Text as published on gao.gov, https://www.gao.gov/products/b-199205, archived 2026-07-17. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-199205, Apr 27, 1981

Number: B-199205

Date: 1981-04-27

B-199205, APR 27, 1981

THE HONORABLE ARLAN STANGELAND HOUSE OF REPRESENTATIVES:

DEAR MR. STANGELAND:

PURSUANT TO YOUR REQUEST, WE HAVE CONSIDERED THE CLAIM OF LAKE OF THE WOODS COUNTY, MINNESOTA, FOR EXPENSES IT INCURRED IN MAINTAINING A ROAD THAT DIRECTLY BENEFITED A UNITED STATES AIR FORCE INSTALLATION. BASED ON OUR REVIEW OF THE SITUATION WE BELIEVE THAT THERE IS NO LEGAL AUTHORITY UNDER WHICH THE CLAIM MAY BE ALLOWED.

WE SOUGHT AND OBTAINED INFORMATION CONCERNING THE CLAIM FROM THE DEPARTMENT OF THE AIR FORCE AND THE MILITARY TRAFFIC MANAGEMENT COMMAND, DEPARTMENT OF THE ARMY. THE BAUDETTE AIR FORCE STATION, LOCATED IN LAKE OF THE WOODS COUNTY, MINNESOTA, CONTAINED A RADAR FACILITY UNTIL IT CEASED OPERATION ON JULY 1, 1979. MAIN ACCESS IS GAINED BY A COUNTY ROAD THAT RUNS FROM THE VILLAGE OF BAUDETTE TO THE STATION FOR A DISTANCE OF 3.47 MILES. THE COUNTY ROAD DOES NOT TERMINATE AT THE STATION BUT CONTINUES ON FOR SEVERAL MILES. IN 1959 THE COUNTY FORMALLY CONVEYED AN EASEMENT IN THE 3.47 MILE SEGMENT OF THE ROAD TO THE AIR FORCE. SHORTLY THEREAFTER, IN JULY 1960, THE AIR FORCE SPENT $75,000 ON ROAD REPAIRS FOR THAT SECTION.

SEVENTEEN YEARS LATER IN AUGUST 1977, FURTHER REPAIRS WERE NEEDED FOR THE SAME ROAD. ON SEPTEMBER 13, 1977, THE COUNTY COMMISSIONERS PASSED A RESOLUTION STATING THAT THE MAJORITY OF THE TRAFFIC ON THE ROAD WAS DIRECTLY RELATED TO THE STATION AND THAT THE AIR FORCE HAD FINACIALLY ASSISTED WITH REPAIRS ON THE ROAD IN THE PAST. THE RESOLUTION FURTHER REQUESTED FINANCIAL ASSISTANCE FROM THE AIR FORCE FOR ITS SHARE OF THE APPROXIMATELY $26,000 COST OF REPAIRS ATTRIBUTABLE TO THE 3.47 MILE SEGMENT.

THE COUNTY INFORMED THE STATION COMMANDER IN A SEPTEMBER 1977 LETTER THAT IT HAD ALREADY LET A CONTRACT FOR THE MAINTENANCE WORK ON 8.6 MILES OF THE ROAD AND REQUESTED HIS ASSISTANCE IN OBTAINING AIR FORCE FUNDING. WHEREUPON THE STATION COMMANDER, BY FORWARDING THIS REQUEST, INITIATED EFFORTS TO OBTAIN FUNDS FOR THE PROJECT THROUGH AIR FORCE CHANNELS. THE ROAD MAINTENANCE WORK WAS BEGUN IN AUGUST 1978 AND COMPLETED DURING THE MONTH OF SEPTEMBER 1978. THE COUNTY SENT A COPY OF THE FINAL PAYMENT VOUCHER TO THE STATION COMMANDER AND REQUESTED THAT HE PROCESS THE COUNTY'S CLAIM FOR PAYMENT.

THE AIR FORCE REGIONAL COMMAND OF WHICH THE STATION WAS A COMPONENT ACTED ON EARLIER REQUESTS OF THE STATION COMMANDER APPARENTLY WITHOUT BEING AWARE THAT THE WORK HAD BEEN COMPLETED AND RESERVED $13,000 TO BE PROVIDED THROUGH BUDGET

CHANNELS UPON REQUEST. ON NOVEMBER 1, 1978, THE STATION'S CIVIL ENGINEER REQUESTED THE CONTRACTING OFFICER TO PROCURE RESURFACING SERVICES FOR THE ROAD IN THE AMOUNT OF $13,000. THE STATION'S CONTRACTING OFFICER REFUSED TO INITIATE PROCUREMENT ACTION ON THE BASIS THAT THE WORK HAD ALREADY BEEN PERFORMED AND THE GOVERNMENT, THEREFORE, NO LONGER HAD A NEED TO HAVE THE ROAD RESURFACED. THE AIR FORCE'S LEGAL STAFF CONCLUDED THAT NO BASIS EXISTS TO RATIFY THE PROCUREMENT OR TO GRANT OTHER EXTRAORDINARY CONTRACTUAL RELIEF.

