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B-157435 October 6, 1965

Number: B-157435

Date: 1965-10-06

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The Honorable E. de la Garza House of Representative

Dear Mr. de la Garza:

By letter of September 17, 1965, you transmitted a letter dated September 10, 1965, which you received from the City Manager of Harlingen, Texas, in connection with Federal Government participation in the cost of paving a street abutting the United States Army Reserve Center located in Harlingen.

We previously advised you with respect to the desire of officials of the City of Harlingen to obtain Federal participation as an abutting property owner in the cost of improving the street involved that in the absence of specific legislation, Federal funds may not be used to improve roads on nonfederal property. The City Manager now points out that the Federal Government owns the fee title to the center of the street covering the entire area desired to be paved. And he points out that the Federal participation sought is through a levy of assessment on the identical basis applied to other shutting property owners. In light of Federal ownership of the area to be paved, we have been requested to reconsider the question as to whether Federal funds may be charged with the cost of this paving.

While our previous conclusion was promised in its terms upon the fact that nonferderal property was involved, such fact was assumed from designation by the City Manager of the United States as an abutting property owner. But whether or not the property to be improved is federally owned is not controlling in the matter. In our letter to you of August 24, 1965, B-157435, we referred to and enclosed a copy of our decision published at 32 Comp. Gen. 286. In the cited decision our conclusion that specific legislative authority would be required for the financing from Federal funds of public improvements on States property was founded on the very ground that such specific authority would even be required where federally owned property is involved.

In another of our decisions-reported at 27 Comp. Gen. 20--we had occasion to consider the property of paying assessments for street improvements levied by the City of Burley, Idaho, against the United States as the owner of contiguous property. Title to the United States property in that case extended to the center of the street as is stated to be the situation in Harlingen. That we said with respect to the Burley claim is equally applicable to the position taken by the City Manager of Harlingen:

"It is a well settled rule that lands owned by the United States cannot be taxed

by a State or by any of the political subdivisions of a State. Van Brocklin v. Tennessee, 117 U.S. 151; United States v. Power County, Idaho, 21 F. Supp. 684; cf. Pacific Spruce Corp. V. Lincoln County, 21 F. Supp. 7=684; cf. Pacific Spruce Corp. v. Lincoln County, 21 F. 2d 586. This rule supplies with equal force where the tax is a special tax or assessment for local improvements as well as in the case of a general property tax against lands owned by the United States. Lee v. Osceola and Little River Road Improvement District, 268 U.S. 643; Mullen Benevolent Corporation v. United States, 290 U.S. 89; United States v. Anderson Cottonwood Irrigation District, 19 F. Supp. 740; 18 Comp. Gen. 562. Cf., also, People of Puerto Rico v. United States, 134 F. 2d 267. A special assessment is a tax within the rule precluding a State from taxing lands owned by the United States, because it is an exercise of the sovereign power of taxation and, like other taxes, is an involuntary exaction. See United States v. Anderson Cottonwood Irrigation District, supra; Hagar v. Reclamation District, 111 U.S. 701."

The State courts in which the question has arisen have uniformly accepted the principle. See Fagan v. Chicago, 84 Ill. 227, stating at page 234, "A municipal corporation has no power to assess or exact from the State or general government any sum for benefits conferred. The power to levy taxes or impose assessments for benefits can only be exercised on the governed, and not on the governing power, whether State or Federal." Other cases to the same effect are collected at 90 A.L.R. 1140. And this has been the steeled policy of the government for many years. See 2 Comp. Dec. 375 (1896), 4 id. 116(1897), 3 Comp. Gen. 416 (1924), 9 Ops. Atty. Gen. 291(1859), 25 id. 234(1904)

Accordingly, in the absence of a Federal statute applicable in the circumstances making United States owned property subject to special assessment for local improvements or otherwise providing for contribution toward the costs thereof, we must sustain our conclusion that there is no authority for Federal participation in costs associated with the street improvements in questions.

Sincerely yours,

FRANK H. WEITZEL Acting Comptroller General of the United States