Text as published on gao.gov, https://www.gao.gov/products/b-47142, archived 2026-07-10. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-47142, February 7, 1945, 24 Comp. Gen. 599

Number: B-47142

Date: 1945-02-07

B-47142, FEBRUARY 7, 1945, 24 COMP. GEN. 599

MUNICIPAL FIREFIGHTING SERVICES RENDERED AT GOVERNMENT RESERVATION WITHIN CITY LIMITS - PAYMENT LIABILITY IN VIEW OF THE LEGAL DUTY OF A MUNICIPALITY TO EXTINGUISH ALL FIRES WITHIN ITS LIMITS, THE GOVERNMENT IS UNDER NO LEGAL OBLIGATION TO MAKE PAYMENT TO A CITY FOR FIREFIGHTING SERVICES RENDERED IN CONNECTION WITH A FIRE AT A GOVERNMENT RESERVATION LOCATED WITHIN THE CITY LIMITS.

COMPTROLLER GENERAL WARREN TO COL. ROY J. CAPERTON, U.S. ARMY, FEBRUARY 7, 1945:

THERE WAS REFERRED TO THIS OFFICE BY INDORSEMENT OF JANUARY 15, 1945, FROM HEADQUARTERS, ARMY SERVICE FORCES, OFFICE OF THE FISCAL DIRECTOR, WAR DEPARTMENT, YOUR LETTER OF DECEMBER 27, 1944, REQUESTING DECISION AS TO WHETHER YOU ARE AUTHORIZED TO MAKE PAYMENT ON A VOUCHER TRANSMITTED THEREWITH IN THE AMOUNT OF $12,026.99, IN FAVOR OF THE CITY OF DETROIT, BOARD OF FIRE COMMISSIONERS.

IT APPEARS THAT THE SUBJECT VOUCHER COVERS SERVICES RENDERED BY THE DETROIT FIRE DEPARTMENT ON JANUARY 24-25, 1944, IN CONNECTION WITH A AFIRE AT FORT WAYNE, DETROIT, MICHIGAN; THAT NO PREVIOUS AGREEMENT TO COMPENSATE FOR SUCH SERVICES HAD BEEN ENTERED INTO BY THE WAR DEPARTMENT FOR THE REASON--- STATED IN SECOND INDORSEMENT, DATED JUNE 23, 1944, OF MAJOR J. A. KENDRICK, REGIONAL POST ENGINEER, FORT WAYNE-- THAT "IT HAS ALWAYS BEEN ACCEPTED THAT THE CITY UTILIZE ITS EQUIPMENT AT FORT WAYNE AS A MATTER OF GENERAL MUNICIPAL PROTECTION; " AND THAT THE DETROIT FIRE DEPARTMENT HAS RESPONDED TO FIRE ALARMS AT FORT WAYNE ON PREVIOUS OCCASIONS--- PRESUMABLY WITHOUT MAKING CLAIMS FOR SUCH SERVICE. THE BASIS FOR THE CLAIM, FROM THE VIEWPOINT OF THE BOARD OF FIRE COMMISSIONERS, CITY OF DETROIT, IS SET FORTH IN A LETTER DATED DECEMBER 12, 1944, ADDRESSED TO THE COMMANDING OFFICER, FORT WAYNE, WHICH LETTER READS, IN PERTINENT PART, AS FOLLOWS:

IN DESCRIBING THE CITY LIMITS OF DETROIT, THE CITY CHARTER INCLUDES FORT WAYNE AS BEING WITHIN THE AREA OF THE CITY OF DETROIT. HOWEVER, IT BEING A MILITARY POST, WE HAVE NO CONTROL OR AUTHORITY WITHIN ITS CONFINES TO ENFORCE ORDINANCES REGULATING CONSTRUCTION OF BUILDINGS OR THOSE PROVIDING FOR ELIMINATION OF FIRE HAZARDS WHEN SUCH CONDITIONS ARE DISCOVERED BY INSPECTIONS BY THE FIRE MARSHAL'S OFFICE.

