiscal year then current.

Annual appropriations for the Government agencies are made for the needs and purposes of the fiscal year for which they are made. The appropriation for the War Assets Administration, as contained in the Third Deficiency Appropriation Act, 1946, Public Law 521, is for all necessary expenses "for the fiscal year 1947", and contains no provision, express or implied, for the payment of rent therefrom beyond that fiscal year. Unless, therefore, the provisions of said section 3 of the act of August 27, 1935, as amended, authorize the use of an annual appropriation for payment of rent beyond the appropriation year under a lease executed under the authority of the section for a term extending beyond the fiscal year, there appears no authority to use such an appropriation therefor.

While said section 3 authorizes the Commissioner of Public Buildings, with the approval of the Federal Works Administrator, to require a Federal agency to whom leased space is assigned to pay the total expenditures under such lease during the entire term, it provides that such payments be made in the manner specified in section 2

of the act. The provisions of section 2 relate to surplus property in which space is assigned to a Government agency or agencies. It provides that the Commissioner of Public Buildings may require the occupying agency to pay the Public Buildings Administration either in advance of or upon or during occupancy for the estimated or actual cost of repairs, alterations, maintenance and operation of the space. However, said section further provides that—

“ * * * Provided further, That the amount so charged against any Federal agency shall be computed at a rate not in excess of that paid as rent by such agency immediately preceding each assignment for space in lieu of which space is so assigned to it, and if it is less the difference shall be deposited in the Treasury as miscellaneous receipts. And provided further, That in the event such space is not assigned in lieu of existing space, the amount so charged shall be computed at a rate not in excess of that which the Commissioner of Public Buildings determines, with the approval of the Federal Works Administrator, would have been paid as rent for corresponding space during the current fiscal year, and if it is less the difference shall be deposited in the Treasury as miscellaneous receipts * * *.”
(Underscoring supplied.)

It seems clear from the last-quoted provisions that the amounts authorized to be paid are limited to the amount of rent that would have been payable for the fiscal year current at the time. Also, it is clear that the provision contains no authority, express or implied, for an advance for rent beyond such fiscal year. Thus, while section 3 authorizes the Commissioner of Public Buildings to require the occupying agency to pay the total expenditures required under a lease during its entire term in the manner referred to, there is nothing in the provision authorizing the

advance of rent from an annual appropriation for a period beyond the appropriation year. Hence, in view of the plain provisions of sections 3648 and 3678, Revised Statutes, the 1947 appropriation here involved may not be used either to pay rent for any period after June 30, 1947, or to make advances to the Public Buildings Administration for the purpose of making such payments.

Respectfully,

(Signed) Lindsay C. Warren
Comptroller General
of the United States.