STATE AND LOCAL HIGHWAY AGENCIES GENERALLY HAVE THE RESPONSIBILITY FOR MAINTAINING ADEQUATE PUBLIC HIGHWAYS FOR ALL USERS, REGARDLESS FOR EXAMPLE, OF WHETHER THE TRAFFIC IS GENERATED BY A DEFENSE INSTALLATION OR A COMMERCIAL MANUFACTURING PLANT. TRAFFIC GENERATED BY DEFENSE INSTALLATIONS PRODUCES SUBSTANTIALLY THE SAME ROAD-USE TAXES PER VEHICLE MILE OF TRAVEL AS DOES OTHER TRAFFIC.

UNDER THE PROVISIONS OF 23 U.S.C. SEC. 210 (1976) WHICH AUTHORIZES THE DEFENSE ACCESS ROAD PROGRAM, FEDERAL FUNDS MAY BE USED TO MAINTAIN LOCAL HIGHWAYS WHERE THE DEFENSE INSTALLATION CREATES AN UNUSUAL IMPACT ON A PUBLIC HIGHWAY THAT THE STATE AND LOCAL HIGHWAY AGENCIES CANNOT CONTROL. IT IS THE POLICY OF THE DEPARTMENT OF DEFENSE TO PROVIDE SUCH FUNDS TO LOCAL JURISDICTIONS FOR HIGHWAY MAINTEANCE ONLY UNDER EXTRAORDINARY CIRCUMSTANCES. EXTRAORDINARY CIRCUMSTANCES ARE DEFINED AS MAINTENANCE REQUIREMENTS ABOVE AND BEYOND WHAT PUBLIC HIGHWAY MAINTENANCE AUTHORITIES NORMALLY PROVIDE SUCH AS MAINTENANCE ON ROUTES REGULARLY USED BY MINUTEMAN MISSILE OVERSIZE/OVERWEIGHT VEHICLES. THE MILITARY TRAFFIC MANAGEMENT COMMAND REVIEWED LAKE OF THE WOODS COUNTY'S MAINTENANCE CLAIM AND DETERMINED THAT THE SITUATION THERE DID NOT SATISFY THE CRITERIA FOR FEDERAL ASSISTANCE UNDER 23 U.S.C. SEC. 210.

IT SHOULD ALSO BE NOTED THAT THE AIR FORCE NEVER ENTERED INTO A CONTRACTUAL AGREEMENT WITH THE COUNTY TO SHARE IN THE COST OF THE MAINTENANCE. FURTHER THE COURSE OF CONDUCT OF THE PARTIES WAS NOT SUCH AS TO GIVE RISE TO AN IMPLIED-IN-FACT CONTRACT. THE COUNTY UNILATERALLY PROCURED THE MAINTENANCE WORK FOR WHICH IT WAS SOLELY RESPONSIBLE AND THEN REQUESTED THE AIR FORCE TO SHARE THE COST. IT IS APPARENT THAT THE COUNTY INTENDED TO MAINTAIN THE ROAD WITH OR WITHOUT AIR FORCE ASSISTANCE. THIS INSTANCE WE SEE NO BASIS FOR AUTHORIZING REIMBURSEMENT OF THE COUNTY. WE EXPRESS NO OPINION AS TO WHETHER, PARTICULARLY IN VIEW OF THE AIR FORCE'S PROPERTY INTEREST IN THE ROAD, THE AIR FORCE COULD HAVE CONTRIBUTED TO THIS PROJECT HAD THE COUNTY NOT UNDERTAKEN UNILATERALLY, AND PRIOR TO ANY AIR FORCE DETERMINATION ABOUT THE PROPRIETY OF ITS CONTRIBUTION IF ANY, TO DO THIS WORK.

IN LIGHT OF THE FORGOING, WE ARE OF THE OPINION THAT THERE IS NO LEGAL BASIS TO SUPPORT THE ALLOWANCE OF THE COUNTY'S CLAIM FOR REIMBURSEMENT OF A SHARE OF THE ROAD MAINTENANCE COST.