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DECISION

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

FILE: B-95136 DATE: August 8, 1979

MATTER OF: General Services Administration use of "Rental of Space" funds for lump-sum payments for initial alterations to leased premises

DIGEST:

1. Funds appropriated from Federal Building Fund for Rental of Space are not available to make lump-sum payments for the cost of initial alterations of leased premises. Such payments can only be made from specific appropriation for Alterations and Major Repairs.

2. The fact that initial alterations to leased premises may be made from Rental of Space appropriations when the alteration costs are amortized and made part of the rental consideration does not make the Rental appropriation "equally available" for purposes of making such alterations so as to give the agency the right to choose which fund to charge.

3. If, as a result of decision that appropriations for Rental are not available for lump-sum payments for initial alterations of leased premises, amounts made available for alterations in FY 1977 in a regional office are exceeded, a technical violation of the Anti-Deficiency Act has occurred. Accounting adjustment can be made only if central office still has unobligated funds which were available in FY 1977 for alterations. Subsequent fiscal year funds cannot be administratively reallocated to regional office for expenditures made in FY 1977. Such expenditures, if they exceed the amount available in FY 1977 for that purpose, should be reported to Congress as Anti-Deficiency Act violation.

The former Administrator of General Services has requested our decision on the propriety of the General Services Administration (GSA) making lump-sum payments for initial space alterations in leased premises from a 1977 appropriation available for rental of space (Rental), rather than from an appropriation available for alterations and major repairs (Alterations). The Administrator advises that the problem arose only during fiscal year 1977, when the Alterations budget was exhausted and the Rental budget had a surplus. For the reasons set forth below, we conclude that the use of Rental funds for lump-sum alteration payments was improper.

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Rental and Alterations activities are funded out of the Federal Building Fund (Fund), established by section 210(f)(1) of the Federal Property and Administrative Services Act of 1949, as amended (Act), 40 U.S.C. § 490 (f)(1) (1976). Monies deposited into the Fund are available for expenditures for real property management and related activities in such amounts as are specified in annual appropriations acts, 40 U.S.C. § 490(f)(2).

Under the heading "Federal Buildings Fund", the fiscal year 1977 appropriation act appropriated to the Administrator the funds for Rental and for Alterations activities as follows;

> "The revenues and collections deposited into a fund pursuant to section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(f)), shall be available for necessary expenses of real property management and related activities not otherwise provided for * * * in the aggregate amount of $1,130,755,000 of which
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> "* * * (2) not to exceed $60,700,000, which shall remain available until expended for alterations and major repairs; * * * (4) not to exceed $473,200,000 for rental of space * * *"

Treasury, Postal Service, and General Government Appropriation Act, 1977, Public Law No. 94-363, July 14, 1976, 90 Stat. 963, 970-971.

The GSA takes the position that, for FY 1977, initial space alterations, upon entering into a lease, could properly be funded out of either of these appropriations. There are two methods for paying for such alterations. One is to amortize their cost over the life of the lease, making the cost part of the rental consideration. The other is to make a lump-sum payment to the lessor or to some other entity. GSA believes that the choice of these methods for any particular building is the responsibility of the appropriate GSA operating official.

GSA states, and we agree, that there is no question but that lump-sum payments for initial space alterations in leased premises were properly payable from the Alterations appropriation and that initial space alterations in leased premises which are amortized over the life of the lease were properly payable from the Rental appropriations. The question is whether the Rental appropriation was available for lump-sum payments for initial space alterations in leased premises as well.

The question arises because in fiscal year 1977, the Commissioner of the Public Buildings division authorized, for that year only, the use of the Rental appropriation to make lump-sum payments

for alterations. GSA contends that this decision, while not free from doubt, is legally supportable. In an enclosure to the Administrator's letter, GSA analyzes a number of our decisions and concludes that this case is different from any we have previously decided. The memorandum states:

> "There are 2 appropriations equally available to GSA for the acquisition of initial tenant alterations in leased space.
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> "Rental of Space - if the cost of the alterations is to be amortized over the life of the lease.
>
> "Alterations and Major Repairs - if the cost of the alterations is to be paid for on a lump-sum basis." (Emphasis in the original.)

