Text as published on gao.gov, https://www.gao.gov/products/b-177325, archived 2026-07-10. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-177325, Nov 27, 1972

Number: B-177325

Date: 1972-11-27

B-177325, NOV 27, 1972

GOVERNMENT OWNED GOOD - MUNICIPALITY - SPECIAL BENEFIT ASSESSMENT QUANTUM MERUIT - FAIR AND REASONABLE VALUE DECISION ALLOWING PAYMENT IN THE AMOUNT OF A BENEFIT ASSESSMENT TO THE MUNICIPALITY OF MILL CITY, OREGON FOR THE COST OF REPAIRS AND IMPROVEMENTS TO A SEWAGE SYSTEM WHICH BENEFITED PROPERTY OWNED BY THE FOREST SERVICE, DEPARTMENT OF AGRICULTURE. ALTHOUGH LANDS OWNED BY THE UNITED STATES ARE NOT SUBJECT TO ANY TAX, INCLUDING A SPECIAL ASSESSMENT, BY A STATE OR ANY POLITICAL SUBDIVISION OF A STATE, 40 COMP. GEN. 72 (1969), PAYMENT MAY BE MADE ON A QUANTUM MERUIT BASIS FOR SPECIAL IMPROVEMENTS TO SUCH LAND. IN SUCH A CASE, THE CLAIMANT IS ENTITLED TO THE FAIR AND REASONABLE VALUE OF SERVICES IT ACTUALLY RENDERED THE GOVERNMENT, PROVIDED IT SHOW EXACTLY HOW IT ARRIVED AT ANY AMOUNTS CLAIMED. ACCORDINGLY, UNDER THE CIRCUMSTANCES OF THIS CASE THE AMOUNT ASSESSED CAN BE CONSIDERED A FAIR AND REASONABLE VALUE AND PAYMENT IN THAT AMOUNT MAY BE MADE.

TO MR. GEORGE D. BREITMEIER:

WE REFER TO YOUR LETTER OF OCTOBER 12, 1972, REQUESTING AN ADVANCE DECISION WHETHER A BENEFIT ASSESSMENT BY A MUNICIPALITY AGAINST PROPERTY OWNED BY THE FOREST SERVICE, DEPARTMENT OF AGRICULTURE, REPRESENTING THAT PROPERTY'S RATABLE SHARE OF THE COST OF REPAIRS AND IMPROVEMENTS TO A SEWAGE SYSTEM, MAY PROPERLY BE PAID. A REQUEST BY A CERTIFYING OFFICER FOR ADVANCE DECISION FROM THIS OFFICE IS REQUIRED TO BE ACCOMPANIED BY A PROPERLY CERTIFIED AND APPROVED VOUCHER. SEE, E.G., 22 COMP. GEN. 588 (1943). YOU HAVE OMITTED TO INCLUDE A VOUCHER WITH YOUR REQUEST. HOWEVER, THE RECORD INCLUDES A STATEMENT PRESENTED BY THE MUNICIPALITY INDICATING THAT THE ASSESSMENT IN QUESTION IS BEFORE YOU FOR PAYMENT. ACCORDINGLY WE WILL IN THIS INSTANCE DECIDE THE QUESTION PRESENTED.

THE PERTINENT FACTS AS DISCLOSED BY YOUR LETTER AND THE ACCOMPANYING DOCUMENTS ARE AS FOLLOWS:

THE FOREST SERVICE OF THE DEPARTMENT OF AGRICULTURE OWNS 6 OF THE 21 DWELLINGS IN A SECTION OF MILL CITY, OREGON, KNOWN AS THE LARK ADDITION, AND USES THESE PROPERTIES AS HOUSING FOR ITS EMPLOYEES. THE LARK ADDITION HAS ITS OWN SEPTIC SEWER SYSTEM, CONSISTING OF A COMMON DRAINAGE SYSTEM LEADING TO A SEPTIC TANK.

RECENTLY THIS SEWER SYSTEM BECAME INCAPABLE OF PROPERLY PROCESSING ALL SEWAGE INTRODUCED INTO IT. EFFLUENT FROM THE SYSTEM WAS RELEASED INTO A GULLY AND THENCE INTO THE NORTH SANTIAM RIVER, WHICH IS A SOURCE OF WATER FOR THE CITY OF SALEM, OREGON. THE COUNTY HEALTH DEPARTMENT INVESTIGATED AND DETERMINED THAT AN INSANITARY CONDITION EXISTED, AND SO ADVISED MILL CITY BY LETTER DATED JUNE 16, 1972.