IT CAN READILY BE SEEN THAT SUCH CONDITIONS PERMIT HAZARDS TO EXIST THAT WOULD NOT BE TOLERATED IN OTHER SECTIONS OF THE CITY. IN ADDITION, NO TAXES ARE PAID BY FORT WAYNE FOR THE SUPPORT OF CITY SERVICES.

BASED ON THE PRECEDING FACTS, IT IS THE OPINION OF THE BOARD OF FIRE COMMISSIONERS THAT SERVICES RENDERED TO FORT WAYNE SHOULD BE PAID FOR BY THE U.S. ARMY ON THE SAME BASIS AS WHEN SERVICE IS RENDERED TO NEIGHBORING COMMUNITIES.

SUCH SERVICE IS RENDERED UNDER THE PROVISION OF SUBSECTION (F), SECTION 7, CHAPTER XV, TITLE IV OF THE CHARTER OF THE CITY OF DETROIT, WHICH STATES UNDER GENERAL POWERS AND DUTIES OF THE BOARD OF FIRE COMMISSIONERS:

"MAY SEND, IN ITS DISCRETION, ANY STEAM, FIRE OR OTHER ENGINES, WITH HOSE AND APPARATUS, TO THE RELIEF OF ANY COMMUNITY IN THE VICINITY; "

REQUESTS FOR ASSISTANCE ARE PROMPTLY COMPLIED WITH BY OUR DISPATCHING OFFICE WHEN SUCH COMMUNITIES HAVE CONTRACTS WITH THE BOARD OF FIRE COMMISSIONERS. SHOULD REQUESTS FOR ASSISTANCE COME FROM COMMUNITIES NOT HAVING CONTRACTS, RESPONSES ARE NOT AS PROMPTLY MADE AS IT IS THEN NECESSARY TO SECURE APPROVAL OF THE BOARD OF FIRE COMMISSIONERS BEFORE COMPANIES CAN BE DISPATCHED FOR SUCH SERVICES.

THE BILLING RENDERED FORT WAYNE IS STRICTLY IN ACCORDANCE WITH THE TERMS OF OUR CONTRACT FOR SERVICES IN OUTLYING COMMUNITIES WHERE NO TAXES ARE PAID FOR THIS SERVICE AND WE HAVE NO FIRE PREVENTION CONTROL OVER THE STRUCTURES INVOLVED.

WE ARE ENCLOSING A COPY OF THIS CONTRACT, AS WELL AS A COPY OF A TYPICAL BILLING RENDERED THE CITY OF DEARBORN ON FEBRUARY 19, 1944 WHICH WAS PAID WITHOUT QUESTION. THIS CONTRACT IS THE ONLY CONTRACT THE BOARD OF FIRE COMMISSIONER HAVE FOR FURNISHING SUCH SERVICES.

THE FUNDAMENTAL QUESTION PRESENTED IN THIS CASE IS WHETHER THERE IS A LEGAL OBLIGATION UPON THE UNITED STATES TO PAY THE CITY OF DETROIT FOR THE SERVICES RENDERED BY THE FIRE DEPARTMENT IN EXTINGUISHING THE FIRE AT FORT WAYNE, AS OTHERWISE PAYMENT THEREFOR WOULD NOT CONSTITUTE A PROPER CHARGE AGAINST APPROPRIATED FUNDS. AND SINCE IT IS CONCEDED THAT SUCH SERVICES WERE NOT RENDERED PURSUANT TO AN EXPRESS CONTRACT BETWEEN THE UNITED STATES AND THE CITY OF DETROIT, THE OBLIGATION, IF ONE EXISTS, NECESSARILY MUST REST UPON AN IMPLIED CONTRACT TO PAY THE FAIR VALUE OF THE SERVICES RENDERED. SEE GOODYEAR TIRE AND RUBBER CO. V. UNITED STATES, 276 U.S. 287; DAVIS ET AL. TRUSTEES V. UNITED STATES, 82 C.1CLS. 334; JOHNSTON V. UNITED STATES, 69 C.1CLS. 728.