GSA notes that funds appropriated are required to be applied solely to the objects for which they are made and for no others, 31 U.S.C. § 628 (1976). GSA states,

> "To hold that Rental of Space budget activity is not available for alterations paid for on a lump-sum basis, the word 'objects' in 31 U.S.C. § 628 * * * [has] to be expanded to include the method of payment as well as what was being procured." (Emphasis in original.)

In other words, GSA believes that both funds are equally available to fund initial space alterations (the object), and, according to our decisions, "the determination of the administrative officer concerned as to which appropriation shall be used for such purchases will not be questioned." The submission then cites 10 Comp. Gen. 440 (1931) and 23 id. 827 (1944) for support.

We disagree that those decisions are applicable in this case. The "object" for which the Rental appropriation is made is the procurement of rented space; its purpose is to lease space already available for Government occupancy. Should a potential landlord have space which can be converted to meet the Government's needs, that person can enter into a rental arrangement with GSA under which he agrees to meet the space and facilities needs. That person will presumably offer to rent the space at a rate which will recover, among other things, his alteration expenses.

On the other hand, the Alterations appropriations is made, among other things, for the "object" of paying for alterations to leased property. As distinguished from the Rental situation in which the landlord will make the alterations, the changes in property can be done

under the Alteration appropriation by the landlord or by contract between GSA and other contractors. By using this method, GSA rents property which will, with alteration, meet its needs at the most advantageous terms and price possible, funding the lease payments from the Rental appropriation. It then superintends necessary alterations under the most advantageous terms and price available, funding the alterations out of the Alterations appropriation.

The Congress, in appropriation acts, beginning with FY 1978, has made explicit this difference between paying for the rental of space, even if part of the rental price has been set by the landlord to recover the cost of alterations, and paying for alterations separately from any rental payments. However, even in FY 1977, the Congress provided separate funds for rental of space and for alterations and major repairs. Unlike the cases cited, the two appropriations were made for entirely different purposes and are not "equally available" for initial alterations. 31 U.S.C. § 628.

GSA therefore had no authority to use the Rental appropriation for alterations the costs of which were not amortized over the term of the lease. It may only be used for rental payments and related costs. Put another way, we conclude that lump-sum payments for initial alterations in leased premises must be funded from the Alterations appropriation.

GSA advises that if we rule that Rental funds should not have been used for this kind of payment, there may have been a violation of the Anti-Deficiency Act, 31 U.S.C. § 665 (1965), in one or more GSA regions. The violation, if any, would arise from a shifting of amounts from the Rental appropriation to the Alteration appropriation, resulting in obligations in the Alteration appropriation in excess of existing regional allotments. Only a complete audit of all obligations will disclose the existence of a violation. GSA notes that the regions where the technical violations occurred, if there are any, would have been following the instructions of the central GSA office. GSA also states that the Central Office had at that time and still has sufficient unobligated balances in the Alterations appropriation to absorb all sums expended in fiscal year 1977 from the Rental appropriation for lump-sum payments for initial alterations in leased premises.

The Anti-Deficiency Act provides that no officer or employee of the United States shall make or authorize any obligation or expenditure in excess of the amount available either in the applicable appropriation or in excess of funds made available through apportionment or reapportionment, including administrative division and subdivision. 31 U.S.C. §§ 665(a) and (h). It is true that monies made available for expenditure from the Fund for alterations and major repairs in annual

appropriation acts remain available until expended. This does not mean, however, that when the total amount available for a specific purpose in a given year is exhausted, and obligations in excess of that amount are improperly incurred, the resulting violation of the Anti-Deficiency Act can be redressed by administrative allocations of monies normally chargeable to the amounts made available in subsequent fiscal years.

If, as GSA states, "at that time"-- i.e., FY 1977--there was a sufficient balance in the alterations account at the Central office so that the administrative allocation could have been amended to make more funds available to a particular regional office for the alterations improperly charged to the Rental appropriation, we will not now object to such an amendment as an accounting adjustment, although there was still a technical violation of the Anti-Deficiency Act. However, once the total amount of funds available in FY 1977 for Alterations and Major Repairs is exhausted, no further adjustments can be made. If, after auditing the transactions for fiscal year 1977 between the Rental appropriation and the Alterations appropriation, there are still expenditures made during FY 1977 which exceed FY 1977 available funds, a violation of the Anti-Deficiency Act has occurred which should be reported by GSA to the Congress.

P.J. Kuhn

Acting Comptroller General
of the United States