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B-192641 May 2, 1979

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Attorneys

Mr. Dan L. Johnston County Attorney Polk County Court House 5th & Mulberry Des Moines, Iowa 50309

Dear Mr. Johnston:

Ms. E. LaVon French of your staff has requested the Comptroller General's assistance in the matter of fire protection for the federally owned property in the Saylorville Dam Recreation Area located In Polk County, Iowa. We are happy to provide you with the following information.

On September 22, 1977, Polk County adopted resolutions which changed the boundaries of a number of townships in order to exclude the Saylorville Project from any existing township. The purpose of this action was to require the United States to establish its own firefighting force for the Saylorville Project or to have it pay for any services rendered by the Polk County townships.

It appears to us from the opinions of Iowa's Attorney General, which have been cited to us, that fire protection was intended to be extended by Iowa State law to all property within the State, including that owned by the United States. In 45 Coup. Gen. 1 (1965), to which Ms. French refers, the land involved was a Federal enclave which had inadvertently been included in the area of the Missoula Rural Fire District. That District, in turn, could legally have redrawn its boundaries to exclude this area. The land in the Saylorville Project is not in a Federal enclave and, it appears, Iowa State law may require that it be provided fire protection. Accordingly, we believe a question has been raised whether Polk County's action is valid under State law. You may wish to raise this with the State Attorney General.

We might also point out that the county's resolutions or September 27, 1977, stated explicitly that the reason for the exclusion of the United States owned property was the insufficiency of tax funds usable for fire protection purposes. In response, the Department of the Army in a report to us on this matter stated:

"It should be noted that Polk County received $11,592 as payments-in-lieu-of-taxes in Fiscal Year 1977 pursuant to Public Law 94-565 (October 20, 1976). Polk County also has received substantial sums ($42,000 for Fiscal Year 1976 and $13,740 for Fiscal Year 1977 and the transition quarter) for certain leases pursuant to Section 7 of the Flood Control Act of August 18, 1941, as amended, 33 U.S.C. 701c-3. Polk County is to receive $13,296 during 1978 for providing

increased law enforcement services at Saylorville Lake pursuant to Section 120 of Public Law 94-587 (October 22, 1976). Finally, several studies indicate that water resources development projects, though initially decreasing the local tax base, may eventually increase the tax base due to increased land values and stimulated economic opportunities."

In any event, the actions of Polk County may unconstitutionally discriminate against the Federal Government since similar action was not taken with respect to State or local government property, or any similar classes of tax exempt property. See, for example, Phillips Co. v. Dumas School District, 361 U.S. 376, 387 (1960). Further, the practical effect of Polk County's denying the Saylorville Project fire protection by excluding it from existing townships is to require the United States to pay for services which are provided to other property owners in the county through taxes without direct user charges. However, as recognized in many court cases and by the decisions of this Office, this violates the principle of sovereign immunity. Accordingly, in our view, the Federal Government may not enter into a contract with the county or its townships for the provision of firefighting services, nor is it obligated to establish its own firefighting force at the Project.

As a partial answer to Polk County's request for Federal participation in the costs of firefighting at the Saylorville Project, I would like to call your attention to section 11 of the Federal Fire Prevention and Control duct of 1974, No. 93-4538, October 29, 1974, 88 Stat. 1543, as unended by Pub. L. No. 95-422, October 5, 1978, 92 Stat. 932, 15 U.S.C. 5 2210. This section provides for the reimbursement for certain costs of firefighting on Federal property. Under that provision of law, the United State Fire Administrator has promulgated regulations, now appearing at 45 CFR, section 2010 et seq. (1978). Under these regulations, reimbursements for costs of fighting fires on Federal property is available to a Local firefighting service unless that locality and the United States have entered into a mutual-aid agreement under 42 U.S.C. Sec. 1856(a) (1976) for provision of reciprocal fire protection in which the parties intend that reimbursement under section 11 will not be available. The regulations also set forth procedures for the submission of claims. For further information, Polk County may wish to contact the United States Fire Administrator, U.S. Department of Commerce, Post Office Box 19518, Washington, D.C. 20036.

Aside from payments made under this statute we are not aware of any other authority for the United States to pay for firefighting services rendered by State or local governments where those services are financed from tax revenues and not from bona fide user charges and a duty of providing fire protection is owed to the Federal property. I regret the delay in responding to your office's inquiry and trust that we have been of assistance to you.

Sincerely yours,

Howard Levy Deputy Assistant General Counsel