IT IS WELL ESTABLISHED THAT IF THE OFFICER OR EMPLOYEE WHO MAKES THE ARRANGEMENT HAS NO AUTHORITY TO CONTRACT FOR OR TO PROCURE CERTAIN GOODS OR SERVICES FOR THE FEDERAL GOVERNMENT, THERE IS NO CONTRACTUAL OBLIGATION, IMPLIED OR OTHERWISE, UPON THE GOVERNMENT TO MAKE PAYMENT THEREFOR, EVEN THOUGH THE GOVERNMENT MAY HAVE BENEFITED THEREBY. THUS, IN BEACH V. UNITED STATES, 226 U.S. 253, 260, THE SUPREME COURT OF THE UNITED STATES SAID--- "IT IS FUNDAMENTAL THAT HE WHO IS WITHOUT AUTHORITY TO BIND HIS PRINCIPAL BY AN EXPRESS CONTRACT CANNOT BE HELD TO HAVE DONE SO BY IMPLICATION.' THE RECORD IN THE INSTANT MATTER DOES NOT SHOW HOW OR BY WHOM THE DETROIT FIRE DEPARTMENT WAS SUMMONED TO THE FIRE. HOWEVER, THERE WOULD SEEM TO BE SERIOUS DOUBT WHETHER THE ABOVE PRINCIPLE OF LAW IS APPLICABLE TO A SITUATION WHERE ASSISTANCE IN THE PRESERVATION OF VALUABLE GOVERNMENT PROPERTY IS ENLISTED UNDER EMERGENCY CONDITIONS (SEE A-6592, MARCH 20, 1925; A-15262, AUGUST 23, 1926; CF. B-6400, AUGUST 28, 1940); HENCE, THE PRESENT CASE WILL BE DECIDED ON OTHER GROUNDS.

THE MORE IMPORTANT QUESTION IS WHETHER THERE WAS A LEGAL DUTY UPON THE CITY OF

DETROIT, OR ITS FIRE DEPARTMENT, TO EXTINGUISH THE INVOLVED FIRE AT FORT WAYNE BY REASON OF THE FACT THAT THE PROPERTY IS LOCATED WITHIN THE CITY LIMITS. FOR, IF SUCH A DUTY DID, IN FACT, EXIST, THERE WOULD BE NO SOUND BASIS FOR CONCLUDING THAT A MERE CALL FOR THE PERFORMANCE OF SUCH DUTY--- EVEN BY AN AUTHORIZED CONTRACTING OFFICER-- CARRIED WITH IT THE NECESSARY IMPLICATION THAT THE FEDERAL GOVERNMENT WOULD PAY THE REASONABLE VALUE OF THE SERVICE RENDERED. B-6400, AUGUST 28, 1940; B-28369, SEPTEMBER 22, 1942.

