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B-93322 April 19, 1950

Number: B-93322

Date: 1950-04-19

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The Administrator General Services Administration

My dear Mr. Administrator:

Reference is made to your letter of February 21, 1950, requesting a decision with respect to the availability of the proceeds of certain insurance now carried in connection with the repair and modernization of the Executive Mansion for payment on the cost of repairs which might be made necessary by damage by fire or other accident.

You state that, on November 4, 1949, pursuant to Public Law 119, 81st congress, approved June 23, 1949, a cost-plus-a-fixed-fee contract for the renovation and modernization of the Executive Mansion was entered into with John WoShain, Inc., which contract was executed on behalf of the Government by the Commissioner of Public Buildings as the contracting officer designated by the Committee on the Renovation of the Executive Mansion. The contract stipulates that the contractor, subject to the approval of the contracting officer, shall provide fire and extended coverage insurance, and you state that pursuant thereto, and at the direction of the contracting officer, the contractor has obtained binders for such insurance in the amount of $1,000,000 on the Executive Mansion and $50,000 on the warehouse in which certain materials received from the Executive Mansion, which are to be replaced therein are stored. The proceeds of the insurance are payable to the Government and the contractor.

You state further that a question has arisen as to whether, in the event of loss due to fire or any hazard covered by the binders, the proceeds of the insurance may be used for the repair and restoration of the damage. Also in the event that it should be held that the proceeds of insurance received under the policies are not available for payment of the cost of repairs made necessary by losses sustained, you request to be advised as to whether the contract may be amended so as to require that the proceeds of the fire and extended coverage insurance shall be payable to the contractor and shall be used by him, under the supervision of the contracting officer, to make all necessary repairs.

The appropriation made by Public Law 119, supra, is stated to be sufficient only to defray the initial cost of the renovation and modernization work required so that, if a substantial loss should occur as a result of fire or other accident for which the contractor is not responsible, funds would not be available to pay the cost of repairs until congress had made an additional appropriation, unless the insurance proceeds could be used. Your doubt as to the availability of the insurance proceeds for this purpose arises because of section 3617, Revised

Statures, 31 U.S.C. 48a, which requires that the gross amount of all moneys received from whatever source for the use of the United States (with exceptions not here applicable) shall be deposited and covered into the Treasury as miscellaneous receipts.

The question first for determination is whether the appropriation made for the renovation and modernization of the Executive Mansion is available for defraying the cost of insurance premiums. The appropriation made by Public Law 119, approved June 23, 1949, contains no specific authority therefor. The necessity for statutory authority to expend appropriated funds for insurance premiums primarily is based upon a long established policy of the Government to assume its own risks of loss--the theory being that the magnitude of its resources constitutes such practice more advantageous if only from the standpoint of economy of the administration of government. See 16 Comp. Gen. 453; 19 id. 211; 21 id. 928. However, Public Law 40, providing for a commission on renovation of the Executive Mansion, authorizes the Commission--Section 2(f)--within the limits of its appropriations to make such expenditures as, in its discretion, it deems necessary. The inclusion of such authority connotes an intention on the part of Congress that the Commission have greater authority in respect of expenditures that ordinarily is conferred in appropriation laws. Hence, any doubt that might exist in the matter properly may be resolved in favor of the Commission's authority to provide for fire and extended coverage insurance. But such determination does not necessarily mean that the proceeds of such insurance received by the United States are available for payment of the cost of repairs made necessary by losses sustained.

In the absence of statutory authorization otherwise, the proceeds of insurance generally have been held subject to the provisions of section 3617 of the Revised Statutes. However, having in mind that there is involved the performance of a particular job of a temporary nature and that the failure to deposit the proceeds of any insurance--to the extent of the Government's loss--to the appropriation might have the effect of defeating the purpose for which Public Law 40 was enacted and the ensuing appropriation made--a result certainly not intended by the Congress--the view is fully warranted that the proceeds of insurance received under the fire and extended coverage binders or policies may be used for the payment of the cost of repairs made necessary by losses sustained, and I so hold. In view thereof, it is not necessary to reply to your second question.

Sincerely yours,

(Signed) LINDSAY C. WARREN Comptroller General of the United States