MILL CITY THEREUPON ADOPTED A RESOLUTION DECLARING THAT THE SEWERAGE CONDITIONS IN THE LARK ADDITION CONSTITUTED AN EMERGENCY AND A HEALTH HAZARD, AND THAT THE MAKING OF A PUBLIC IMPROVEMENT TO CORRECT THOSE CONDITIONS WAS IMMEDIATELY NECESSARY FOR THE PUBLIC HEALTH, SAFETY, AND CONVENIENCE OF THE CITY, AND PARTICULARLY OF THE INHABITANTS RESIDING IN THE LARK ADDITION OR IN CONTIGUOUS AREAS. MILL CITY COUNCIL RESOLUTION OF JUNE 20, 1972. ACCORDINGLY, ON SEPTEMBER 13, 1972, MILL CITY AWARDED A CONTRACT FOR IMPROVEMENT OF AND REPAIRS TO THE SEPTIC SYSTEM AT A COST OF $13,500. IN ORDER TO RECOVER THIS COST, THE CITY ADOPTED ORDINANCE NO. 121 OF SEPTEMBER 13, 1972, PROVIDING FOR A SPECIAL ASSESSMENT AGAINST EACH OF THE 21 DWELLINGS IN THE LARK ADDITION FOR ITS RATABLE SHARE ($642.85) OF THE $13,500 CONTRACT PRICE. PURSUANT TO THAT ORDINANCE, A NOTICE OF ASSESSMENT AGAINST THE FOREST SERVICE WAS SERVED ON SEPTEMBER 15, 1972, FOR SIX DWELLINGS AT $642.85 EACH FOR A TOTAL OF $3857.10, REPRESENTING THE RATABLE SHARE OF THE SEWER REPAIR COST ATTRIBUTABLE TO THE FOREST SERVICE BASED ON ITS OWNERSHIP OF 6 OF THE 21 DWELLINGS SERVED BY THE SEWER SYSTEM. THAT ASSESSMENT IS THE SUBJECT OF YOUR REQUEST FOR AN ADVANCE DECISION.

IT IS WELL SETTLED THAT LANDS OWNED BY THE UNITED STATES ARE NOT, IN THE ABSENCE OF CONGRESSIONAL AUTHORIZATION, SUBJECT TO TAXATION BY A STATE OR BY ANY POLITICAL SUBDIVISION OF A STATE. 49 COMP. GEN. 72 (1969) AND CASES CITED THEREIN. A SPECIAL ASSESSMENT IS A TAX WITHIN THE MEANING OF THE FOREGOING RULE. SEE B-168287, NOVEMBER 9, 1970. IN THE INSTANT CASE, HOWEVER, YOU ADVISE THAT THE CITY WAS OBLIGATED TO ASSUME OWNERSHIP OF A SEPTIC SEWER SYSTEM USED IN COMMON BY 21 DWELLINGS WHICH ARE ONLY A SMALL PART OF THE TOTAL NUMBER OF BUILDINGS IN THE CITY. YOU FURTHER ADVISE THAT:

"*** CITY OWNERSHIP IS REQUIRED BY STATE LAW BECAUSE THE SEPTIC SEWER SYSTEM SERVES MORE THAN ONE BUILDING UNDER MORE THAN SINGLE OWNERSHIP. THIS SYSTEM IS A TYPE WHICH IS RARELY USED AS A COMMUNITY SEWAGE DISPOSAL SYSTEM BECAUSE IT IS BASICALLY A TYPE DESIGNED FOR SINGLE OCCUPANCY USE. THE REPAIRS TO THE SYSTEM ARE NOT AN INCREASE IN SEWAGE TREATMENT SYSTEM CAPACITY IN THE USUAL SENSE, BUT MORE NEARLY PARALLELS THE KINDS OF REPAIRS AN INDIVIDUAL PROPERTY OWNER WOULD LIKELY ENCOUNTER WITH A SIMILAR SYSTEM. BECAUSE OF THE PECULIAR NATURE OF THIS PARTICULAR SITUATION, REPAIRS OF NECESSITY HAD TO BE MADE BY THE CITY AND THEIR ONLY RECOURSE WAS TO PASS THE COST ALONG TO THE INDIVIDUAL USERS. I CONSIDER THIS A MERITORIOUS CLAIM BECAUSE THE FOREST SERVICE OCCUPIES THE POSITION OF BEING A RESIDENT THROUGH OWNERSHIP OF SIX DWELLINGS SERVED IN COMMON WITH 15 OTHER DWELLINGS BY A SEPTIC TANK THAT CANNOT BE REPLACED BY INDIVIDUAL SYSTEMS. THE LOT SIZES ARE NOT LARGE ENOUGH FOR EACH DWELLING TO HAVE ITS OWN SEPTIC TANK OR SEWAGE DISPOSAL SYSTEM, NOR DOES THE COMMUNITY OF MILL CITY, OREGON HAVE A SEWAGE DISPOSAL FACILITY FURNISHED FOR OCCUPANTS OTHER THAN THE 21 INVOLVED IN THIS CLAIM. IT HAS BECOME NECESSARY FOR MILL CITY TO PASS AN ORDINANCE AND ADOPT AN ASSESSMENT ROLL TO REQUIRE PAYMENT BY EACH OF THE 21 OCCUPANTS, ALTHOUGH I DO NOT FEEL THIS SHOULD BE VIEWED AS AN ASSESSMENT IN THE USUAL SENSE OF THE TERM. IF THE FOREST SERVICE CANNOT PAY ITS SHARE OF THE SYSTEM REPAIR, THIS COST WILL HAVE TO BE PASSED ALONG TO THE OTHER 15 USERS OF THE SYSTEM. WE CANNOT DISCONNECT OUR HOUSES FROM THE SYSTEM SINCE THERE IS NO WAY IN WHICH WE CAN INSTALL AN ADEQUATE SEWAGE DISPOSAL FACILITY IN EACH OF THE LOTS WE OWN. THUS, IF WE ARE TO CONTINUE OCCUPYING THE HOUSES AND USING THE FACILITIES, IT APPEARS THAT WE WOULD HAVE AN OBLIGATION TO ASSUME A PRO-RATA SHARE OF THE REPAIR COSTS. HOWEVER, I CAN FIND NO AUTHORITY PERMITTING ME TO CERTIFY THE INSTANT CLAIM SINCE IT IS MADE IN THE FORM OF AN ASSESSMENT."

WHILE, AS INDICATED ABOVE, PAYMENT MAY NOT BE MADE ON THE BASIS OF A SPECIAL ASSESSMENT, PAYMENT MAY BE MADE ON A QUANTUM MERUIT BASIS. FURTHER, PAYMENT ON A

QUANTUM MERUIT BASIS DOES NOT ALWAYS REQUIRE THAT A CLAIM BE PRESENTED ON A "QUANTITY OF USE" BASIS BUT ONLY THAT THE AMOUNT CLAIMED REPRESENT THE "FAIR AND REASONABLE VALUE" OF THE SERVICES ACTUALLY RENDERED TO THE GOVERNMENT. OF COURSE, THE CLAIMANT MUST SHOW EXACTLY HOW IT ARRIVED AT ANY AMOUNTS CLAIMED, AND ONLY WHEN IT IS SHOWN THAT THE SPECIFIED AND OUTLINED METHOD OF COMPUTATION IS BASED PURELY ON THE VALUE OF THE SERVICES RENDERED TO THE GOVERNMENT MAY PAYMENT BE MADE.

IT IS DIFFICULT TO MAKE A PRECISE DETERMINATION OF THE BENEFIT THE GOVERNMENT RECEIVES FROM A PUBLIC IMPROVEMENT SUCH AS THE ONE INVOLVED HERE. IN THE INSTANT CASE THE CLAIMANT SETS FORTH WITH SUFFICIENT CLARITY HOW IT ARRIVED AT THE AMOUNT CLAIMED. FURTHER, WHILE THE CLAIM IS MADE IN THE FORM OF AN ASSESSMENT, IT IS IN FACT A PRO RATA SHARE OF THE ACTUAL COST OF THE WORK PERFORMED TO ELIMINATE THE HEALTH HAZARD PRESENTED BY THE SEPTIC SEWAGE DISPOSAL SYSTEM. CONSIDERING THE DIFFICULTY OF PRECISELY DETERMINING THE FAIR AND REASONABLE VALUE OF A SERVICE SUCH AS THAT INVOLVED HERE, WE CANNOT SAY THAT THE BASIS USED BY THE CITY - ALTHOUGH DENOMINATED AS AN ASSESSMENT - IN COMPUTING THE VALUE OF SUCH SERVICE IS UNREASONABLE. IN OTHER WORDS, UNDER THE FACTS AND CIRCUMSTANCES EXISTING IN THIS CASE IT IS OUR VIEW THAT THE AMOUNT ASSESSED MAY BE CONSIDERED THE "FAIR AND REASONABLE VALUE" OF THE SERVICES ACTUALLY RENDERED, THUS MEETING THE REQUIREMENTS FOR PAYMENT ON A QUANTUM MERUIT BASIS. ACCORDINGLY PAYMENT MAY BE MADE IN THE AMOUNT ($3,857.10) CLAIMED IF OTHERWISE PROPER.