THE ESTABLISHMENT AND OPERATION OF A FIRE DEPARTMENT BY MUNICIPAL CORPORATION IS A GOVERNMENTAL--- AS DISTINGUISHED FROM A PROPRIETARY OR BUSINESS--- FUNCTION. O-DONNELL V. GROTON, 144 A. 468; KLING V. CITY OF AUSTIN, 62 S.W.2D 689. AND THE GOVERNMENTAL FUNCTIONS OF A MUNICIPAL CORPORATION ARE EXERCISED FOR THE BENEFIT AND WELFARE OF THE COMMUNITY AT LARGE; SUCH FUNCTIONS ARE NOT MERE FRANCHISES OR PRIVILEGES TO BE PERFORMED OR IGNORED BY THE MUNICIPALITY AT ITS DISCRETION, BUT RATHER LEGAL DUTIES IMPOSED BY THE STATE UPON ITS CREATION; AND SUCH DUTIES ARE OF A MANDATORY NATURE, NOTWITHSTANDING THE LACK OF CIVIL LIABILITY FOR NEGLIGENCE IN THE PERFORMANCE THEREOF. 43 C.J. 182-4; MASON ET AL. V. FEARSON, 50 U.S. 248; MARXER V. CITY OF SAGINAW, 258 N.W. 627; ROSE V. GYPSUM CITY, 179 P. 348; CITY OF UVALDE V. UVALDE ELECTRIC AND ICE CO., 250 S.W. 140. IN THE CASE OF THE CITY OF DETROIT, THE AUTHORITY TO ESTABLISH AND OPERATE A FIRE DEPARTMENT IS DERIVED FROM SECTION 20, ARTICLE VIII, OF THE MICHIGAN CONSTITUTION, AND THE PROVISIONS OF THE HOME RULE ACT (COMP. LAWS 1929, SECTION 2230). THE SUPREME COURT OF MICHIGAN HAS SAID THAT IT IS THE DUTY OF A MUNICIPAL FIRE DEPARTMENT TO "EXTINGUISH FIRES WITHIN THE LIMITS OF A MUNICIPALITY.' DAVIDSON V. HINE, 115 N.W. 246, 248. HENCE, IT MAY BE ACCEPTED AS ESTABLISHED--- AT LEAST INSOFAR AS THE CIVIC COMMUNITY GENERALLY IS CONCERNED--- THAT THERE IS A LEGAL DUTY UPON THE CITY OF DETROIT TO EXTINGUISH ALL FIRES WITHIN ITS MUNICIPAL LIMITS.

APPARENTLY, IT IS THE CONTENTION OF THE BOARD OF FIRE COMMISSIONERS OF THE CITY OF DETROIT THAT SUCH DUTY DOES NOT EXTEND TO THE PROPERTY AT FORT WAYNE BY REASON OF ITS OWNERSHIP BY THE FEDERAL GOVERNMENT, NOTWITHSTANDING THE ADMITTED FACT THAT SUCH PROPERTY IS LOCATED WITHIN THE LIMITS OF THE MUNICIPALITY. IT IS, OF COURSE, TRUE THAT FEDERAL PROPERTY IS EXEMPT FROM STATE OF MUNICIPAL REAL ESTATE TAXES UNDER THE CONSTITUTION OF THE UNITED STATES (VAN BROCKLIN V. TENNESSEE, 177 U.S. 151; UNITED STATES V. MAYOR AND COUNCIL OF CITY OF HOBOKEN, N.J., 29 F.2D 932); IN FACT, THE LAWS OF THE STATE OF MICHIGAN SPECIFICALLY SO PROVIDE. COMP. LAWS 1929, SECTION 3395. BUT THE SAME PROVISIONS OF THE MICHIGAN LAW EXEMPT FROM TAXATION REAL PROPERTY OF THE STATE OR OF ANY COUNTY, TOWNSHIP, CITY, VILLAGE OR SCHOOL DISTRICT, AS WELL AS THAT OWNED AND OCCUPIED BY LIBRARY, BENEVOLENT, CHARITABLE, EDUCATIONAL OR SCIENTIFIC INSTITUTIONS, CHURCHES AND CERTAIN WAR VETERANS AND PERSONS FOUND FINANCIALLY UNABLE TO PAY TAXES. COULD IT SERIOUSLY BE CONTENDED THAT THERE IS LIKEWISE NO DUTY UPON THE CITY TO EXTINGUISH FIRES INVOLVING ANY OF SUCH TAX-EXEMPT PROPERTY? CERTAINLY THERE HAS BEEN FOUND NO PROVISION OF LAW OR JUDICIAL AUTHORITY TO SUSTAIN ANY SUCH PROPOSITION; AND THE MORE REASONABLE VIEW WOULD APPEAR TO BE THAT THE DUTY TO THE COMMUNITY TO EXTINGUISH ALL FIRES WITHIN MUNICIPAL LIMITS HAS NO CONNECTION WHATEVER WITH THE LIABILITY FOR OR PAYMENT OF TAXES ON THE PROPERTY INVOLVED.

ALSO, IT IS TRUE THAT THERE IS NO AUTHORITY IN THE BOARD OF FIRE COMMISSIONERS TO ENFORCE ORDINANCES REGULATING THE CONSTRUCTION OF BUILDINGS OR THE ELIMINATION OF FIRE HAZARDS AT FORT WAYNE. MAYO V. UNITED STATES, 319 U.S. 441; UNITED STATES V. CITY OF PHILADELPHIA, 56 F.1SUPP. 62; UNITED STATES V. CITY OF CHESTER, 51 F.1SUPP. 573. IN UNITED STATES V. CITY OF CHESTER, SUPRA, WHEREIN THE QUESTION WAS WHETHER OR NOT THE CITY OF CHESTER COULD COMPEL THE UNITED STATES HOUSING AUTHORITY TO COMPLY WITH A LOCAL BUILDING REGULATION, THE COURT

SAID:

* * * THIS REQUIREMENT OF THE CITY OF CHESTER IS A RESTRICTION LAID DIRECTLY UPON THE UNITED STATES. IT IS A RESTRICTION, THE COMPLIANCE WITH WHICH, IF IT IS ENFORCIBLE, WOULD BE REQUIRED BEFORE EXECUTING A FUNCTION OF GOVERNMENT AND THE SUPREMACY CLAUSE OF THE CONSTITUTION,

ARTICLE 6, PROHIBITS JUST THIS. * * *

THUS, THE ABSENCE OF A LEGAL RIGHT IN THE CITY OF DETROIT TO REQUIRE THE FEDERAL GOVERNMENT TO COMPLY WITH BUILDING AND FIRE ORDINANCES IS AN ATTRIBUTE OF THE SOVEREIGN POWER OF THE FEDERAL GOVERNMENT VESTED IN IT BY THE CONSTITUTION OF THE UNITED STATES. HOWEVER, THE FACT THAT THE CITY OF DETROIT LIKEWISE HAS NO FIRE PREVENTION CONTROL OVER PROPERTY LOCATED IN OUTLYING COMMUNITIES WOULD NOT SEEM SUFFICIENT TO PLACE FEDERAL PROPERTY LOCATED WITHIN CITY LIMITS AND PROPERTY LOCATED LOCATED OUTSIDE CITY LIMITS IN THE SAME CATEGORY INSOFAR AS CONCERNS THE RIGHT TO THE SERVICES OF THE MUNICIPAL FIRE DEPARTMENT. UNDOUBTEDLY THE CITY OF DETROIT WOULD HAVE THE RIGHT TO--- AND WOULD--- CHARGE FOR SERVICES RENDERED IN EXTINGUISHING FIRES INVOLVING PROPERTY MIGHT HAVE COMPLIED STRICTLY WITH BOTH THE BUILDING AND FIRE ORDINANCES OF THE CITY OF DETROIT.

UNDER ARTICLE I, SECTION 8, CLAUSE 17, OF THE CONSTITUTION, THE CONGRESS OF THE UNITED STATES HAS EXCLUSIVE JURISDICTION OVER "ALL PLACES PURCHASED BY THE CONSENT OF THE LEGISLATURE OF THE STATE IN WHICH THE SAME SHALL BE, FOR THE ERECTION OF FORTS, MAGAZINES, ARSENALS, DOCK-YARDS, AND OTHER NEEDFUL BUILDINGS.' IN A SENSE IT COULD BE ARGUED THAT BY REASON OF SUCH CONSTITUTIONAL PROVISION, A GOVERNMENT RESERVATION OR BUILDING, ALTHOUGH PHYSICALLY LOCATED WITHIN THE LIMITS OF A MUNICIPALITY, SHOULD NOT BE CONSIDERED A PART THEREOF FOR THE PURPOSE OF ENTITLEMENT TO THE SERVICE OF THE MUNICIPAL FIRE DEPARTMENT. A SEMBLANCE OF SUPPORT FOR SUCH PROPOSITION IS FOUND IN A RECENT CASE DECIDED BY THE COURT OF APPEALS OF OHIO (STATE EX REL. MOORE V. BOARD OF EDUCATION OF EUCLID CITY SCHOOL DISTRICT., 57 N.E.2D 118), HOLDING THAT A CITY BOARD OF EDUCATION WAS NOT OBLIGED TO ENROLL IN ITS SCHOOLS MINOR CHILDREN LIVING WITH THEIR PARENTS IN HOUSING PROJECTS OWNED BY THE FEDERAL GOVERNMENT--- CONSTRUCTED UNDER THE PROVISIONS OF THE LANHAM ACT, 42 U.S.C. 1521, ET SEQ.--- WITHOUT PAYMENT OF TAXES, TUITION OR ANY SUMS IN LIEU THEREOF.

HOWEVER, IF A CITY MAY CHARGE THE FEDERAL GOVERNMENT FOR THE SERVICE OF ITS FIRE DEPARTMENT UNDER THE CIRCUMSTANCES HERE INVOLVED, WOULD IT NOT FOLLOW THAT A CHARGE COULD BE MADE FOR THE SERVICE OF ITS POLICE DEPARTMENT, THE SERVICE OF ITS STREET/CLEANING DEPARTMENT AND ALL SIMILAR SERVICES USUALLY RENDERED BY A CITY FOR THE BENEFIT AND WELFARE OF ITS INHABITANTS. IN OTHER WORDS, IT WOULD SEEM THAT A DECISION FAVORABLE TO THE CITY OF DETROIT IN THIS CASE WOULD HAVE FAR-REACHING EFFECT. SUCH FACT, ALONE, MIGHT BE CONSIDERED SUFFICIENT FOR THIS OFFICE TO DENY THE CITY'S RIGHT TO PAYMENT IN THE ABSENCE OF CLEAR AND ESTABLISHED JUDICIAL AUTHORITY IN SUPPORT THEREOF; AND THERE HAS BEEN FOUND NO SUCH AUTHORITY.

THERE IS ONE FURTHER GROUND FOR CONCLUDING THAT THERE IS NOT LEGAL OBLIGATION UPON THE FEDERAL GOVERNMENT TO MAKE PAYMENT IN THIS CASE. INDICATED ABOVE, SUCH OBLIGATION MUST BE FOUND IN AN IMPLIED CONTRACT BETWEEN THE PARTIES. AND IT IS WELL SETTLED THAT A CONTRACT TO PAY FOR SERVICES RENDERED WILL BE IMPLIED IN FACT ONLY WHEN THE CIRCUMSTANCES RAISE THE PRESUMPTION THAT THE PARTIES INTENDED COMPENSATION SHOULD BE PAID. VAUGHT V. CHARLESTON NATIONAL BANK, 62 F.2D 817; COLEMAN V. UNITED STATES, 152 U.S. 96; JOHNSTON V. UNITED STATES, SUPRA. IN THE

INSTANT CASE, THERE ARE GROUNDS FOR BELIEVING THAT ON PREVIOUS OCCASIONS THE DETROIT FIRE DEPARTMENT GRATUITOUSLY RENDERED SERVICE IN EXTINGUISHING FIRES AT FORT WAYNE. SUCH FACT--- IF IT BE A FACT--- WOULD TEND TO DEFEAT ANY PRESUMPTION THAT THE UNITED STATES IN REQUESTING THE SERVICE ON THIS OCCASION UNDERSTOOD IT WOULD BE CHARGED THEREFOR OR THAT THE CITY OF DETROIT IN RENDERING THE SERVICE EXPECTED TO BE PAID THEREFOR. ACCORDINGLY, I HAVE TO ADVISE THAT PAYMENT ON THE SUBJECT VOUCHER, WHICH WILL BE RETAINED IN THIS OFFICE, IS NOT AUTHORIZED.